It is further ordered, That the initial decision of the hearing examiner, as modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents shall, within sixty (60) days from the date of service of this order and every sixty (60) days thereafter until divestiture is fully effected, submit to the Commission a detailed report of their actions, plans, and progress in complying with the divestiture provisions of this order, and fulfilling their objectives. All reports shall include, among other things that will be from time to time required, a summary of all contacts and negotiations with potential purchasers of the stock, assets, properties, rights or privileges to be divested under this order, the identity of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

Commissioner MacIntyre did not participate.

IN THE MATTER OF

HOLIDAY UNIVERSAL INC., ET AL.

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

Docket C-1851. Complaint, Jan. 19, 1971—Decision, Jan. 19, 1971

Consent order requiring an operator of various health club facilities and an advertising agency, both located in Baltimore, Maryland, to cease misrepresenting that the price of any membership is special or reduced or that an increase is imminent, that its health program will alter body size, extend life, prevent heart attacks, and reduce weight without calorie control, that all facilities are available at all clubs and that any service is guaranteed unless all aspects of the guarantee are disclosed, using deceptive "before and after" photographs, making repeated telephone calls to obtain payments on any debt, misrepresenting that any debt has been turned over to an independent collector, failing to disclose that any paper about to be signed is a contract or promissory note, obtaining signature on any contract which fails to provide a four day cancellation clause and a provision that it may be cancelled if the customer moves beyond a 25 mile limit, and misrepresenting that application for membership will be held without acceptance pending further investigation.

COMPLAINT

PARAGRAPH 1. Respondent Holiday Universal, Inc. (hereinafter sometimes referred to as "Holiday"), is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Maryland with its office and principal place of business located at 2321 North Point Boulevard, in the city of Baltimore and the State of Maryland. Holiday Universal, Inc. owns all of the shares and controls and directs the acts and practices of the following named corporate respondents (hereinafter sometimes collectively referred to as "Health Clubs") all of which are organized, existing and doing business under and by virtue of the laws of the State of Maryland with their offices and principal places of business located at the following addresses:

Holiday Health of Pimlico, Inc.,
5343 Park Heights Avenue,
Baltimore, Maryland.

Holiday Health Studios of Glen Burnie, Inc.,
408 Ritchie Highway, N.W.,
Glen Burnie, Maryland.

Holiday Health Studios of North Point, Inc.,
323 North Point Boulevard,
Baltimore, Maryland.

Holiday Health of Bethesda, Inc.,
7904 Wisconsin Avenue,
Bethesda, Maryland.

Holiday Health of Silver Spring, Inc.,
8533 Georgia Avenue,
Silver Spring, Maryland.

Holiday Health of Washington, D.C., Inc.,
1718 "L" Street, N.W.,
Washington, D.C.

Holiday Health of 40 West, Inc.,
Pike Park Mall Shopping Center,
6516 Baltimore National Pike,
Baltimore, Maryland.

Holiday Health of Huntington, Inc.,
839-50 New York Avenue,
Huntington, New York.

Holiday Health of Falls Church, Inc.,
Seven Corners Medical Building,
Fairfax County, Virginia.

Holiday Health of Hempstead, Inc.,
188 Hempstead Turnpike,
Hempstead, Long Island, New York.

General Health of Laurias, Inc.,
6577 Roosevelt Boulevard,
Philadelphia, Pennsylvania.

General Health of Windsor, Inc.,
1700 Benjamin Franklin Parkway,
Philadelphia, Pennsylvania.

General Health of Park City, Inc.,
3900 Ford Road,
Philadelphia, Pennsylvania.

Holiday Health of Towson, Inc.,
Towson Plaza Shopping Center,
Towson, Maryland.

Century Health Spa of Plainview, Ltd.,
359 South Oyster Bay Road,
Plainview, New York.

Holiday Health Spa, Inc.,
c/o Country Squire Motor Lodge,
Route #70,
Cherry Hill, New Jersey.

Spa International, Inc.,
12117 Rockville Pike,
Pike Shopping Center,
Rockville, Maryland.

American Spas, Inc.,
405 Highway #18,
East Brunswick, New Jersey.

Holiday Health of Hampton, Inc.,
Federal Avenue and Capital Beltway,
Capital Heights, Maryland.

By and through said health clubs, respondent Holiday Universal, Inc., sells memberships in and operates health club facilities in various States of the United States and the District of Columbia.

Respondent Holiday Universal, Inc., owns all of the shares and controls the acts and practices of the corporate respondent Great American Financial Management Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its office and principal place of business located at 2321 North Point Boulevard in the city of Baltimore and State of Maryland, which corporation in turn, owns all of the shares and controls and directs the acts and practices of the following named corporate respondents (hereinafter sometimes collectively referred to as "Great American") also organized, existing and doing business under and by virtue of the laws of the State of Maryland with their principal places of business located at the following addresses:

1) Trans State Investments, Inc., 2321 North Point Boulevard, Baltimore, Maryland.

2) Trans State Investments of Glen Burnie, Inc., 95 Aquahart Road, Glen Burnie, Maryland.

3) National Loan Corporation, 2321 North Point Boulevard, Baltimore, Maryland.

4) National Loan Corporation of Glen Burnie, Inc., 95 Aquahart Road, Glen Burnie, Maryland.

By and through said corporate respondents, respondent Holiday Universal, Inc., finances the purchase of health club memberships and collects monthly payments from members of the aforesaid health clubs.

Respondents Frank Bond, Norman Pessin, Donald Goldman and Maury Scarborough are individuals and officers of said corporate respondent Holiday Universal, Inc. They formulate, direct and control the acts and practices of said corporation and of the subsidiary corporations, including the acts and practices hereinafter set forth. Their address is the same as that of Holiday Universal, Inc.

Respondent Bernard Sandler Advertising, Inc. (hereinafter some times referred to as "Sandler Advertising"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at 809 St. Paul Street, in the city of Baltimore, and State of Maryland.

Respondent Bernard Sandler is an individual and officer of Bernard Sandler Advertising, Inc. He formulates, directs and controls the acts and practices of said corporation including the acts and practices hereinafter set forth. His address is the same as that of the said corporation.

All of the aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale and sale of health club memberships of various types; the financing of the purchase of club memberships by the general public; the collection of members' club dues; and the general management and supervision of said health clubs located in various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid, the respondents, Holiday Universal, Inc., and Sandler Advertising, have caused, and do now cause, advertisements for said health clubs and to appear in newspapers of interstate circulation, including but not limited to *The Washington Post*, *The Washington Evening Star*, *The Washington Daily News*, and on radio and television programs

of interstate transmission, as well as in telephone directories in the District of Columbia and elsewhere, all of which are designed and intended to induce persons to purchase said health club memberships.

In the course and conduct of their business as aforesaid, Holiday Universal, Inc., and its Great American subsidiaries finance memberships in its health clubs and collect dues from its health club members located in various States of the United States and in the District of Columbia.

In the course and conduct of their business, respondents Sandler Advertising and Bernard Sandler are now, and for some time last past have been, the advertising representatives of Holiday Universal, Inc., and now prepare and place, and for some time last past have prepared and placed, for publication, advertising material, including the advertising referred to herein, which is designed to promote the sale of the said health club memberships.

Accordingly, all of said respondents have maintained, and do now maintain, a course and conduct of business in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of health club memberships, respondents have made and are now making numerous statements and representations in advertisements inserted in newspapers of general circulation and other promotional material with respect to the price of said memberships and the benefits and facilities available for those who become members.

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

If you are a size 42 * * * You'll be a perfect waist size 39 in 60–90 days!
If you are a size 39 * * * You'll be a perfect waist size 36 in 60–90 days.
If you are a size 36 * * * You'll be a perfect waist size 34 in 60–90 days.

* * * * * * *

Phase 1 Now Closing Out.
Phase 2 to begin shortly with a 25% increase.
ACT NOW! SAVE ½!

* * * * * * *

Wonderful news for you ladies!
You can
SLENDERIZE
BEAUTIFY
REPROPORTION
your figure easily without dieting at HOLIDAY.

* * * * * * *

* Pictorial newspaper advertisement was omitted in printing.

At Holiday we turn corners into curves. A mere wisp of a 60–90 day program Exclusive exercise holds in your tummy and curves your upper hip, then reaches down in back to round your derriere. Naturally.

Representative and illustrative, albeit neither verbatim nor all inclusive, of oral statements and representations made to prospective purchasers by respondent Holiday Universal, Inc., and its subsidiary corporate health clubs and their salesmen, representatives and agents, are the following:

I am calling to ask you one question and that is, do you have 15 minutes to spend so that I can show you how you can live five more active, healthy years?

* * * * * * *

Do you have 15 minutes to spend so I can show you how you can prevent a heart attack? Would you be interested in learning how?

* * * * * * *

It would be well for you, if you are interested in maintaining your health, appearance and vitality, to sign a contract with us now because we are running reduced rates today and tomorrow the rates will be substantially increased for the same membership.

* * * * * * *

Everyone here at Holiday is getting his membership paid for by bringing in friends.

* * * * * * *

You're in luck since we happen to have a few memberships left on our advertising special.

* * * * * * *

We are open Monday through Friday from 10 to 10 and Saturday from 10 to 8. You can come and go at your convenience without having to worry about a schedule.

* * * * * * *

On the special, we are offering your wife, (husband), a week's free membership so that she (he) can get in at the reduced price.

* * * * * * *

We assure you we can add more years to any individual's life. Why should a man put himself in a position of economic peril because he never insured his ability to work by keeping himself healthy. Suppose a man could work twenty more years than he could have normally by keeping fit. This means a total of up to several hundred thousand dollars and that's the kind of a price tag you can place on a program at Holiday.

* * * * * * *

If you keep yourself in shape you definitely will increase the years of your life. This a life or death matter. Your decision today on whether to join Holiday or not is your decision in favor of a longer life or a shorter life.

