

IN THE MATTER OF  
KELLOGG COMPANY, ET AL.

*Docket 8883. Interlocutory Order, Jan. 29, 1979*

Order denying motion to dismiss the complaint, or in the alternative, to withdraw the proceedings from adjudication and to hold an evidentiary hearing.

ORDER

On November 29, 1978, General Mills filed a motion and supporting memorandum seeking dismissal of the complaint, or alternative relief including withdrawal of the proceedings from adjudication and an evidentiary hearing on the negotiations with Judge Hinkes. Complaint counsel responded on December 12, 1978. The Commission has reviewed these submissions as well as the Order, separate statement of Chairman Pertschuk, and accompanying materials issued on December 8, 1978, and has determined that the relief requested by General Mills should be, and hereby is denied.

I

With respect to General Mills' assertion that the complaint must be dismissed because any continuation of the proceedings will violate General Mills' statutory and constitutional rights, the Commission has concluded that the grounds stated do not warrant the relief requested. In the first place, members of the Commission other than Chairman Pertschuk were unaware of the negotiations with Judge Hinkes at the time that they occurred. Hence, no basis exists in support of a claim that the Commission as a body violated General Mills' rights. Second, Chairman Pertschuk's conduct with respect to the Hinkes contract neither demonstrates a lack of impartiality nor creates an appearance thereof. On the contrary, his conduct was motivated solely by considerations of sound administration and a desire to accommodate the interests of all the parties in bringing these proceedings to an expeditious conclusion. Clearly, the circumstances surrounding his actions would not lead a reasonable person to conclude otherwise.

To the extent that General Mills' motion is based upon contacts between Chairman Pertschuk and Judge Hinkes, it is important to note that Chairman Pertschuk was not acting as an interested party or on behalf of an interested party, but as the "administrative head of the agency." Rules of Practice Section 0.8(a); Reorganization Plan No. 8 of 1950, Section 1(a), 64 Stat. 1264, *reprinted in* 15 U.S.C. 41 App. Further, the Chairman's actions were not related to the merits

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of the proceeding in any way, nor did he discuss the merits with Judge Hinkes. In light of these facts, the Commission has concluded that there is no actual or apparent lack of impartiality on the part of the Chairman or of any other Commissioner, and that the course of negotiations did not prejudice General Mills' rights in any manner.

## II

While General Mills argues that the Commission has an "affirmative duty" to hold an evidentiary hearing, the authorities cited do not warrant such a conclusion. The facts here are clearly distinguishable from the circumstances involved in *United Air Lines, Inc. v. CAB*, 281 F.2d 53 (D.C. Cir. 1960), and *Sangamon Valley Television Corp. v. United States*, 269 F.2d 221 (D.C. Cir. 1959). Moreover, to the extent that the motion otherwise seeks the information contained in or appended to the Commission's order of December 8, it is dismissed as moot. To the extent that it seeks to probe beyond the explanation already offered, it is denied. General Mills seeks in effect, to probe the predecisional "mental processess" of an agency. Such probing of the mental processes is disfavored, especially where, as here, the reasons for an agency decision are stated. *United States v. Morgan*, 313 U.S. 409, 422 (1941); *National Nutritional Foods Ass'n v. FDA*, 491 F.2d 1141, 1144-46 (2d Cir.), cert. denied, 419 U.S. 874 (1974). In this case, the Chairman has given an ample statement concerning his actions, and related memoranda have been released. See Order of December 8, 1978. Nor has there been any showing of bad faith or improper behavior. On the contrary, the Commission believes that the documents in the record demonstrate the absence of improper behavior or bad faith.

## III

Finally, the Commission declines to entertain General Mills' request to withdraw this matter from adjudication and to consider the possibility of settlement. General Mills is entirely free to follow the procedures set forth in Rules of Practice Section 3.25, should it choose to do so.

## IV

*It is ordered*, That (1) General Mills' motion of November 29, 1978, is dismissed as moot to the extent it seeks relief already granted; and (2) To the extent it seeks relief not previously granted, it is denied in all respects.

Commissioner Pitofsky did not participate.

## IN THE MATTER OF

## KELLOGG COMPANY, ET AL.

*Docket 8883. Interlocutory Order, Jan. 29, 1979*

Order denying motion to disqualify FTC Chairman and each other Commissioner advised in advance of proposal to retain ALJ on contract basis.

## ORDER

On December 7, 1978, General Foods Corporation filed a motion to disqualify Chairman Pertschuk and each other Commissioner advised in advance of the proposal to retain Judge Hinkes on a contract basis. On January 11, 1979, the Chairman responded to General Foods' motion and refused to disqualify himself. That response was placed on the public docket and served on the parties.

In responding to General Foods' alternative motion that the Commission itself determine whether the Chairman should be disqualified from participating in these proceedings,<sup>1</sup> we see no reason to differ from the result reached by the Chairman. The Chairman's actions were undertaken pursuant to his administrative authority under Reorganization Plan No. 8 of 1950, 64 Stat. 1264. The documents which have been released, and the Chairman's statement of December 8, clearly indicate that his actions in this matter were taken without reference to the merits of the case. Under the circumstances we do not believe that any bias, prejudice or apparent unfairness has been demonstrated. *Cinderella Career & Finishing Schools, Inc. v. FTC*, 425 F.2d 583, 591 (D.C. Cir. 1970); *Amos Treat & Co. v. SEC*, 306 F.2d 260, 267 (D.C. Cir. 1962).

As to General Foods' motion to disqualify each of the Commissioners who had advance knowledge of the Hinkes contract, the record is clear that no such Commissioner was so advised. Accordingly,

*It is ordered*, That the motion of General Foods Corporation to disqualify FTC Chairman Michael Pertschuk and each other Commissioner advised in advance of the proposal to retain Judge Hinkes on a contract basis be, and the same hereby is, denied.

Chairman Pertschuk and Commissioner Pitofsky did not participate.

<sup>1</sup> General Foods argues that the Chairman should be disqualified not only from participating in any decision with respect to the Hinkes contract, but also from participating in any future deliberations in this case.

Complaint

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IN THE MATTER OF

HARPER SALES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT*Docket 9070. Complaint, Dec. 19, 1975 — Decision, Feb. 1, 1979*

This consent order, among other things, requires a Rush, N.Y. mobile home dealer and its affiliates to cease conditioning the leasing or renting of space in their trailer parks to the purchase of mobile homes and accessories from Harper Sales, Inc. or other designated sources.

*Appearances*

For the Commission: *Henry R. Whitlock* and *Herbert S. Forsmith*.  
For the respondents: *John Stuart Smith, Nixon, Hargrave, Devans & Doyle*, Rochester, N.Y.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the parties identified in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

## I. DEFINITIONS

PARAGRAPH 1. For the purposes of this complaint, the following definitions shall apply:

(a) "Mobile home" means a transportable unit or units designed to be placed without a permanent foundation, connected to utilities, and used or capable of being used for year-round living.

(b) "Mobile home park" means a tract of land utilized specifically for the purpose of renting sites for the placement of mobile homes for residential purposes and in which utility connections and various communal services are commonly provided.

## II. RESPONDENTS

PAR. 2. Respondent Harper Sales, Inc. is a corporation organized under the laws of the State of New York with its principal office located at 7500 West Henrietta Road, Rush, New York.

PAR. 3. Respondent Edgewood Park Estates, Inc. is a corporation

organized under the laws of the State of New York with its principal place of business located at 4000 Brick Schoolhouse Road, Hamlin, New York.

PAR. 4. Respondent Harper Park-Avon is a partnership organized under the laws of the State of New York with its principal office located at 6150 East Avon-Lima Road, Avon, New York.

PAR. 5. Respondents Ralph R. Harper and John R. Harper are officers of corporate respondent Harper Sales, Inc. They formulate, direct, approve, authorize and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Said individual respondents also are partners in the partnership respondent, Harper Park-Avon. They formulate, direct, approve, authorize and control the acts and practices of the partnership respondent including the acts and practices hereinafter set forth. Their business address is the same as that of corporate respondent Harper Sales, Inc.

PAR. 6. Respondent Harper Sales, Inc. has been, and is now, engaged in the advertising, offering for sale, sale and distribution of mobile homes and mobile home accessories.

In fiscal year 1972, sales of mobile homes by respondent Harper Sales, Inc. were approximately \$1,600,000.

PAR. 7. Respondent Edgewood Park Estates, Inc. has been, and is now, engaged in the development and operation of a mobile home park known as Harper Park-Hamlin located at the same address as that of said corporate respondent.

PAR. 8. Respondent Harper Park-Avon has been and is now, engaged in the development and operation of a mobile home park located at 6150 East Avon-Lima Road, Avon, New York.

### III. JURISDICTION

PAR. 9. (a) In the course and conduct of its business as aforesaid, respondent Harper Sales, Inc. now causes, and for some time last past has caused, mobile homes and other products to be shipped to purchasers located in states other than New York.

(b) In the course and conduct of its business as aforesaid, respondent Harper Sales, Inc. has purchased and continues to regularly purchase mobile homes and other products from suppliers in states other than New York for the purpose of offering said products for sale, to maintain an available inventory for sale and to fill special purchase orders received from their customers.

(c) In the course and conduct of their business, respondents Edgewood Park Estates, Inc. and Harper Park-Avon have entered into agreements with respondent Harper Sales, Inc. which are

essential to make effective the restraints on interstate commerce alleged in Paragraph Eleven hereof.

(d) Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 10. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondents have been and are in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, with persons or firms engaged in the sale of mobile homes and mobile home accessories and with persons or firms engaged in the operation and maintenance of mobile home parks.

#### IV. VIOLATIONS

PAR. 11. In the course and conduct of their business as aforesaid, respondents have refused to rent sites under the control of Edgewood Park Estates, Inc. and Harper Park-Avon for the accommodation of mobile homes which have not been purchased from Harper Sales, Inc. thereby making the rental of said sites conditional and dependent upon the purchase of mobile homes from Harper Sales, Inc.

#### V. EFFECTS

PAR. 12. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, as hereinabove alleged, have or tend to have the effect of:

- (a) reducing competition in the sale of mobile homes;
- (b) foreclosing potential competitors in the sale of mobile homes by raising entry barriers;
- (c) foreclosing substantial sales by dealers of mobile homes to actual or prospective tenants of sites in respondents' mobile home parks;
- (d) inflating the prices of mobile homes purchased from respondents;
- (e) depriving consumers of the benefits of competition.

PAR. 13. The aforesaid acts, practices and methods of competition, constitute unreasonable restraints of trade and unfair methods of competition in or affecting commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended, and constitute unfair acts and practices in or affecting commerce in

violation of Section 5 of the Federal Trade Commission Act, as amended.

#### DECISION AND ORDER

The Commission having issued its complaint on December 19, 1975, charging that the respondents named in the caption hereof have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45); and

Respondents and complaint counsel, by joint motion filed December 16, 1976, having moved to have this matter withdrawn from adjudication for the purpose of submitting an executed consent agreement; and

The Commission, by order issued January 11, 1977, having withdrawn this matter from adjudication pursuant to Section 3.25(c) of its Rules; and

Each of the respondents and counsel supporting the complaint having executed an agreement containing a consent order, which includes an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, and waivers as required by the Commission's Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of one hundred and eighty (180) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Harper Sales, Inc. is a corporation organized under the laws of the State of New York, with its principal office located at 7500 West Henrietta Road, Rush, New York.

Respondent Edgewood Park Estates, Inc. is a corporation organized under the laws of the State of New York, with its principal place of business located at 4000 Brick Schoolhouse Road, Hamlin, New York.