* * * * * * *

The only way that you can exercise all of the muscles in your body, and do it properly, is with the professional guidance and scientific equipment which is available only here at Holiday.

PAR. 5. By and through the use of said advertisements, and others of similar import and meaning but not expressly set out herein, and by oral statements and representations made by salesmen, agents and representatives of the respondent health clubs, respondents Holiday Universal, Inc., and its corporate subsidiary health clubs, and Bernard Sandler Advertising, Inc., have represented and are now representing directly or by implication that:

1. There are a limited number of memberships which are available for sale at each of the health clubs at a "special" or reduced price.

2. The prices of memberships and services which are being offered are special prices available only for a limited period of time.

3. In 60 to 90 days, or some similarly short period of time, it is possible for every patron to achieve a substantial reduction in the size of dresses which women wear or the size of men's waists.

4. The results which are depicted in "before" and "after" photographs contained in advertisements, and employed as part of the oral sales presentation, will be achieved by any person participating in the Holiday program.

5. Attendance and participation in the Holiday program assures that one's life span will be extended 10 to 15 years or for some specified longer or shorter period.

6. Attendance and participation in the Holiday program will insure against or prevent heart attacks.

7. Holiday's exercise program is unique.

8. Holiday's exercise program is the only possible way to improve a woman's figure or a man's physique, and is the only way to retain youthful appearance, beauty and vigor.

9. Holiday sells monthly programs, 60 to 90 day programs and programs extending for a similarly limited period of time.

10. The Holiday exercise program will slenderize, beautify and proportion every woman's figure, without regulating caloric intake.

11. Most or many members receive their memberships free of charge by inducing others to become members of Holiday.

12. The health clubs are open 10 a.m. to 10 p.m. on weekdays and 10 a.m. to 8 p.m. on Saturdays, and all advertised facilities are available at all clubs to any patrons during these hours.

PAR. 6. In truth and in fact:

1. There is no limit on the number of memberships available for sale at each of the health clubs. In fact, sales personnel are con-

stantly encouraged to sell memberships as well as to re-sign present members for extended memberships and additional services.

2. The prices at which memberships and services are sold are not special prices nor are they available for only a limited time. They are the usual and customary prices charged for Holiday Health club memberships and services and they have been substantially the same for an extended period of time.

3. It is not possible for every person who might become a patron of these clubs to achieve a specified reduction in dress size or waist size in a stated period of time.

4. The results depicted in "before" and "after" photographs contained in advertising and employed as part of the oral sales presentation will not be achieved by every person participating in the Holiday program, and, in fact, were not achieved by the persons so depicted through participation in Holiday's program or attendance at Holiday facilities.

5. Attendance and participation in the Holiday program will not assure that one's life will be extended for 10 to 15 years or for any other determinable period of time.

6. Attendance and participation in the Holiday program will not insure against or prevent heart attacks.

7. Holiday's exercise program is not unique.

8. Holiday's exercise program is not the only possible way to improve a woman's figure or a man's physique and is not the only way to retain youthful appearance, beauty or vigor.

9. Holiday does not sell monthly programs, 60 to 90 day programs or programs for a similarly limited period of time. Its regular membership is customarily for a period of two years.

10. The Holiday exercise program will not slenderize, beautify and reproportion every woman's figure without dieting.

11. Most Holiday members do not pay for their memberships by inducing others to become members of Holiday.

12. While the health clubs are open during the hours represented, they are not all available to any patron, but rather some of the facilities are limited on specific days of the week to either male or female members. Furthermore, all advertised facilities are not available at each of respondents' health clubs.

Therefore, the statements and representations set forth in Paragraphs Four and Five were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of its business respondent Holiday Universal, Inc., through its subsidiary Great American, and

Great American's subsidiary corporations, has called on Holiday patrons by telephone and in person, at home and at their places of employment, both day and night, in efforts to collect monies alleged to be due for club memberships.

PAR. 8. In the course and conduct of its business respondent Holiday Universal, Inc., through its subsidiary, Great American, and Great American's subsidiary corporations, has represented to patrons of Holiday health clubs, through the use of letters and documents sent to said patrons through the United States mails, that the accounts of such patrons (with Holiday Health Studios) have been turned over to a private attorney engaged in the business of collecting past due accounts and that this attorney will institute legal processes in five days, or some similarly short span of time, if he is not contacted or payment is not received. Great American and its subsidiary corporations have represented, directly or by implication, to said patrons and others, that Great American and its subsidiaries are holders in due course of instruments executed by health club members, and have certain legal rights as a result thereof.

PAR. 9. In truth and in fact, the aforesaid accounts never leave the physical control of Great American or its subsidiaries, and, in fact, are not turned over to an attorney outside of the employ of Great American or its subsidiaries, for the purpose of taking legal actions, nor is legal action instituted in all cases within the time specified in the lawyer's collection letter.

None of respondents become holders in due course of any instruments executed by purchasers of health club memberships. Therefore, the statements and representations as set forth in Paragraph Eight were and are false, misleading and deceptive.

PAR. 10. Respondents, Holiday and its corporate subsidiaries, by means of oral statements and representations of their salesmen and representatives, have misrepresented, or have failed to disclose:

1. The identity, nature, and terms of documents which customers are required to sign.

2. The circumstances under which memberships may be terminated.

3. The fact that customers' notes and contracts would be transferred to collection agencies for collection.

PAR. 11. Respondents, Holiday and its corporate subsidiaries, have represented that customers would obtain "guaranteed results" without disclosing the nature and extent of the gaurantee, the manner in which the guarantor will perform, or the identity of the guarantor.

PAR. 12. Respondents, Holiday and its corporate subsidiaries, after

inducing customers to enroll in it health clubs by use of the aforesaid unfair and deceptive acts and practices, require such customers to execute membership agreements which contain provisions authorizing any attorney of any Court of Record to appear for such customers in Courts of Record, if such agreements are not paid when due, and confess judgement against them for any amount appearing due under such agreements, plus 15 percent attorneys' fees and cost of suit, and which further release all errors and waive all rights of appeal and stays of execution thereon. By the terms of said agreements, demand or presentment for payment, notice of dishonor, protest and notice of protest are also waived by such customers.

The terms and conditions of said agreements, including the terms and conditions set forth above, are not disclosed, or are misrepresented, to such customers at the time their signatures are obtained thereon.

Respondents do, in fact, obtain confess judgments against health club members without notice to such members.

PAR. 13. Respondents, Holiday and its corporate subsidiaries, have represented to their prospective customers that, contrary to fact, they will hold customer's applications for membership without accepting same, until further confirmation by the customer.

PAR. 14. In the course and conduct of their aforesaid business and at all times mentioned herein respondents have been and now are in substantial competition in commerce with corporations, firms and individuals engaged in the same general kind and nature of business as that engaged in by the respondents.

PAR. 15. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices have had, and do now have, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said advertisements and representations were and are true, and into the purchase of substantial numbers of respondents' health club memberships by reason of said erroneous and mistaken beliefs, and into the payment of certain monies to respondents which might otherwise have been disputed.

PAR. 16. The aforesaid acts and practices of respondents as herein alleged were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in 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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Holiday Universal Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its office and principal place of business located at 2321 North Point Boulevard in the city of Baltimore, State of Maryland.

Holiday Universal, Inc., owns all of the shares and controls and directs the acts and practices of the following named corporate respondents, all of which are organized, existing and doing business under and by virtue of the laws of the State of Maryland:

Holiday Health of Pimlico, Inc.,
Holiday Health Studios of Glen Burnie, Inc.,
Holiday Health Studios of North Point, Inc.,
Holiday Health of Bethesda, Inc.,
Holiday Health of Silver Spring, Inc.,
Holiday Health of Washington, D.C., Inc.,
Holiday Health of 40 West, Inc.,
Holiday Health of Huntington, Inc.,

Holiday Health of Falls Church, Inc.,
Holiday Health of Hempstead, Inc.,
General Health of Laurias, Inc.,
General Health of Windsor, Inc.,
General Health of Park City, Inc.,
Holiday Health of Towson, Inc.,
Century Health Spa of Plainview, Ltd.,
Holiday Health Spa, Inc.,
Spa International, Inc.,
American Spas, Inc.,
Holiday Health of Hampton, Inc.,
Great American Financial Management Corporation,
Trans State Investments of Glen Burnie, Inc.,
National Loan Corporation,
National Loan Corporation of Glen Burnie, Inc.,

Respondent Frank Bond, Norman Pessin, Donald Goldman and Maury Scarborough are officers of Holiday Universal, Inc., and of the various subsidiary corporations heretofor named. They formulate, direct and control the policies, acts and practices of said corporations.

Respondent Bernard Sandler Advertising, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its office and principal place of business located at 809 St. Paul Street, Baltimore, Maryland.

Respondent Bernard Sandler is an officer of said respondent Bernard Sandler Advertising, Inc. He formulates, directs and controls the policies, acts and practices of said corporation.

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 the respondents, Holiday Universal Inc., a corporation, and Holiday Health of Pimlico, Inc., Holiday Health Studios of Glen Burnie, Inc., Holiday Health Studios of North Point, Inc., Holiday Health of Bethesda, Inc., Holiday Health of Silver Spring, Inc., Holiday Health of Washington, D.C., Inc., Holiday Health of 40 West, Inc., Holiday Health of Huntington, Inc., Holiday Health of Falls Church, Inc., Holiday Health of Hempstead, Inc., General Health of Laurias, Inc., General Health of Windsor, Inc., General Health of Park City, Inc., Holiday Health of Towson, Inc., Century Health Spa of Plainview, Ltd., Holiday Health Spa, Inc., Spa International, Inc., American Spas, Inc., Holiday Health of Hampton, Inc., Great American Financial Management Corpora-

tion, Trans State Investments, Inc., Trans State Investments of Glen Burnie, Inc., National Loan Corporation, National Loan Corporation of Glen Burnie, Inc., corporations and their officers, and Frank Bond, Norman Pessin, Donald Goldman, and Maury Scarborough, individually and as officers of said corporations and respondents' agents, representatives, salesmen and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, and sale of health club memberships or other services or products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

I. Representing, directly or by implication

(A) That fewer health club memberships are available for sale than are in fact available.

(B) That the price charged for any club membership or service is a special or reduced price unless:

(1) Respondents maintain accounting records with respect to each sale, indicating:

(a) The type of membership and/or services,

(b) The price charged for such membership and/or services,

(c) The terms of each such membership or service,

(d) The name and address of each customer purchasing any such membership or services.

(2) Such price represents a significant reduction from the usual and customary price charged for the same or similar memberships or services.

(C) That a price increase is imminent unless the respondents' management by appropriate corporate action has previously theretofor determined the amount of such increase and the effective date thereof and such increase takes place on the date determined.

(D) That any person will alter their body size or configuration in any specific way or in any specified period of time as a result of participation in respondent's health club program.

(E) That attendance and participation in respondents' programs will insure an extended life span or will insure against or prevent heart attacks or any other bodily malfunctions.

(F) That respondents' exercise programs are unique.

(G) That respondents' programs are the only way to improve a person's figure or physique, appearance, vitality or virility.

H) That health club memberships are available for any period of time less than the shortest period for which a significant number of memberships are in fact sold to the public.

(I) That respondents' programs are effective in reducing a person's weight without regulating caloric intake.

(J) That a substantial number of respondents' health club members had paid for their memberships by inducing others to join respondents' clubs.

(K) That any facilities are available unless such facilities are available at all clubs referred to in any particular advertisement and are available to persons of either sex at all said clubs during all of said clubs' business hours. If the facilities are not available to all members at all hours at each club referred to in such advertisement, such representation shall be qualified by a clear and conspicuous disclosure in immediate conjunction therewith: *Providing*, That "such facilities and hours may differ at each location." Such disclosure shall appear in a type size larger than the size used to set out the facilities.

(L) That any of the respondents are holders in due course of any notes, contracts or other documents signed or executed by respondents' customers.

(M) That any service or product is guaranteed without disclosing clearly and conspicuously and in immediate conjunction therewith:

(1) The nature and extent of such guarantee;

(2) The manner in which the guarantor will perform thereunder;

(3) The identity of the guarantor.

II. Use of "before and after" or comparison photographs indicating any change of body configuration unless:

(A) The person so depicted has attended respondents' health clubs, *and* the results depicted were achieved through participation in respondents' health club programs; or

(B) The photographs are accompanied by the following statement to appear in clear and conspicuous fashion in immediate conjunction therewith: "Posed photographs."

III. Placing repeated telephone calls to, or making repeated personal contact with, any person at their home, place of

employment, or any other place, for the purpose of obtaining payment on any debt or obligation after such person has clearly indicated he will not heed such telephone or personal requests for payment.

IV. Misrepresenting, directly or by implication that a customer's account has been turned over to an attorney or an independent organization engaged in the business of collecting past due accounts.

V. Failing to clearly and conspicuously disclose in writing in a manner which can be easily understood by any customer and before obtaining his signature on any application for membership, note, contract, agreement, or other document and failing to require all salesmen and other representatives, by means of both oral and written instructions, that they disclose orally in a manner which can be easily understood by any customer, and before obtaining his signature on any application for membership, note, contract, agreement or other document:

(A) That the document is a contract and will become legally binding upon said customer upon its acceptance by the respondents.

(B) The terms and conditions of any promissory note or other instrument of indebtedness in such document.

(C) Each and every circumstance or condition under which a customer's membership may be cancelled or terminated, and any terms, conditions or costs to the customers of such cancellation or termination.

VI. Taking judgment on any note, agreement or other instrument executed by the respondents' health club customers, which contains any provision whereby any party thereto authorizes a confession of judgment against said party or waives any legal rights or defenses which said party would have under a suit on a simple contract, unless the defendent in such suit receives notice from the respondent in accordance with the rules of court of the local jurisdiction where such suit is instituted of his right to assert any defense in such suit which he would have if the suit were a suit on a simple contract in such jurisdiction and unless the defendant is afforded an opportunity for a hearing on the merits in such proceeding prior to judgment.

VII. Obtaining customer's signatures on any application for membership, contract, note or other document which fails to:

(A) Contain a clause allowing customers to avoid said agreement or obligation, within four business days of the date of execution of said document, upon the tender of a

certificate from the customer's physician that participation in respondents' health club programs would impair the health of said customer during the term of said contract: *Provided*, Such certificate is accurate and correct.

(B) Contain a clause which provides for termination of the membership in respondents' health clubs by any member who permanently moves his place of residence beyond a twenty-five (25) mile radius of any health club owned or operated by respondents or by any other person or firm which is a member of a trade or other association to which respondents belong and with whom they have an agreement offering reciprocal membership in a health club with similar facilities without additional charge to such member.

VIII. Representing to any of the respondents' customers that any application for membership, contract, note, or other documents executed by said customer will: (1) be held without acceptance pending further confirmation of the terms and conditions thereof by said customers and not be accepted by respondents until such confirmtion or (2) not be accepted by respondents in the normal course of business unless such representation is specifically contained in the terms of the written agreement or in a separate written instrument.

IX. Failing to deliver a copy of this order to cease and desist to all operating divisions of the corporate respondents, to all franchises or licensees and to all officers, managers and salesmen both present and future and to any other person now engaged or who shall become engaged in the sale of health club memberships or collection of club dues as respondents' agent, representative or employee; and failing to secure a signed statement from each of said persons acknowledging receipt of a copy thereof.

It is further ordered, That respondents Bernard Sandler Advertising, Inc., a corporation, and Bernard Sandler, individually and as an officer of said corporation, and respondents' agents, representatives, salesmen and employees, directly or through any corporate or other device, do forthwith cease and desist from disseminating or causing the dissemination of any advertising of health clubs, or other products or services, containing any representation or misrepresentations prohibited by Paragraphs I or II hereof.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in any of the corporate respondents, such as dissolution, assignment or sale resulting in the

emergence of any successor corporations, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.

IN THE MATTER OF

CAPITOL SEWING MACHINE CORPORATION, ET AL.

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

Docket C-1852. Complaint, Jan. 21, 1971—Decision, Jan. 21 1971

Consent order requiring a Harrisburg, Pennsylvania, corporation which sells and services new and used sewing machines and franchises operators of similar businesses to cease misrepresenting that certain of its sewing machines offered for sale have been repossessed, using misleading statements to obtain leads to prospective purchasers, misrepresenting that any price for respondents' products is special, reduced or is a savings from the regular selling price, failing to maintain records which would support its savings claims, failing to disclose all aspects of its guarantees, placing in the hands of others means to mislead purchasers, failing to disclose to purchasers that any note may be sold to a finance company, and making any contract of sale which becomes binding prior to its third day.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Capitol Sewing Machine Corporation, a corporation, and Dennis R. LaVine, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Capitol Sewing Machine Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 921 Eisenhower Boulevard, in the city of Harrisburg, State of Pennsylvania.

Respondent Dennis R. LaVine is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the granting of franchises to partnerships and individuals located in various States of the United States, to operate businesses specializing in the servicing, repair and sale of new and used sewing machines, sewing machine cabinets and related products to the public. Respondents also engage directly in the servicing, repair and sale of new and used sewing machines, sewing machine cabinets and related products to the public. In connection with the granting of said franchises to operate sewing machine dealerships, respondents require their franchisees to enter into agreements which require said franchisees to pay an initial sum of money for the privilege and said franchisees are required to purchase their sewing machines and related products from the respondents. Said franchisees are required to attend respondents' training course prior to commencing operation; are required to attend monthly meetings thereafter; to adhere at all times to respondents' advertising, sales and merchandising policies and procedures. Said franchisees' new salesmen are also trained for two weeks at the respondents' headquarters in Harrisburg and daily contact is maintained between the respondents and their franchisees via telephone. Respondents exercise, and at all times mentioned herein have exercised, a close and continuing supervision and control over the acts and practices of their franchisees as hereinafter described and those who fail to adhere to respondents' methods of operation may have their franchises terminated.

The manner in which respondents operate their sewing machine retail business is similar in all material respects to the manner of operation required of respondents' franchisees. The same classified newspaper advertisements are published throughout the franchise system.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, new and used sewing machines, sewing machine cabinets and related products thereto to be shipped from their place of business in the State of Pennsylvania to franchise dealers located in various other States of the United States. In the further course and conduct of their business, as aforesaid respondents transmit to and receive from their franchisees throughout the United States checks, contracts and other instrumentalities of a commrcial nature.

In the further course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States.

In the course and conduct of their business as aforesaid, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of the products and services offered by respondents and their franchisees, respondents and their franchisees have made, and are now making, in advertisements inserted in newspapers of general circulation, numerous statements and representations with respect to the kind, quality, price, savings, guarantees and credit of their merchandise.

Typical and illustrative of said statements and representations, made in said newspaper advertisements, but not all inclusive thereof, are the following:

Singer zig-zag. Late Cabinet Model, slightly used, 5 yr. parts and service guaranteed, no attachments necessary sews button holes, fancy designs blind hems, and straight stitches. unpaid balance $56.30 or pay payment of $4.86 per month. Call Capitol Credit Manager till 9 p.m. 944–7461. If toll, call collect.