Respondent Harper Park-Avon is a partnership organized under the laws of the State of New York with its principal office located at 6150 East Avon-Lima Road, Avon, New York.

Respondents Ralph R. Harper and John R. Harper are officers of corporate respondents Harper Sales, Inc. and Edgewood Park

Estates, Inc. They formulate, direct, approve, authorize and control the acts and practices of Harper Sales, Inc. Said individual respondents are also partners in the partnership respondent, Harper Park-Avon. They formulate, direct, approve, authorize and control the acts and practices of the partnership respondent. Their business address is the same as that of corporate respondent Harper Sales, Inc.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

#### ORDER

*It is ordered*, That Harper Sales, Inc. and Edgewood Park Estates, Inc., corporations, and Harper Park-Avon, a partnership, their successors and assigns, and their officers and partners and Ralph R. Harper and John R. Harper, individually and as officers of said corporations and as partners in said partnership, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, partnership, division or other device, in connection with the sale of mobile homes or the rental or lease of mobile home sites, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

The offering, execution, maintenance or enforcement of any lease, agreement, understanding or other arrangement which, directly or indirectly, conditions the lease or rental of a mobile home site upon the purchase of a mobile home from a respondent, or a source designated by a respondent. For the purposes of the foregoing sentence a transfer or conveyance of a mobile home site by any respondent to anyone not a respondent which grants any respondent the option or right to purchase such site, shall be deemed to be a lease; and the lease or rental of a mobile home under which the lessor has the option or right to require the lessee to purchase such mobile home as a condition for the continued use of such mobile home, shall be deemed to be a purchase.

*Provided, however*, that respondents may freely exercise their rights as businessmen, including the right to set reasonable rules, regulations and standards concerning the appearance of mobile homes and acceptance of tenants in respondents' mobile home parks and the operation, maintenance and appearance of mobile homes, mobile home parks and mobile home sites, except insofar as limited by the provisions of this order; and

*Provided further*, that nothing in this order shall exempt any

person or firm from the duty to comply with all applicable laws or regulations which are consistent with the provisions of this order.

*It is further ordered,* That respondents shall, within thirty (30) days of service of this order, distribute, and obtain a signed receipt therefor, a copy of this order to each of their operating divisions and respondents' employees engaged in the sale or rental of mobile homes or mobile home sites.

*It is further ordered,* That each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment, and of his affiliation with a new business or employment. In addition, for a period of ten years from the effective date of this order, each individual respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the sale of mobile homes or the rental or lease of mobile home sites or of his affiliation with a new business or employment in which his own duties and responsibilities involve the sale of mobile homes or the rental or lease of mobile home sites. Such notice shall include this respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

*It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to any proposed change in any corporate respondent, or the partnership respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or partnership, the creation or dissolution of subsidiaries or any other change in the corporation or partnership which may affect compliance obligations arising out of the order.

*It is further ordered,* That respondents maintain complete business records relative to the manner and form of their continuing compliance with the terms and provisions of this order. Each record shall be retained by respondents for at least three years after it is made.

*It is further ordered,* That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

THE KROGER COMPANY

*Docket 9102. Interlocutory Order, Feb. 1, 1979*ORDER AFFIRMING ORDER RULING ON RESPONDENT'S MOTION  
FOR PRODUCTION OF DOCUMENTS PURSUANT TO § 3.36

Administrative Law Judge Montgomery K. Hyun (the "ALJ") has *sua sponte* certified to the Commission for discretionary review certain of his rulings in connection with respondent's motion for *in camera* production of documents in the files of the Commission. We decline to disturb the ALJ's discovery rulings and, accordingly, we affirm. Our disposition of this matter also moots respondent's application for a stay of further proceedings before the ALJ and for oral argument before the Commission.

The ALJ certified his rulings only because of suggestions by respondent that his continued participation in this matter might be inappropriate in light of the Commission's refusal to grant clearance to one of respondent's attorneys, Mr. Mark Tuller, notwithstanding that both previously served at different times as attorney-advisors to former Chairman Engman.

The standards governing the appearance of former agency employees in Commission proceedings address issues different from those concerning the propriety of participation by administrative law judges. The clearance rules concern impropriety resulting from access to inside information whereas the principal question involving an ALJ's participation is one of bias or prejudice. Thus, application of these standards may lead to differing results concerning the continued participation of Mr. Tuller and Judge Hyun in this proceeding, notwithstanding that each avers that during his tenure with Chairman Engman he did not participate in any matter pertaining to the respondent.

Here, no question of possible bias or prejudice by the ALJ has been raised by the respondent and we can perceive none. Certainly mere access to information in the possession of the Commission casts no shadow on Judge Hyun's ability to render an impartial decision in this matter. Indeed, to suggest otherwise would call into question a judge's ability to review assertedly privileged information *in camera* for the purpose of determining whether the attorney requesting the information is entitled to see it. For these reasons, we find nothing inconsistent about the fact that Mr. Tuller

has been denied clearance in this proceeding while Judge Hyun may continue to serve in his altogether different role.

*It is ordered*, That the ALJ's rulings of January 15, 1979 be, and they hereby are, affirmed; and

*It is further ordered*, That respondent's motions for a stay and for oral argument, dated January 30, 1979, be, and they hereby are, denied.

Commissioner Pitofsky did not participate.

IN THE MATTER OF  
FEDERAL SIGNAL CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket C-2953. Complaint, Feb. 1, 1979 — Decision, Feb. 1, 1979*

This consent order, among other things, requires a Chicago, Ill. manufacturer and seller of public safety and communication equipment to cease, in connection with the sale of such products to governmental entities, from exchanging bidding information with its distributors prior to submission of competitive bids, submitting or soliciting the submission of collusive bids, or employing any other business practice that may hinder or prevent competitors from bidding successfully. The firm is also required to cease furnishing governmental bodies seeking to purchase civil defense warning systems with advertisements or specifications that might induce such bodies to limit distribution of invitations to bid; incorporate the name or model number of firm's products into advertisements for bids or specifications; or draft specifications that would restrain, lessen, or prevent the sale of such devices by others.

*Appearances*

For the Commission: *John T. Hankins and David J. Richman.*

For the respondent: *Gary L. Mowder, Schiff, Hardin & Waiter,*  
Chicago, Ill.

COMPLAINT

The Federal Trade Commission having reason to believe that Federal Signal Corporation has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. For the purpose of construing this complaint, the following definitions shall apply:

A. "Signal Division products" means any products, or component or accessory thereof, presently or in the future sold by the Signal Division of Federal Signal Corporation, including but not limited to radio equipment, vehicle lights and sirens, speed detecting devices, helmets, visual and audible warning and signaling devices such as lights, sirens, horns and bells, and civil defense warning systems.

B. "Civil defense warning systems" means outdoor warning sirens and components and accessories thereof, which are designed to warn the public of impending enemy attack, storms or other emergency situations. The term includes sirens, activating devices,

timers, telephone relays, and other equipment customarily used in connection with the operation of the sirens.

C. "Distributor" shall mean any person, company or other entity purchasing Signal Division products for resale.

D. "Competitive bidding" means the process by which any bid or quotation is made concerning or in response to any solicitation, announcement, advertisement or request by a public body.

E. "Public body" means any unit of federal, state, county or municipal government, or any other organization funded primarily from tax revenues. The term shall include, but not be limited to police departments, fire departments, highway departments and civil defense organizations.

PAR. 2. Federal Signal Corporation, hereinafter referred to as Federal or respondent, is a corporation organized and doing business under the laws of the State of Delaware with its principal office at 120 S. Riverside Plaza, Chicago, Illinois. Federal's sales in 1975 were in excess of \$68,000,000.

PAR. 3. Federal, through its Signal Division, is engaged in the manufacture, distribution and sale of public safety and communications equipment for commercial and governmental markets. Federal's sales of Signal Division products were in excess of \$29,000,000 in 1975.

PAR. 4. In the course and conduct of its business as aforesaid, respondent causes and has caused its Signal Division products to be shipped from the state in which they are manufactured to distributors and other customers located in other states. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in such products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Except to the extent that competition has been hindered or restrained by the acts and practices alleged herein, respondent has been and is now in substantial competition, in or affecting commerce, with its own distributors in the offering for sale and sale of Signal Division products and with other manufacturers and distributors in their offering for sale and sale of similar products.

PAR. 6. Federal sells its Signal Division products to distributors located throughout the United States. Federal also sells such products directly to the using customers. Customers of Federal and its distributors include fire departments, police departments, civil defense and disaster warning agencies, and commercial enterprises. In many instances customers purchasing from Federal and its distributors utilize competitive bidding procedures in the purchase of

Signal Division products. In some instances the process of inviting competitive bids is required by law.

PAR. 7. In the course and conduct of its business as aforesaid, respondent, in combination with its distributors, has engaged in the following unfair methods of competition, in or affecting commerce, in connection with the offering for sale, sale and distribution of Signal Division products on a competitive bidding basis:

A) Respondent has exchanged information with its distributors, prior to the submission of bids by respondent and its distributors on particular projects, concerning:

- (1) the intent to submit or not to submit a bid;
- (2) the prices that will be bid.

B) Respondent has entered into agreements with its distributors, prior to the submission of bids by respondent and its distributors on particular projects, concerning:

- (1) whether a bid will be submitted;
- (2) which type of equipment will be bid;
- (3) what prices will be bid; and
- (4) which party will submit the low bid.

C) Respondent has submitted and solicited the submission of collusive bids on particular projects; and

D) Respondent has entered into agreements with its distributors allocating customers among respondent and its distributors.

PAR. 8. The manufacture, distribution and sale of civil defense warning systems constitutes a separate and distinct market. The market for civil defense warning systems is highly concentrated. Federal is the dominant manufacturer in this market and produced more than 70 percent of the civil defense warning systems installed during 1975. Federal has used its dominant position, size and economic power to hinder and frustrate the ability of smaller manufacturers to compete in this market, and to hinder, prevent or lessen competition in the manufacturing and sale of civil defense warning systems. Thus, Federal has been and is now engaged in various monopolistic or other unfair acts, practices, or methods of competition in maintaining a monopoly in the manufacture and sale of civil defense warning systems.

More particularly, Federal has, since at least 1972, adopted and maintained various business practices to restrain, lessen or prevent the sale of civil defense warning systems by others engaged in the

manufacture and sale of such products. Respondent has engaged in the following monopolistic acts and practices:

A) Respondent, individually and in combination with its distributors, has participated in the preparation of advertisements soliciting bids and specifications used to obtain and evaluate bids for civil defense warning systems. In the course of this action, respondent has engaged in manipulating the terms contained in such advertisements and specifications with the purpose and effect of hindering or preventing the sellers of other brands of civil defense warning systems from bidding effectively on civil defense warning systems;

B) Respondent has submitted bids, and solicited its distributors to submit bids, which are not intended to secure business, but are intended to hinder or prevent competitors from bidding successfully;

C) In response to requests from public bodies for the names of firms which can bid on civil defense warning systems, respondent generally provides only the names of sellers of its products.

PAR. 9. The aforesaid conduct of respondent in the sale and distribution of Signal Division products, including civil defense warning systems, both individually and in combination with its distributors, has the capacity, tendency, and effect of:

a) restricting, restraining, or eliminating competition among respondent, its distributors, and manufacturers and distributors of competitive products;

b) undermining and subverting the competitive bidding procedures utilized by public bodies and others in the purchase of such products;

c) raising, fixing, stabilizing, and maintaining the prices paid by public bodies for such products;

d) depriving purchasers of such products of the benefits of free and open competition;

e) monopolizing the market for civil defense warning systems;

f) creating, preserving, and increasing barriers to entry into the market for civil defense warning systems.