A domestic Zig Zag Sewing Machine, slightly used. Fancy stitches, sew on buttons, makes button holes. No attachments needed. 5 year parts guarantee & free service. Complete Price $38.00 or pay payments of $4.30 per month. Call Capitol Sewing Credit Manager 'til 9 p.m. 944–7461. If toll call collect.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with oral statements and representations of respondents and their franchisees, and their salesmen and representatives, respondents and their franchisees have represented, and are now representing, directly or by implication, that:

(1) Through the use of the phrases and words "unpaid balance," "Balance," "assume payments" separately and in connection with the words "Credit Dept." and "Credit Manager" and other words and phrases of similar import, that sewing machines partially paid for by a previous purchaser, have been repossessed and are being offered for sale for the unpaid balance of the purchase price, or a portion thereof.

(2) That they are making a bona fide offer to sell repossessed sewing machines as described in said advertisements, for reason of de-

fault in payment by the previous purchaser and on the terms and conditions stated.

(3) That respondents' merchandise is being offered for sale at special or reduced prices, and that savings are thereby afforded to purchasers from respondents' regular selling prices.

(4) That the advertised machines are guaranteed for five years without limitation or condition.

PAR. 6. In truth and in fact:

(1) In few, if any, instances, are the advertised products repossessed sewing machines being offered for the unpaid balance of the original purchase price, or a portion thereof.

(2) Respondents are not making bona fide offers to sell repossessed sewing machines on the terms and conditions stated; but said offers are made for the purpose of obtaining leads as to persons interested in the purchase of sewing machines. After obtaining leads through response to said advertisements, respondents or their franchisees or their salesmen call upon such persons but make no effort to sell said advertised sewing machines. Instead, they exhibit sewing machines which are in such poor condition as to be unuseable or undesirable, and disparage the advertised product to discourage its purchase, and attempt, and frequently do, sell much higher priced sewing machines.

(3) Respondents' merchandise is not being offered for sale at special or reduced prices, and savings are not thereby afforded respondents' customers because of a reduction from respondents' regular selling price. In fact, respondents do not have a regular selling price but the price at which respondents' merchandise is sold varies from customer to customer depending upon the resistance of the prospective purchaser.

(4) Said advertised machines are not unconditionally guaranteed in every respect without limitations and conditions for a period of five years. Such guarantees as may be furnished in connection therewith, are subject to numerous terms, conditions and limitations and fail to set forth the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, respondents have in many instances failed to disclose certain material facts to purchasers, including, but not limited to the fact that, at respondents' option, conditional sales contracts, promissory notes, or other

instruments of indebtedness executed by such purchaser in connection with their credit purchase agreements may be discounted, negotiated, or assigned to a finance company or other third party to whom the purchaser is thereafter indebted and against whom defenses may not be available.

Therefore, respondents' failure to disclose such material facts, both orally and in writing prior to the time of sale, was and is false, misleading and deceptive, and constituted and now constitutes an unfair or deceptive act or practice.

PAR. 8. Directly and in the aforesaid manner and by the aforesaid means, respondents have placed in the hands of their franchisees, dealers and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove set forth.

PAR. 9. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents, directly and through their franchisees, have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of sewing machines and other products of the same general kind and nature as those sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of the products and services offered by respondents and their franchisees by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in 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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and

which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have 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 thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Capitol Sewing Machine Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 921 Eisenhower Boulevard, in the city of Harrisburg, State of Pennsylvania.

Respondent Dennis R. LaVine is an officer of said corporation and his office and principal place of business is located at the above-stated address.

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 respondents Capitol Sewing Machine Corporation, a corporation, and its officers, and Dennis R. LaVine, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device or through policies or practices suggested or recommended by respondents to any licensee or franchisee, in connection with the advertising, offering for sale, sale or distribution of sewing machines, sewing machine cabinets and related products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that sewing machines or related products have been repossessed or in any manner reacquired from a former purchaser, or are being offered for sale for the unpaid balance, or any portion thereof, of the original purchase price, or for the amount or any portion of the amount owed by a former purchaser, unless said advertised products actually were of the character stated and were offered for sale on the terms and conditions represented.

2. Representing, directly or by implication, that sewing machines or related products are offered for sale when such offer is not a bona fide offer to sell said products on the terms and conditions stated; or using any sales plan or procedure involving the use of false, deceptive or misleading statements to obtain leads or prospects for the sale of said merchandise.

3. Advertising or offering for sale any sewing machine or related product unless respondent has, makes a good faith effort to demonstrate, and offers for sale to prospective purchasers, without disparaging or in any manner discouraging its purchase, a product which conforms to the representations and descriptions contained in the advertisement or offer.

4. Using any deceptive sales scheme or device to induce the sale of the products or services offered by respondents or their franchisees.

5. Representing, directly or by implication, that any price for respondents' products is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondents in the recent regular course of their business.

6. Representing, directly or by implication, that any savings, discount or allowance is given purchasers from respondents' selling price for specified products, unless said selling price is the amount at which such products have been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent regular course of their business.

7. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

8. Failing to maintain adequate records (a) which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims, and similar representa-

tions of the type described in Paragraphs 5 through 7 of this order are based, and

(b) from which the validity of any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 5 through 7 of this order can be determined.

9. Representing, directly or by implication, that respondents' products are guaranteed unless the nature, extent and duration of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith.

10. Placing in the hands of others any means or instrumentalities whereby they may mislead purchasers or prospective purchasers as to any of the matters or things prohibited in Paragraphs 1 through 9 hereof.

11. Failing to orally disclose prior to the time of sale, and in writing on any conditional sale contract, or other instrument of indebtedness executed by a purchaser, and with such conspicuousness and clarity as is likely to be observed and read by such purchaser, that:

Any such instrument, at respondents' option and without notice to the purchaser, may be discounted, negotiated or assigned to a finance company or other third party to which the purchaser will thereafter be indebted and against which the purchaser's claims or defenses may not be available.

12. Contracting for any sale whether in the form of trade acceptance, conditional sales contract, promissory note, or otherwise which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after date of execution.

13. Failing to serve a copy of this order upon each present and every future licensee or franchisee and obtaining written acknowledgement of the receipt thereof and from failing to make every reasonable effort to obtain from each present and every future licensee or franchisee an agreement in writing to abide by the terms of this order.

It is further ordered, That the respondent corporation:

(1) Shall forthwith distribute a copy of this order to each of its operating divisions.

(2) Notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corpo-

ration, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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.

IN THE MATTER OF

GULF UNION CORPORATION, ET AL.

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

Docket C-1853. Complaint, Jan. 25, 1971—Decision, Jan. 25, 1971

Consent order requiring a Baton Rouge, Louisiana, radio broadcasting company and its subsidiary to cease engaging in "hypoing" during a period when its broadcast audience is being measured, that is, using unusual promotional practices designed to temporarily increase the size of a broadcast audience during rating periods.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Gulf Union Corporation, and Sound Dimensions, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gulf Union Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal place of business located in the city of Baton Rouge, State of Louisiana.

Respondent Sound Dimensions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal place of business located in the city of Baton Rouge, State of Louisiana. Respondent Sound Dimensions, Inc., is the licensee of Radio Station WQXY-FM.

Sound Dimensions, Inc., is a wholly owned subsidiary of Gulf Union Corporation which owns the entire capital stock of Sound Di-

mensions, Inc. Gulf Union Corporation directs and controls the acts and practices of Sound Dimensions, Inc.

PAR. 2. Respondents are now, and for some time last past have been engaged in radio broadcasting and in the offering for sale and sale of radio broadcast time to advertisers and advertising agencies.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now sell and offer for sale, and for some time last past have sold and offered for sale, broadcast time for advertising purposes to advertisers and advertising agencies located both in the State of Louisiana and in various other States of the United States, and respondents now cause, and for some time last past have caused, the broadcasting of radio signals, including, among other things, the aforementioned advertising, from their transmitter and place of business in the State of Louisiana into various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in the sale of broadcast time and in broadcasting in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents and other radio broadcasters purchase audience measurement reports as compiled and sold by market research companies for use in the sale of broadcast time to advertisers and advertising agencies. These reports are compiled from audience surveys as conducted in each particular market, and purport to contain statistical estimates of the ratings, audience size and audience composition of each radio station attaining certain minimal audience levels in the measured market.

Such reports are used by the respondents and other radio broadcasters to demonstrate to the purchasers of advertising time, the size and composition of the audience that is tuned to their station at any particular time of the day, and how the size and composition of their station's audience compares with that of competing radio broadcasters in the same market.

Advertisers and advertising agencies purchase the same reports for use in determining from which radio broadcaster in a particular market they will purchase broadcast time for advertising purposes.

PAR. 5. In the further course and conduct of their aforesaid business respondents engaged in certain unusual promotional practices during a rating period, to wit:

1. Respondents conducted and broadcast a contest, designated as "WQXY-FM $30,000 Cash Sweepstakes," over their radio station beginning on April 11, 1970, and ending on May 10, 1970. Members of the public were sent a card with a "lucky number" printed on its

face. The contest was tied directly to, and required the listening to respondents' broadcasts. To participate one had to be listening to respondents' broacast at 7 a.m., 10 a.m., 2 p.m., 5 p.m., for it was at these times that the winning number was announced. Nowhere else could the winning number be obtained.

2. During the period beginning April 16, 1970, and ending May 13, 1970, respondents' market was being surveyed and measured by the American Research Bureau (ARB). The ARB survey was subscribed to by respondents.

3. The value of the prizes offered daily during this contest was one thousand dollars ($1,000).

4. In the support of this contest, respondents placed 100 television spots in a four week period coinciding with the contest. In addition. respondents promoted their contest with a thirty (30) day showing of billboards in six locations and with three newspaper ads.

5. During respondents' tenure of its license, they have conducted no other contests.

PAR. 6. The employment of short term and unusual promotional practices by a broadcaster has the tendency and capacity to effect a temporary increase in the size of that broadcaster's audience. Such a temporary increase in the size of a broadcaster's audience occurring during a period when that broadcaster's market is being measured or surveyed would cause the survey or rating company to measure an audience for such broadcaster that would be larger than would have been measured but for such short term and unusual promotional practices, thereby causing the rating or survey company to publish in its report, ratings and other data that would appear to be estimates of such a broadcaster's customary and usual audience.

As set forth in Paragraph Four hereof, audience survey reports are extensively used by broadcasters and purchasers of broadcast time as a tool for establishing the cost of broadcast time and for evaluating broadcast audiences. It is therefore an unfair act or practice for a broadcaster to employ any short term and unusual promotional practice which has the tendency or capacity to temporarily distort or inflate viewing levels in a broadcast market during a period when that market is being measured or surveyed. Engaging in such a practice is known as "hypoing."

Therefore, the unusual promotional practices of the respondents, as set forth in Paragraph Five hereof, constitute unfair acts or practices.

PAR. 7. The acts and practices of respondents as set forth in Paragraph Five hereof were calculated or designed to cause the Ameri-

can Research Bureau to publish in its April-May 1970 report for the Baton Rouge market, ratings and other audience data that would appear to be estimates of respondents' customary and usual audience but which would in fact be estimates based upon the measurement of an audience larger than respondents customarily or usually have, and to cause ARB to place in the hands of purchasers of such reports, audience ratings and other data which would have the tendency and capacity to mislead and deceive such purchasers as to the size and composition of respondents' customary and usual audience.

Therefore the aforesaid unusual promotional practices of respondents constitute deceptive acts or practices.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce with corporations, firms and individuals in the sale of broadcast time of the same general nature as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid unfair or deceptive acts and practices has had, and now has, the capacity and tendency to mislead the purchasers of broadcast time into the erroneous and mistaken belief that the ratings and other audience data contained in the aforementioned April–May 1970 report are estimates of the usual audience of the radio stations reported therein and into the purchase of substantial quantities of respondents' broadcast time by reason of said erroneous and mistaken belief.

As a consequence thereof substantial trade in commerce has been and is being unfairly diverted to the respondents from their competitors, and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alledged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices in 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 respondents named in the caption hereon, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission by the respondents 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 respondents 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 respondents have 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission thereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Gulf Union Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana with its principal office and place of business located at 1364 Nicholson Drive, Baton Rouge, Louisiana.

Sound Dimensions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana with its principal office and place of business located at 1737 Wooddale Boulevard, Baton Rouge, Louisiana.

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 respondents, Gulf Union Corporation, a corporation, and Sound Dimensions, Inc., a corporation, their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the broadcasting, and the advertising, offering for sale or sale of broadcast time in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

> Conducting or participating in any unusual contest or giveaway or promotional practice which is calculated or designed to temporarily increase the size of their broadcast audience only during a rating or survey period or which is calculated or designed to cause any rating or survey company to publish and place in the hands of purchasers thereof, audience rating or

other data which may mislead or deceive such purchasers as to the size or composition of respondents' audience.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

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

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.

IN THE MATTER OF

MAREMONT CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND THE FEDERAL TRADE COMMISSION ACT

Docket 8763. Complaint, July 1, 1968—Decision, Jan. 26, 1971

Consent order requiring a major manufacturer and distributor of automotive parts with headquarters in Chicago, Ill., to divest itself of 28 warehouse distributors not located in California by selling them to a minimum of four different purchasers, to sell its 153 automotive parts jobber stores to at least three separate purchasers, respondent must not acquire any processor or wholesaler of automobile parts without Commission approval for the next 10 years, and not to engage in any systematic reciprocal buying and selling agreements with other manufacturer-wholesalers of automotive parts, accessories or equipment.

COMPLAINT

The Federal Trade Commission has reason to believe that Maremont Corporation, an Illinois corporation has acquired all or part of the stock or assets of Accurate Parts Manufacturing Co.; Grizzly Manufacturing Co.; Muskegon Camshaft Company; Universal Friction Materials Co.; The Gabriel Company; Leland Corporation; Monroe Products Company; 2401 South Michigan, Inc.; Winslow

Engineering and Manufacturing Co.; Replacement Unit Co. an Ohio corporation; Replacement Unit Company, a Missouri corporation; Replacement Unit Company, a California corporation; Exchange Parts Company of Fort Worth; Automotive Utilities, Inc.; Auto Parts Exchange Co.; Rebuilt Parts, Inc.; United Automotive Products, Inc.; General Armature & Manufacturing Co.; Chanslor & Lyon Co., Inc.; Joseph F. Meyer Co.; Smith Auto Parts Co.; Independent Jobbers Warehouse; Onandaga Supply Co., Inc.; Chapin-Owen Co., Inc.; Chapin-Owen Batavia Corp.; Automotive Supply Company; Motive Parts Company of Pennsylvania, Inc.; Dyke Charnet, Inc.; General Trading Company; GN Finance Company; The Gibson Company, Inc.; Atlas Manufacturing Co., Inc.; Service-Items, Inc.; Motor City Automotive, Inc.; Apex Battery Manufacturing Co.; Champion Exchange Products, Inc.; Sidles Company; Midlands Automotive Warehouse, Inc.; Parts Warehousing Corporation; and Triangle Automotive Parts, Inc.; in violation of Section 7 of the Clayton Act, as amended, (U.S.C., Title 15, Section 18) and/or of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), and therefore issues this complaint, stating its charges in that respect as follows:

I. DEFINITIONS

1. For the purpose of this complaint, the following definitions shall apply;

(a) Automotive parts whether new or rebuilt are components or assemblies used in the manufacture or repair of motor vehicles. The words "automotive parts," "accessories" and "equipment" are used with the same meaning as in Industry 5013 of the Standard Industrial Classification System.

(b) Rebuilt automotive parts are parts which have been remanufactured for re-use, excluding those parts which are custom remanufactured on a unit-by-unit basis.

(c) "Maremont's manufacturing acquisitions," as used in this complaint, refer to its acquisitions of the stock or assets of Accurate Parts Manufacturing Co.; Grizzly Manufacturing Co.; Universal Friction Materials Co.; Muskegon Camshaft Company; Leland Corporation; Monroe Products Company; 2401 South Michigan, Inc.; The Gabriel Company, and Winslow Engineering and Manufacturing Co.

(d) "Maremont's rebuilding acquisitions," as used in this complaint, refer to its acquisitions of the stock or assets of Replacement Unit Co., an Ohio corporation; Replacement Unit Co., a Missouri corporation; Replacement Unit Co., a California corporation; Ex-

change Parts Company of Fort Worth; Automotive Utilities, Inc.; Auto Parts Exchange Co.; Rebuilt Parts, Inc.; United Automotive Products, Inc.; and General Armature and Manufacturing Co.

(e) "Maremont's distribution acquisitions," as used in this complaint, refer to its acquisition of the stock or assets of Chanslor & Lyon Co., Inc.; Joseph F. Meyer Co.; Smith Auto Parts Co.; Independent Jobbers Warehouse; Onandaga Supply Co., Inc.; Chapin-Owen Co., Inc.; Chapin-Owen Batavia Corp.; Automotive Supply Company; Motive Parts Company of Pennsylvania, Inc.; Dyke-Charnet, Inc.; General Trading Company; GN Finance Company; The Gibson Company, Inc.; Atlas Manufacturing Co., Inc.; Motor City Automotive, Inc.; Apex Battery Manufacturing Co.; Champion Exchange Products, Inc.; Sidles Company; Midlands Automotive Warehouse, Inc.; Parts Warehousing Corporation; and Triangle Automotive Parts, Inc.

(f) Warehouse distributors are wholesalers automotive parts, accessories and equipment selling primarily to jobbers and other wholesalers.

(g) Jobbers are wholesalers of automotive parts, accessories and equipment who do not sell primarily to other jobbers or wholesalers.

II. MAREMONT CORPORATION

2. Respondent Maremont Corporation (Maremont) is a corporation organized and existing under the laws of the State of Illinois with its principal office and place of business located at 168 Michigan Avenue, Chicago, Illinois.

3. In 1966, Maremont had sales of $155.3 million and assets of $75.3 million. In that year it was the 418th largest industrial corporation in the nation. Maremont is the nation's largest rebuilder of functional automotive parts, one of its two largest producers of replacement automotive shock absorbers and one of its three largest producers of replacement automotive exhaust system parts. Maremont now also owns and operates one of the nation's two or three largest chains of warehouse distributors of replacement automotive parts, accessories and equipment, which has added another $100 million to its 1966 sales.

III. MAREMONT ACQUISITION PROGRAM

A. Automotive Parts Manufacturers

4. In 1939, Maremont, then the nation's leading manufacturer of replacement leaf springs, entered automotive muffler manufacturing

by acquiring the assets of Gem Manufacturing Company of Pittsburgh, Pennsylvania, and Burgess Industries of Madison, Wisconsin. In 1944, it entered exhaust and tail pipe manufacturing by acquiring certain assets of American Welding Manufacturing Company. Maremont's position in the replacement exhaust system business was further bolstered by its 1953 acquisitions of certain assets of Aluminum Industries, Inc., and Pratt Industries Inc., of Frankfort, New York. By the late 1950's Maremont had become the third largest member of the existing oligopoly that dominates the U.S. market for replacement automotive exhaust system parts. In 1960 Maremont acquired control of Saco-Lowell Shops, a corporation which manufactured a small number of mufflers and universal joints in addition to textile machinery and ordnance material. Saco-Lowell's total sales were $27.5 million for the year ending November 30, 1959, and were $41.7 million for the year 1960. By the terms of an anti-trust consent decree in *U.S.* v. *Maremont Automotive Products, Inc., and Saco-Lowell Shops*, Civil No. 60–0–1897 (N.D. Ill. 1960), Maremont was prohibited for a period of five years from making further acquisitions of any manufacturer or distributor (excepting retail) of automotive mufflers without the approval of the Court. On February 3, 1965, Maremont completed its exhaust parts line with the acquisition of Marwil Products Company, a corporation organized and existing under the laws of the State of Michigan with its principal place of business at 19275 Woodston, Detroit, Michigan. Marwil Products Company manufactured clamps and hangers for exhaust systems and had annual sales of $1.2 million for the year 1964.