PAR. 10. The acts and practices of respondent in combination with its distributors, as set out in Paragraph Seven herein, constitute an agreement, combination, or conspiracy to restrict or eliminate competition in the sale and distribution of Signal Division products; are all to the prejudice of actual and potential competitors and buyers of respondent's products, and the public; have a dangerous tendency to and have actually restrained and prevented competition in the sale of Signal Division products and therefore constitute

unfair methods of competition, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. The acts and practices of respondent, as set out in Paragraph Eight herein, both individually and in combination with its distributors, have a tendency to and have actually restrained and prevented competition in the sale of civil defense warning systems; and have created and maintained in respondent a monopolistic control over the terms and conditions of the sale of such products and therefore constitute unfair methods of competition, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Denver Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Federal Signal Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1415 West 22nd St., Oak Brook, Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## ORDER

### I

*It is ordered,* That respondent, Federal Signal Corporation, its subsidiaries, successors, assigns, officers and directors, and respondent's agents, representatives and employees, individually or in concert with others, directly or indirectly, or through any corporate or other device, in connection with the distribution, offering for sale, or sale of Signal Division products by Federal or any of its distributors, to public bodies on a competitive bidding basis, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Exchanging information with any of its distributors, prior to any bid being submitted on any particular project, concerning:

- a) the intent to submit or not to submit a bid; or
- b) the price(s) that will be bid;

2. Entering into any agreement or understanding with any of its distributors, prior to any bid being submitted on any particular project, concerning:

- a) the intent to submit or not to submit a bid;
- b) the type of equipment that will be bid;
- c) the price(s) that will be bid; or
- d) the party which will submit the low bid;

3. Submitting or soliciting the submission of any collusive bid;

4. Allocating or attempting to allocate customers among respondent and its distributors, provided that respondent may furnish the name of one or more of its distributors to any buyer or prospective buyer of respondent's products.

### II

*It is further ordered,* That respondent, in connection with the distribution, offering for sale, or sale of civil defense warning systems by Federal or any of its distributors, to public bodies on a competitive bidding basis, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Furnishing, directly or indirectly, prior to the submission of any written bid, any written specification to such public body (other than specifications established by any department of the federal government) to be substantially incorporated into materials used to obtain or evaluate bids;
2. Influencing or attempting to influence any such public body to:
  - a) limit the distribution of invitations to bid to respondent and/or its distributors;
  - b) incorporate the name or model number of any of respondent's products into advertisements for bids or specifications used to obtain or evaluate bids;
  - c) draft specifications which disqualify sellers of competitive products from bidding effectively;
3. Preparing any part of any advertisement for bids or specification used by a public body to obtain or evaluate bids.

Nothing contained in Part II of the order shall prohibit respondent from conducting surveys of civil defense warning system needs for public bodies and providing quotations containing descriptions of civil defense warning systems and estimated costs. All such quotations shall contain the following statement in close proximity to the product description:

Civil defense warning systems produced by other manufacturers may provide adequate coverage for the area surveyed even though such systems may contain differing numbers of sirens having different decibel ratings or functioning in a different manner. The names and addresses of other recognized manufacturers of civil defense warning systems will be provided upon request.

*It is further ordered,* That respondent, upon request by a public body, provide the names and addresses of all other manufacturers of civil defense warning systems known to respondent.

### III

*It is further ordered,* That respondent, for a period of five years from the date of service of this order:

1. Institute a continuing surveillance program to insure that its distributors of civil defense warning systems are not engaging in any act or practice which, if engaged in by respondent, would violate Paragraphs 1, 2, or 3 of Part II of this order;
2. Upon receiving information indicating that any of its distributors of civil defense warning systems has engaged in any such act or practice, respondent shall obtain the written assurance of such

distributor that such conduct shall not again occur. If the distributor fails to provide such written assurance, respondent shall forthwith cease and desist from supplying civil defense warning systems to such distributor;

3. Upon ascertaining that a distributor, after having given such written assurance, has again engaged in any such act or practice, forthwith cease and desist from supplying civil defense warning systems to such distributor.

#### IV

*It is further ordered.* That respondent, for a period of three years from the date of service of this order, in connection with each bid on civil defense warning systems submitted to a public body:

- 1) include a copy of the letter set forth in Appendix A hereto and a copy of this order with each such bid; and
- 2) maintain a file concerning each such bid, such file to include a copy of the bid and accompanying letter, all work papers used in computing the bid, and a copy of each document furnished to the public body involved.

The files described herein shall be made available for Commission inspection upon reasonable notice.

#### V

*It is further ordered.* That respondent shall within thirty days after service upon it of this order, distribute a copy of the order to each of the respondent's operating divisions, to each of its present corporate officers and to each domestic sales representative in the Signal Division, and to its future corporate officers and Signal Division domestic sales representatives within five days of their assumption of office or employment with respondent corporation.

#### VI

*It is further ordered.* That respondent shall notify the Commission at least thirty days prior to any proposed change in its organization, such as dissolution, assignment or sale resulting in organization, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

*It is further ordered.* That the respondent shall within sixty days after service upon it of this order, file with the Commission a report,

in writing, setting forth in detail the manner and form in which it has complied with this order.

## APPENDIX A

(Official Stationery of Federal Signal Corporation)

Dear \_\_\_\_\_:

Federal Signal Corporation has entered into a consent agreement with the Federal Trade Commission concerning the company's competitive bidding practices. The agreement is for settlement purposes only and does not constitute an admission of any law violations. Part I of the Order issued pursuant to the agreement applies to the sale of all Signal Division products. Parts II, III, and IV apply to sales of civil defense warning systems.