5. In 1953 Maremont entered the automotive clutch market with the acquisition of Accurate Parts Manufacturing Co. of Cleveland, Ohio, and Accurate's affiliates, Replacement Unit Co., an Ohio corporation, Replacement Unit Co., A Missouri corporation and Replacement Unit Co., a California corporation, rebuilders of clutches under the brand name of "ReNu" and suppliers to other rebuilders. At the time of their acquisition by Maremont these firms together constituted the nation's second largest replacement clutch supplier, with annual sales of about $4.6 million.

6. In 1953, Maremont entered the friction materials market with the acquisition of Grizzly Manufacturing Co. of Paulding, Ohio. Subsequent acquisitions by Maremont have provided a substantial captive market for Grizzly's brake linings, and it has also remained an important factor in the open market, selling $2.2 million in brake linings in 1966. By virtue of this acquisition, Maremont also acquired a clutch facing supplier for its automotive clutch manufac-

turing and rebuilding operations. In 1962 Maremont also acquired Universal Friction Materials Co. of Kendallville, Indiana.

7. On November 16, 1959, through a subsidiary Maremont acquired Muskegon Camshaft Company, a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1747 Seventeenth Street, Muskegon, Michigan. Muskegon manufactured automotive camshafts and had annual sales of $414 thousand for the six months ending September 30, 1959. Muskegon's camshafts by the end of 1964 were the nation's largest selling line of camshafts in the automotive aftermarket.

8. On November 23, 1959, Maremont acquired Leland Corporation, Monroe Products Company and 2401 South Michigan, Inc., corporations organized and existing under the laws of the State of Illinois, with their principal places of business in Chicago, Illinois. Leland Corporation and Monroe Products Company sold heavy duty automotive parts, *viz.*, brake, axle and landing gear parts, wheel bearings, grease seals and parts and suspension system parts and had combined annual sales of $1.5 million for the fiscal year ending November 30, 1959.

9. On September 14, 1962, Maremont acquired 50 percent of the stock of the Gabriel Company (hereafter "Gabriel") a corporation organized and existing under the laws of the State of Ohio, with its principal place of business located at 1148 Euclid Avenue, Cleveland, Ohio. In 1962, Gabriel was one of the nation's two leading producers of automotive shock absorbers other than the vehicle makers. Other products manufactured by Gabriel at the time of the acquisition included microwave antennae, rocket propellants, ejection systems, and bomb racks. Total annual sales for the year ending December 31, 1961, were $30 million, of which 73 percent was accounted for by the sale of automotive parts and accessories, principally shock absorbers sold in the aftermarket. Its remaining stock was acquired by Maremont in 1963. Subsequently, Gabriel's assets were sold to Maremont, and Gabriel was dissolved. At the time of this acquisition Maremont, because of its position as a leading maker and marketer of under-chassis parts, was one of the most likely potential entrants into the highly concentrated shock absorber market.

10. On February 7, 1964, Maremont acquired Winslow Engineering & Manufacturing Co., a corporation organized and existing under the laws of the State of California with its principal place of business at 1093 Charter Street, Redwood City, San Mateo, California, and plants in California and Kentucky. Winslow, a manufacturer of

automotive oil filters, with important patent rights, had annual sales of $2.4 million for the year ending June 30, 1963.

B. Parts Rebuilders

11. In 1962, Maremont expanded its rebuilding operations beyond the Accurate ReNu clutch building business acquired in 1953 (See Paragraph 5 above) by acquiring several important full-line regional rebuilders. The first of these was Exchange Parts Company of Fort Worth (hereafter "EPCO"), a corporation organized and existing under the laws of the State of Texas with its principal place of business located at 2500 West Vickery, Fort Worth, Texas. EPCO, one of the three leading rebuilders in the Southwest, had annual sales of $3.5 million in the year 1961. At the time of the acquisition, on May 24, 1962, EPCO rebuilt such parts as clutch plates, brake shoes, carburetors, fuel pumps, generators, starters, solenoids, armatures, distributors, and clutch assemblies. Its trade area included Texas, Oklahoma, Arkansas and Louisiana.

12. On June 25, 1962, Maremont acquired Automotive Utilities, Inc., a corporation organized and existing under the laws of the State of Illinois with its principal place of business at 2222 South Racine, Chicago, Illinois. Automotive Utilities was one of the nation's leading rebuilder of carburetors, with annual sales of $2 million for the year ending April 30, 1962. Its trade area included the Mid-Central States, Pennsylvania and Texas.

13. On September 7, 1962, Maremont acquired Auto Parts Exchange Co. (hereafter "APECO"), a corporation organized and existing under the laws of the State of California with its principal place of business located at 825 Lawson, city of Industry, California. APECO, with its affiliate Rebuilt Parts, Inc., a California corporation also acquired by Maremont (on October 9, 1962) remanufactured automotive parts. They had combined sales of $3.5 million for the period from September 1961 through August 1962. APECO rebuilt the following automotive parts: clutch plates/assemblies, brake shoes, power brakes, fuel pumps, water pumps, starter drives, starters, solenoids, armatures, distributors, generators and voltage regulators. It was one of the two outstanding full-line rebuilders of automotive parts on the West Coast. Its trade area included California, Arizona and Nevada.

14. On October 31, 1962, Maremont acquired United Automotive Products Inc., a corporation organized and existing under the laws of the State of Oregon, with its principal place of busness located at

2625 North West Industrial, Portland, Oregon. United rebuilt the following automotive products: clutch plates, brake shoes, water pumps, generators, starters, armatures, and clutch assemblies. It had sales of $488 thousands for the year ending May 31, 1962. Its trade area included Oregon, Washington, Idaho and Alaska.

15. On December 4, 1962, Maremont acquired General Armature and Manufacturing Co., a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business located at Water Street, Lock Haven, Pennsylvania. General Armature was a leading rebuilder and marketer of electric automotive products in the New England and Mid-Atlantic States area. It also operated armature rewinding plants, now abandoned, in Kansas and Georgia. It had annual sales of $2.7 million for the fiscal year ending November 30, 1962. At the time of the acquisition, General Armature remanufactured generators, starters, starter drives, solenoids, voltage regulators, and armatures.

16. With the making of the acquisitions alleged in Paragraphs 11–15, Maremont completed its drive to become one of the Nation's largest suppliers, other than vehicle makers, of a relatively complete automotive replacement line. In so doing, it had also become the Nation's largest functional parts rebuilder and the only one operating on a nationwide basis. It established a goal of winning 10 percent of the nationwide market for rebuilt automotive parts.

C. Warehouse Distributors

17. In 1966, Maremont embarked on a program to acquire ownership of a nationwide chain of leading automotive warehouse distributors with some 55 to 60 warehouses.

18. On December 12, 1966, pursuant to a contract dated May 13, 1966, Maremont acquired 80 percent of the stock of Chanslor & Lyon Co., Inc. (hereafter C&L), a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 380 Valley Drive, Crocker Park, Brisbane, California. At this same time it acquired rights to obtain the remaining 20 percent of C&L's stock at a future date. C&L at the time of its acquisition was one of the two outstanding chains of warehouse distributors of automotive parts, accessories and equipment in California, Washington, and Oregon. By virtue of its 1961 acquisition of Archenhold Automobile Supply Co. C&L was also a large warehouse distributor in West Texas. C&L had net sales in the year 1966 of $28.8 million. Much of C&L's trade was with jobbers whom it had financed.

19. On May 27, 1966, subsequent to execution of Maremont's contract to acquire C&L, through C&L Maremont acquired the Joseph F. Meyer Co., a corporation organized and existing under the laws of the State of Texas with its principal place of business located at 4701 Calhoun, Houston, Texas. Meyer operated as a warehouse distributor of automotive parts in the Houston, Texas area, including part of Louisiana. It has annual sales of $1.5 million in the year 1965.

20. On July 31, 1966, subsequent to the execution of Maremont's contract to acquire C&L, through C&L it acquired the stock of Smith Auto Parts Co., a corporation organized and existing under the laws of the State of Oregon with its principal place of business located at 1740 West Flanders, Portland, Oregon. Smith was a chain jobber of automotive parts operating in the State of Oregon with some sales in Washington. It had sales in the year 1965 of $1.5 million.

21. On November 18, 1966, subsequent to the execution of Maremont's contract to acquire C&L, through C&L's wholly owned subsidiary, Ballou & Wright Inc., Maremont indirectly acquired the assets of Independent Jobbers Warehouse ("IJW") a corporation organized and existing under the laws of the State of Colorado with its principal place of business located at 2650 West 3rd Avenue, Denver, Colorado. IJW was a warehouse distributor of automotive parts in Colorado. It was a leading supplier of automotive parts into Wyoming and also made some sales into Kansas and Nebraska. It had annual sales of about $1.8 million for the year ending August 31, 1965. In connection with its IJW acquisition, Maremont's subsidiaries also acquired rights to the patronage of many Wyoming jobbers who had recently been set up in business by IJW's ownership.