A copy of the order issued by the Commission is enclosed. If, in connection with this bid or at any time in the future, you believe that Federal has engaged in any of the practices prohibited by the Order, report the details in writing to:

Federal Trade Commission  
Washington, D. C. 20580

You are also requested, at your option, to send a copy of any such letter to:

Federal Signal Corporation

Attention: President

Very truly yours,

(Name)

President

Federal Signal Corporation

IN THE MATTER OF  
INDIANA FEDERATION OF DENTISTS

*Docket 9118. Interlocutory Order, Feb. 5, 1979*

ORDER DENYING PETITION OF STATE OF INDIANA TO  
INTERVENE

The State of Indiana, by its Attorney General, has appealed from a decision of Administrative Law Judge Paul R. Teetor (the "ALJ") denying its application to intervene in this proceeding. Because we do not believe that there has been a sufficient showing of the necessity for intervention, we cannot grant the petition.<sup>1</sup> The State of Indiana, however, is granted leave to appear in the proceeding as *amicus curiae* and to submit such briefs as it deems necessary to adequately represent the interests of the State on its own behalf and as *parens patriae* for its citizens.

The complaint in this matter was issued in October, 1978, and charges the respondent Indiana Federation of Dentists with, *inter alia*, illegally conspiring to frustrate cost control programs administered by a number of insurance companies. In essence, the respondent and its members, a small group of Indiana dentists, are alleged to have agreed among themselves to refuse to submit X-rays and other diagnostic tests to insurers, who seek such information in order to assure that a dentist's proposed treatment is the least expensive treatment adequate to remedy a patient's dental ills.

Respondent has raised as an affirmative defense the assertion that its members are proscribed by Indiana law from submitting diagnostic materials, such as X-rays, to third party insurance payers, because such companies may employ non-dentists to review the X-rays. Respondent notes that Indiana law forbids the practice of dentistry by non-dentists, and contends that review of X-rays constitutes the practice of dentistry. Under this so-called "state action" defense, respondent in effect asserts that it is acting as a private attorney general to enforce Indiana law.

The State of Indiana apparently agrees with respondent about what constitutes the "practice of dentistry,"<sup>2</sup> and seeks permission

<sup>1</sup> Unlike the ALJ, we do not believe that the proposed intervenor's status as a state bars its application here. Section 5(b) of the Federal Trade Commission Act provides: "Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person." The term "person" as used in the antitrust laws may encompass a state. *Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389 (1978). A consistent interpretation should be given to the implementing provision of the Commission's Rules of Practice, Section 3.14, albeit slightly different phraseology is used there. Indeed, the Commission has previously permitted intervention by sovereign states, see e.g., *Florida Citrus Mutual*, Dkt. 6074 (February 12, 1953).

<sup>2</sup> See Unofficial Advisory Letter, dated March 14, 1974, from Curtis Plopper, Deputy Attorney General of the

(Continued)

to intervene both to press this point and, as *parens patriae*, to protect its citizens from the unauthorized practice of dentistry in Indiana. While we appreciate the State's concerns, we are not convinced that Indiana must be made a party to this proceeding in order for that State to present effectively its views on the proper interpretation of Indiana law. No witnesses need be examined, nor any documentary evidence introduced, to establish Indiana's point of statutory construction, and as the State itself recognizes in its Memorandum in Support of Application for Review (p. 4), "*amicus curiae* . . . is the traditional role accorded to those concerned with the precedential impact of adjudicative decisions." Where, as here, Indiana's arguments are wholly legal in nature and will relate more to such concerns as legislative history than to respondent's challenged practices, *amicus curiae* status should satisfactorily protect the State's interest.

Even assuming *arguendo* that some evidentiary inquiry or undertaking is necessary to properly present the "state action" defense, the State of Indiana has advanced no reason why that defense cannot adequately be presented by counsel for respondent. Were the State intending to raise different or even supplemental concerns, our response might be otherwise, but the Deputy Attorney General candidly concedes that "[t]he State does not contemplate raising issues distinct from those raised in the Complaint and the Answer." Memorandum in Support of Application for Review, p. 8. As we said in *Firestone Tire and Rubber Co.*, 77 F.T.C. 1666, 1668 (1970), persons seeking intervention must raise substantial issues "which would not otherwise be properly raised or argued." Given the apparent identity of interest between respondent and the State, and given that the State has not even contended that respondent will not adequately present the "state action" defense, we cannot say that the *Firestone* test has been met.

We are sympathetic to the concerns raised by the State and appreciate its interest in assisting the Commission in reaching a just result in this adjudicative proceeding. We hope that the State will avail itself of the opportunity to file *amicus* briefs as the need arises, so that both the ALJ and the Commission can have the benefit of its views on the proper application of Indiana law to the facts at bar.

*It is ordered*, That the application for intervention filed by the State of Indiana be, and it hereby is, denied.

State of Indiana, to Dr. Raymond Rothaar, President, Indiana Board of Dental Examiners, in which the author apparently concludes that review of dental X-rays constitutes the "practice of dentistry" under Indiana law. The letter concludes by stating that "[t]he views expressed herein are those of the writer and are not to be considered to be the opinion of the Attorney General of Indiana, nor a precedent of the Attorney General's office."

IN THE MATTER OF  
RHINECHEM CORPORATION, ET AL.

*Docket 9116. Interlocutory Order, Feb. 12, 1979*

ORDER DENYING RESPONDENTS' MOTION FOR DISMISSAL OF  
COMPLAINT

Administrative Law Judge Ernest G. Barnes has certified to the Commission, without recommendation, a motion by two respondents, Allegheny Ludlum Industries, Inc. ("ALI"), and Chemetron Corporation, to dismiss the complaint. We deny the motion, believing that the public interest would be better served by allowing this case to proceed.

Respondents' ground for dismissal is that the proposed acquisition by Rhinechem Corporation of the Pigments Division of Chemetron, a subsidiary of ALI, has been terminated. This acquisition, however, was not abandoned until after a United States District Court, upon motion of the Commission, issued an injunction against respondents barring the acquisition during the pendency of a Commission administrative proceeding and any subsequent judicial review. In granting the injunction, the court found that the Commission, which had contended that the acquisition would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, had demonstrated a sufficient likelihood of ultimate success on the merits.

It is conceded, and the Commission has so held, *see, e.g., British Oxygen Co., Ltd.*, 86 F.T.C. 1241, 1334-35 (1975), *rev'd on other grounds*, 557 F.2d 24 (2d Cir.1977), that the prohibitions of Section 7 of the Clayton Act are directed against the acquiring company, rather than the company to be acquired. Nevertheless, it is also clear that the moving respondents may be properly charged with a violation of Section 5 of the Federal Trade Commission Act for entering into a merger agreement which, complaint counsel contend, violates Section 7 of the Clayton Act. *Dean Foods Co.*, 70 F.T.C. 1146, 1288-92 (1966); *British Oxygen Co., Ltd.*, *supra* at 1334. *Cf. Grand Union v. FTC*, 300 F.2d 92 (2d Cir. 1962). Thus, even though the Commission has withdrawn this matter from adjudication with respect to Rhinechem Corporation in order to consider a proffered consent agreement, the complaint nonetheless states a cause of action under Section 5 of the Federal Trade Commission Act against the moving respondents. In Section 5 cases, it is well established that the discontinuance or abandonment of a practice, especially where not entirely voluntary, does not preclude the issuance of an

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appropriate cease and desist order. *E.g., Coro, Inc. v. FTC*, 338 F.2d 149 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965). Accordingly,

*It is ordered*, That respondents' motion for dismissal of the complaint, dated December 19, 1978, be, and it hereby is, denied.

IN THE MATTER OF  
KAUFMAN AND BROAD, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket C-2954. Complaint, Feb. 12, 1979 — Decision, Feb. 12, 1979*

This consent order, among other things, requires a Los Angeles, Calif. builder and seller of residential housing to cease misrepresentations of fact and using any other unfair or deceptive practices in the advertising, sale and construction of consumer housing. The firm is also required to furnish prospective customers with disclosures regarding construction materials and components; as well as information relating to the land, taxes and community facilities. Further, the company is required to provide home purchasers with warranties patterned on the housing industry's Home Owners Warranty program; and to employ the industry's standards in home construction and repair. Additionally, provisions in the order entitle original owners of company homes purchased from January 1, 1972, to have specified defects repaired, and requires the firm to repurchase the homes at the original price, should it fail to make proper repairs in a timely manner. The order also provides that disputes concerning repairs may be settled through third-party arbitration.

*Appearances*

For the Commission: *Blanche Stein, Richard A. Palewicz and Jerome S. Lamet.*

For the respondents: *Elroy Wolff, Sidley & Austin, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that respondents Kaufman and Broad, Inc., a corporation, Kaufman and Broad Homes, Inc., a corporation, and Kaufman and Broad Home Sales, Inc., a corporation, have violated Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint as follows:

I

For purposes of this complaint, "on-site residential housing" shall mean housing structures, including lots, consisting of single family dwelling units or housing structures consisting of multi-family dwelling units (including condominiums) represented and sold by respondents as completely constructed or partially constructed units.

## II

PARAGRAPH 1. Respondent Kaufman and Broad, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal place of business located at 10801 National Boulevard, Los Angeles, California.

Respondent Kaufman and Broad, Inc. has numerous subsidiaries in various States of the United States.

Respondent Kaufman and Broad, Inc. uses the trade styles: Kaufman & Broad, Kaufman and Broad, and Kaufman and Broad homes in the course and conduct of its business.

Respondent Kaufman and Broad Homes, Inc. is a wholly-owned subsidiary of respondent Kaufman and Broad, Inc., and is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 900 Jorie Boulevard, Oak Brook, Illinois.

Respondent Kaufman and Broad Home Sales, Inc. is a wholly-owned subsidiary of respondent Kaufman and Broad Homes, Inc., an Illinois corporation, and is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 900 Jorie Boulevard, Oak Brook, Illinois.

PAR. 2. Respondents are now and for some time last past have been engaged in the production, advertising, offering for sale or sale of on-site residential housing to the public. Gross sales of on-site residential housing by respondent and its subsidiaries in 1973 was approximately \$306,763,000, in 1974 approximately \$256,567,000, in 1975 approximately \$250,482,000, and in 1976 approximately \$283,183,000.

## III

PAR. 3. In the course and conduct of its business, as aforesaid, respondent Kaufman and Broad, Inc. has formulated and established uniform and standardized methods, practices and procedures for the regulation, supervision and monitoring by respondent of the book-keeping, accounting, financial, purchasing, sales, personnel, customer relations and management operations of its subsidiaries located in various States of the United States.

In the course and conduct of its business, as aforesaid, respondent Kaufman and Broad Homes, Inc., an Illinois corporation, has caused to be published in newspapers of interstate circulation advertisements which are designed and intended to induce the public to purchase respondent's on-site residential housing.

In the course and conduct of its business, as aforesaid, respondent

Kaufman and Broad Homes Sales, Inc., an Illinois corporation, has entered into contracts for the purchase of respondent's on-site residential housing with members of the public residing outside the State of Illinois.

Therefore, each of the corporate respondents is engaged in or affects "commerce," as "commerce" is defined in the Federal Trade Commission Act and has been continuously so engaged for several years.

#### IV

PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the public to purchase respondents' on-site residential housing, respondents have made statements and representations in advertising brochures and in advertising inserted in newspapers of interstate circulation.

Typical and illustrative of such statements and advertising representations, but not all inclusive thereof, are the following:

We're America's largest publicly held company whose primary business is on-site housing. We know the housing business!