22. On June 26, 1967, Parts Supply, Inc. (formerly Armature Rewind Company, Inc.), a wholly owned subsidiary of Maremont Corporation, acquired certain assets, *viz.* the automotive divisions, of Onandaga Supply Co., Inc., Chapin-Owen Co., Inc., and Chapin-Owen Batavia Corp., affiliated corporations organized and existing under the laws of the State of New York, with their principal places of business located at 334 West Genesse Street, Syracuse, New York (Onandaga) and 205–213 St. Paul Street, Rochester, New York (both Chapin-Owen firms). The automotive divisions of the subject corporations were chain warehouse distributorships serving Syracuse, Rochester, Watertown, Batavia and Elmira, New York and environs, with some sales into Pennsylvania. In 1966 these acquired automotive divisions had combined annual sales of automo-

tive parts of approximately $5.6 million. Chapin-Owen was the leading warehouse distributor in Rochester and Onandaga Supply was one of the two leading warehouse distributors in Syracuse. Both owned many jobber outlets.

23. On July 13, 1967, Maremont acquired the stock of Automotive Supply Company, a corporation organized and existing under the laws of the State of Pennsylvania with its principal place of business located at 1917 Margaret Avenue, Altoona, Pennsylvania. Automotive Supply, a leading local chain, distributed automotive parts, accessories and equipment in widely separated areas: in Central Pennsylvania (with a subsidiary located in West Virginia) and in Arizona, where it did business as "Complete Auto Supply Co." In the fiscal year ending June 30, 1966, Automotive Supply had annual warehouse distribution sales of $7.5 million in Pennsylvania and $4.8 million in Arizona. In both areas it owned many jobber outlets.

24. On July 13, 1967, Maremont through its subsidiary 168 North Michigan Avenue Corporation, a corporation organized and existing under the laws of the State of Illinois, acquired all the stock of General Trading Company and GN Finance Company, corporations organized and existing under the laws of the State of Minnesota with their principal place of business located at 475 North Pryor Avenue, St. Paul, Minnesota. General Trading Company operated the outstanding chain of warehouse distributors serving the automotive parts trade in Minnesota, Wisconsin, Upper Michigan, and the eastern part of the Dakotas. GN Finance Company had recently financed the sale of the jobber outlets of General Trading Company to employees and others. For the year ending April 30, 1967, General Trading Company had net sales of $10.1 million and GN Finance Company's net equity of investments and advances was $2.8 million.

25. On or about September 12, 1967, Maremont acquired the stock of The Gibson Company, Inc., and certain assets of its affiliate, Atlas Manufacturing Co., Inc., corporations organized and existing under the laws of the State of Indiana with their principal places of business located at 433–439 North Capitol Avenue, Indianapolis, Indiana. These companies together constituted one of the two outstanding chains of auto parts distributors in Indiana, with sales in Ohio, Illinois, and Kentucky. Their warehouse distribution sales amounted to $8.1 million for the fiscal year ending February 25, 1967. Some of their jobber outlets were owned by them. In connection with this acquisition Maremont also acquired one-fourth interest in Service-Items, Inc., a Missouri corporation, which supplies ware-

house distributors nationwide with hand tools and supplies used by automotive service establishments.

26. On or about September 20, 1967, Maremont acquired the stock of Motive Parts Company of Pennsylvania, Inc., and Dyke-Charnet, Inc., corporations organized and existing under the laws of the State of Pennsylvania with their principal places of business located in Pittsburgh, Pennsylvania, at 6379–99 Penn Avenue (East Liberty). These firms had automotive distribution sales of $3.2 million in 1966 and together constituted one of four significant distributorships in the Pittsburgh area, including a small part of eastern Ohio. They had owned many jobber outlets.

27. On January 10, 1968, Maremont acquired all of the stock of Motor City Automotive, Inc., a corporation organized and existing under the laws of the State of Michigan with its principal place of business located at 4800 Stecker, Dearborn, Michigan. Motor City was one of the two largest automotive warehouse distributorships operating in southern Michigan. In 1966 it had net sales of $4.8 million.

28. On or about February 7, 1968, Maremont acquired the stock of Apex Battery Manufacturing Co. and its affiliate, Champion Exchange Products, Inc., both corporations organized and existing under the laws of the State of Illinois with their principal places of business located at 3433 West Madison Street, Chicago, Illinois. With combined 1966 sales of $5 million for new and rebuilt parts, these firms constituted one of the three leading automotive warehouse distributorships in the Chicago metropolitan area. Its sales reached into Wisconsin, Indiana and Iowa.

29. On March 19, 1968, Maremont acquired the assets of the automotive parts divisions of Midlands Automotive Warehouse, Inc., and its affiliate, Sidles Company, both of Omaha, Nebraska (hereafter collectively "Midlands/Sidles"). Midlands/Sidles was the largest chain of warehouse distributors and auto parts jobbers in Nebraska. It also had substantial market positions in Western Iowa and in Western Kansas, Colorado and Wyoming. Midlands'/Sidles' warehouse distribution sales of automotive parts, accessories and equipment in 1966 approximated $16 million and in 1967 $20 million.

29.1 On or about May 23, 1968, Maremont acquired all of the stock of Parts Warehousing Corporation and its affiliate, Triangle Automotive Parts, Inc., both being corporations organized and existing under the laws of the State of Ohio, with principal places of business at 2900 Superior Avenue, Cleveland, Ohio. Parts Warehousing was one of the few large warehouse distributors in the Cleveland

area, with sales of about $2.1 million in 1967. Triangle, a chain of jobber outlets, had 1967 sales of about $1.2 million.

30. Maremont has now acquired 41 warehouses throughout most of the United States except the Atlantic Seaboard and the Southeast, It may be negotiating additional similar acquisitions in order to complete its plan for a nationwide chain of captive warehouse distributors. It can be expected to continue its acquisition plans unless ordered to cease and desist therefrom.

31. At the time of each and every acquisition of stock and/or assets referred to in Paragraphs 5–30 above, Maremont and each and every corporation whose stock or assets was acquired, directly or indirectly, by Maremont were engaged in commerce within the meaning of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18) and also of Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45).

IV. TRADE AND COMMERCE

32. There are two major markets for automotive parts: the original equipment market and the replacement market. There are extremely important differences in their characteristics. The original equipment market (hereafter sometimes "OEM") consists of motor vehicle makers who buy parts for installation in new vehicles. Sales into the OEM are typically negotiated and are to specification. In contrast to the OEM, where parts producers deal with a few, very large, well-informed buyers who generally possess the ability to make such parts themselves, a producer selling into the replacement market (hereafter sometimes "aftermarket") deals with a large number of relatively small customers, who possess varying degrees of information about the product and who rarely have the potential to engage in the manufacture of such parts. To sell automotive parts successfully in the aftermarket a producer must possess a sales organization capable of reaching many buyers in the relevant market areas, frequently the entire nation. In the aftermarket a successful supplier of a particular product must market a fairly complete line of that product for all vehicle makes and models whereas a supplier to the OEM may negotiate to produce only one or more particular parts for a particular model.

33. The manufacture of domestic automotive parts by all producers for replacement purposes was of a magnitude of $3.8 billion in 1966. Approximately 100 producers of automotive parts make substantial sales of parts into the aftermarket. Although the manufacturers of motor vehicles have long supplied their own dealers a

full-line of parts for their own make vehicles, other suppliers of replacement automotive parts, until a few years ago, typically produced only one or two basic product lines. Recently, however, a few of the largest producers of automotive parts have by mergers extended their product mix to as many as a third or more of all automotive parts. In most submarkets for replacement products the percentage of the market held by the top four firms is high: 70 percent in the replacement exhaust parts market and 90 percent in the replacement shock absorber market, for example.

34. Certain automotive parts can be replaced by parts rebuilt by specialized rebuilders rather than by new parts. Since the rebuilder can utilize many of the components of the old unit and since he can set up his operation on virtually the same basis for reassembly as a new producer, for many products the rebuilder can offer a rebuilt unit equivalent to a new unit at a lower price than that paid for the new unit. In many instances, new and rebuilt products are in direct competition. Among those parts most commonly rebuilt and the approximate extent to which since rebuilt parts have taken over the replacement markets in question ar brake shoes (88 percent), starters (94 percent), generators and alternators (98 percent), clutches (85 percent), carburetors (70 percent), water pumps (60 percent) and fuel pumps (48 percent).

35. Nationwide there are several hundred automotive parts rebuilders, the larger of whom sell into the wholesale market (through warehouse distributors and/or jobbers). Pure rebuilders are quite small by comparison with leading automotive parts manufacturers like Maremont. Only a handful have achieved annual sales as high as $10 or $15 million. Larger rebuilders commonly remanufacture an average of a half dozen parts while smaller rebuilders, who comprise two-thirds of the total population of the rebuilding industry, more often specialize in one or two products or specialize in a group of related products such as ignition parts. Because the nature of the industry requires a double freight charge, *i.e.*, shipping the rebuilt unit to the buyer and getting back the old unit (or "core") so that it can be rebuilt, most rebuilders are limited to shipping within a few hundred miles of their plants. Thus, regional and local markets are peculiarly important to such rebuilders. The growth of rebuilders has exerted a healthy influence on competition in the sale of those automotive parts which can be rebuilt.

36. The very few vehicle makers account for less than half of all replacement sales of automotive parts. They rely on their franchised vehicle dealers as outlets for the greater portion of their parts sales

and the free wholesale market for most of the rest. Other significant parts manufacturers, by contrast, rely most heavily on the free wholesale market and sell virtually nothing directly and only small quantities indirectly through franchised vehicle dealers. Such parts makers do, however, have an outlet for the lesser portion of their production through so-called mass-merchandisers, who buy direct from the manufacturer (a market little touched by the vehicle makers). The free wholesale market in 1963 was composed of about 15,000 jobbers who in turn resold parts to service stations, garages and, occasionally, car dealers.