\* \* \* \* \*

Because Kaufman and Broad is Chicago's largest home builder, we can build fine homes. . .our size enables us to use good workmen, quality materials and money-saving tools and techniques.

\* \* \* \* \*

Ask your Kaufman and Broad salesman about our exclusive Buy Back Plan. It is an extra assurance to you made possible by Kaufman and Broad's full confidence in the value and quality construction of the homes they build. After one year, if you are not completely satisfied with your home, Kaufman and Broad will give you your money back. . .

\* \* \* \* \*

Because of our size, we are able to give you a bigger better home for your money. . .

\* \* \* \* \*

You can have confidence in Kaufman and Broad. Most homeowners do.

\* \* \* \* \*

Kaufman and Broad's years of experience also insure sound planning and design in all community developments. The added value of this experience will be appreciated by the home owner in his day-to-day living as he realizes the thought and care that has gone into the development of his home and community.

\* \* \* \* \*

Kaufman & Broad provides a kind of quality control that only can be offered because of its huge size.

\* \* \* \* \*

. . . the best locations—there are Kaufman and Broad communities in many of the most popular Chicago suburbs. Because we're first, we get first choice of all the prime land that's available.

\* \* \* \* \*

Immediate occupancy No closing costs

\* \* \* \* \*

F.H.A. loans available. . .

\* \* \* \* \*

. . . Homes with garages, basements, family rooms, patio kitchens, glamour vanity baths and much more - all the room your family needs

\* \* \* \* \*

. . . with a garage and basement, . . .

\* \* \* \* \*

3 & 4 bedroom homes from \$20,990.

\* \* \* \* \*

. . . 2, 3 and 4 bedroom homes from \$19,990 . . . These low prices available for a limited time only.

\* \* \* \* \*

You needn't stray far from your home in Appletree to reach all the things you need.

1. Rich Central High
2. Marion High (Parochial)
3. Southwood Jr. High
4. Willowview Elementary
5. Baker Avenue Kindergarten
6. Loretto Lane Kindergarten
7. St. Emeric's Elementary (Parochial)
8. St. John Lutheran School
9. Hillcrest High

PAR. 5. By and through the use of the above-quoted statements and representations and others of similar import and meaning not expressly set out herein, respondents have represented, and are now representing, directly or by implication that:

1. Housing sold by respondents is built in accordance with good construction practices in the housing industry.
2. Housing sold by respondents is of top quality workmanship.
3. Housing sold by respondents is constructed in accordance with the Minimum Property Standards for such housing as required by the U.S. Department of Housing and Urban Development.
4. Housing sold by respondents is constructed in accordance with plans and specifications approved by the U.S. Department of Housing and Urban Development.
5. By and through the use of the words "quality materials," "quality construction," "quality control," and other words of similar import and meaning not specifically set out herein, respondents' housing is free from structural or other defects that could impair such housing for ordinary use as homes or habitations.
6. Respondents have a unique quality control program that provides for the inspection of their housing at various stages in construction to insure that such housing is of quality workmanship and is free from structural and other defects.
7. By and through the use of the words "best locations" and "first choice of all the prime land that's available," and other words of similar import and meaning not specifically set out herein, land used by respondents for building sites is not subject to any severe limitations that may affect the use of such land for the construction of on-site residential housing sold by respondents.
8. Respondents' advertised homes are available for immediate occupancy.
9. All homes offered for sale by respondents include a family room and a garage or a basement and a garage in the advertised price.
10. All rooms advertised as bedrooms in respondents' 4-bedroom homes are suitable for sleeping purposes.
11. Respondents' advertised prices for homes are for a limited time only.
12. Respondents' housing is sold to purchasers free of all closing costs.
13. Schools listed in respondents' advertising are in school districts where respondents' housing is located.

**PAR. 6. In truth and in fact:**

1. All housing sold by respondents was not built in accordance with good construction practices in the housing industry. In some houses, fire walls were improperly anchored, foundation walls were not covered with membrane waterproofing to prevent water seepage

into habitable spaces, or weep holes were absent in brick veneer walls for the escape of water.

2. All housing sold by respondents was not top quality in workmanship. In some houses, siding was not properly anchored, roof sheathing did not meet with roof edges, spaces between foundation walls and sill plates were not sealed to prevent the entry of air and moisture, or piping and bathroom fixtures were not properly installed.

3. All housing sold by respondents was not constructed in accordance with the Minimum Property Standards for such housing as required by the U.S. Department of Housing and Urban Development. In some houses, front stoops were improperly supported and/or anchored to foundation walls, sill plates were not properly matched to foundation walls to prevent seepage of water and/or air into the interior of the house, or paint used on kitchen and bathroom walls was not washable as required by such standards.

4. All housing sold by respondents was not constructed in accordance with the plans and specifications approved by the Department of Housing and Urban Development. In some houses, there were deviations and omissions from such plans and specifications that affected the quality of a component part in the house.

5. All housing sold by respondents was not free from structural or other defects that could impair such housing for ordinary use as homes or habitations. In some houses, walls were not properly supported by foundations, floor girders were not properly supported to prevent sagging floors, or foundations contained cracks due to structural failures.

6. Respondents did not have a unique quality control program that provides for the inspection of their housing at various stages in construction to insure that such housing is of quality workmanship and is free from structural and other defects. In many cases, housing constructed and delivered by respondents to purchasers has been characterized by defects that could have been avoided through proper inspections by supervisory personnel.

7. All land used by respondents for building sites was not free from severe limitations that may affect the use of such land for the construction of on-site residential housing sold by respondents. In some cases, such land was subject to frequent or continuous water saturation, slow run-off of surface water, ponding of water in various places or poor drainage that could result in frost-heave and shrink-swell.

8. Homes advertised by respondents as available for "immediate occupancy" were in many cases unavailable for occupancy by