37. At least two-thirds of roughly $3 billion 1966 sales to automotive parts jobbers are now made through warehouse distributors, rather than directly from manufacturers or rebuilders to jobbers, as commonly in the past. Warehouse distributors, who have come to constitute a well-defined and significant submarket within the wholesale market for automotive parts, experienced their principal growth since World War II. The proliferation of automotive parts needed to serve increasingly complex motor vehicles had made it difficult for jobbers to meet the motorist's demand for prompt service without excessive inventory cost. Thus, there arose the warehouse distributor, who carries a broader range of products within a product line than could be handled economically by jobbers. He provides inventory control and faster delivery service than could be made directly from distant manufacturers' factories (and usually faster than from regional factory warehouses). He handles a full-line of automotive parts, accessories and equipment, thus consolidating supply sources for the convenience and economy of jobbers. Large, full-line WD's are the most effective marketers.

38. The Nation's warehouse distributors, with total 1966 sales of about $2.2 billion annually, provide manufacturers with a more effective method of marketing within such warehouse distributors' trade areas, not only for the foregoing and similar economic reasons but because of additional influence which many WD's have on the buying patterns of many of their jobber customers through ownership interests, financing arrangements, and family or other non-legal ties. Because of all these factors, a jobber commonly tends to follow the brand preference of his principal warehouse distributor at least in the absence of an unusually strong brand preference by the jobber or his customers.

39. Recent years have seen some growth of chain warehouse distribution of automotive parts, accessories and equipment, principally by acquisition and principally to take advantage of the greater power yielded by greater size in dealing with suppliers on one hand

and with jobber customers on the other. Aside from Maremont, however, only two other firms have as yet established nationwide warehouse distribution chains. The top four WD chains, including C&L, at the beginning of 1966 controlled about 16 percent of all warehouse distribution sales of automotive parts, accessories and equipment in the United States, up from about 13 percent in 1963.

40. While most manufacturers of automotive parts, accessories and equipment have traditionally made only a few kind of products, wholesalers thereof have traditionally carried a complete line of products to satisfy their customers' needs. However, for various reasons parts wholesalers, including warehouse distributors, have commonly handled only a single brand of many kinds of the many automotive parts they carry. Such a practice operates to foreclose outlets temporarily to all other suppliers than those currently patronized. However, in the absence of outlet ownership or control by a supplier such exclusive dealing nevertheless leaves a wholesaler's custom subject to free and open competition on the traditional bases of price, quality and service. Prior to the start of Maremont's distribution acquisition program, vertical integration between warehouse distributors and manufacturers or rebuilders of replacement automotive parts, accessories or equipment was extremely rare. Amont the top four warehouse distributor chains some backward integration had begun but on a much more limited scale than has been introduced by Maremont since mid–1966.

V. COMPETITIVE EFFECTS OF MAREMONT'S DISTRIBUTION ACQUISITIONS

41. Maremont's 1966 acquisition of C&L, with sales of nearly $30 million, and its subsequent steady expansion of that firm into almost a nationwide distributor, with warehouse distribution sales now over $100 million as described in Paragraphs 17 through 30, has already increased nationwide concentration among warehouse distributors significantly; from about 16 percent to about 19 percent. In the process C&L's rank within this incipient warehouse distribution oligopsony has already been raised from fourth to second or third place nationwide.

42. Moreover, the present disparate size and power of the greatly expanded C&L chain vis-a-vis its many smaller warehouse distributor competitors throughout most of the United States may afford C&L decisive competitive advantages over such smaller competitors, both in dealing with parts manufacturers and rebuilders and in dealing with parts jobbers. C&L's expansion encourages the similar growth of other such chains by other acquisitions and mergers.

43. A major anticompetitive effect of Maremont's acquisitions of warehouse distributors is that Maremont may now be expected to foreclose and has often already foreclosed suppliers of competitive products from access to at least 4 percent and eventually probably more of the nation's warehouse accessories and equipment. In particular automotive parts lines manufactured and/or rebuilt by Maremont, its ability to foreclose its competitors from outlets for their products has been increased much more substantially. The captive business acquired by Maremont in each such particular line and its *pro forma* effect on Maremont's market position, product by product, is shown as a percentage of the total aftermarket for each such product in Table I (nationwide sales through all channels of distribution generally and through wholesale channels in particular) and in Table II (wholesale sales in specified regions of the United States). Maremont's newly acquired captive business necessarily represents even more substantial shares of the all-important warehouse distribution markets concerned than is indicated in Tables I and II for the corresponding wholesale markets.

Table I.—Nationwide Market Shares of Maremont and Acquired Warehouse Distributors in Maremont's Major Lines

Product lines	1966 market magnitude	1966 Maremont market share (percent)	1966 acquired firms share [1] (percent)	Maremont potential share [2] (pro forma) (percent)
Non-rebuildable auto parts:				
Exhaust system parts:				
All channels	$130.8MM	11.4	4.0	14.6
Wholesale channels	87.5MM	11.9	6.0	16.7
Shock absorbers:				
All channels	21.3MM units	23.4	6.6	30.0
Wholesale channels	8.8MM units	12.4	15.9	28.3
Oil filters:				
All channels	162.9MM units	.3	2.4	2.7
All channels except car dealers	130.1MM units	.4	3.0	3.4
Rebuildable auto parts:				
Carburetors:				
All channels	2.3MM units	10.6	6.6	16.0
Wholesale channels	1.7MM units	8.4	8.7	15.6
Water pumps:				
All channels	3.4MM units	8.1	9.8	16.2
Wholesale channels	2.7MM units	7.4	12.2	17.5
Fuel pumps:				
All channels	6.9MM units	2.9	8.8	11.3
Wholesale channels	4.1MM units	3.5	14.9	17.7
Generator, alternators and starters:				
All channels	9.2MM units	6.5	2.1	8.1
Wholesale channels	6.2MM units	3.5	3.1	5.8
Brakeshoes:				
All channels	29.4MM units	3.2	3.7	6.9
Wholesale channels	21.6MM units	.9	5.0	5.9
Clutch parts:				
All channels	5.0MM jobs	7.2	1.9	8.6
Wholesale channels	3.3MM jobs	9.2	2.9	11.3

[1] *Excludes* C&L purchases of all products at Seattle and Portland except exhaust parts, shock absorbers and oil filters.

[2] Maremont's pro forma potential market share increase *excludes* all captive business previously supplied by Maremont while the acquired firm was independent.

Table II.—Wholesale Market Shares of Maremont and Acquired Warehouse Distributors in Six Rebuildable Auto Parts Lines in Four Regions of the United States

Product and region	1966 market magnitude (millions)	1966 Maremont market share (percent)	1966 acquired firms share (percent)	Maremont potential share [2] (pro forma) (percent)
Pacific and Rocky Mountain States [1]:				
Carburetors	$2.1	10.8	16.9	22.7
Water pumps	1.9	16.2	27.4	39.8
Fuel pumps	1.6	10.0	25.5	32.3
Generators, alternators, starters	9.8	6.5	6.1	9.3
Brake shoes	9.1	1.3	9.3	10.6
Clutch parts	6.0	11.2	5.2	13.9
West South Central States:				
Carburetors	1.2	11.7	4.7	16.4
Water pumps	1.0	15.2	16.9	32.1
Fuel pumps	.9	7.9	9.8	17.7
Generators, alternators, starters	5.4	6.9	3.3	10.2
Brake shoes	5.0	2.6	2.5	5.1
Clutch parts	3.3	8.7	2.7	11.4
North Central States:				
Carburetors	3.4	8.5	15.3	21.8
Water pumps	3.0	1.6	15.5	14.8
Fuel pumps	2.6	.4	24.5	24.8
Generators, alternators, starters	15.7	.8	4.3	5.1
Brake shoes	14.5	.4	6.0	6.4
Clutch parts	9.6	3.2	4.4	6.8
Northeastern States:				
Carburetors	2.4	5.1	2.5	7.5
Water pumps	2.1	5.4	4.2	9.2
Fuel pumps	1.8	1.1	8.1	8.8
Generators, alternators, starters	11.0	4.0	1.2	4.6
Brake shoes	10.2	.5	4.3	4.9
Clutch parts	6.8	16.5	2.2	18.4

[1] Excludes C&L purchases of all products at Seattle and Portland.
[2] Maremont's pro forma potential market share increase *excludes* all captive business previously supplied by Maremont while the acquired firm was independent.

NOTE: Table II assumes that substantially all shipments from rebuilding plants are made to buyer locations within the same broad geographic region.

44. Maremont's actual and potential foreclosure of substantial segments of nationwide and regional warehouse distributor markets for automotive parts may effect its most substantial lessening of competition by shortly provoking defensive and retaliatory acquisitions of a similar or equally anticompetitive kind. Maremont's competitors will not sit by indefinitely while Maremont continues to foreclose them from substantial markets for their automotive parts. A wave of defensive and retaliatory acquisitions by competitors may engulf the automotive parts industry if Maremont's acquisitions of automotive warehouse distributors continue unabated.

45. There is a substantial probability that direct foreclosure of trade, both by Maremont and by its competitors as they retaliate, will be accentuated by indirect foreclosure as a result of vastly increased opportunities for reciprocal trading. These will be created as automotive parts manufacturers, who typically make only limited lines of automotive parts, acquire distributorships which must buy a

nearly complete line of all automotive parts for resale. Trading off unused patronage in each other's acquired warehouses may magnify greatly the foreclosure of such distribution to manufacturers and rebuilders who cannot or at least do not acquire distributorships and thus have no such trading power.

46. Maremont's *own* acquisitions of distribution and defensive acquisitions and mergers by *competitors* and then by its *competitors' Competitors* will all tend to rigidify the channels of distribution for automotive parts by permanently curtailing the availability of the existing warehouse distribution network through which independent, unintegrated automotive parts manufacturers and rebuilders have competed freely for the trade of automotive parts jobbers. This curtailment of the free warehouse distribution network will necessarily reduce the ability of most independent parts manufacturers—and particularly small firms like rebuilders (who cannot retaliate in kind)—to compete effectively with the large vehicle manufacturers and with the few large automotive parts manufacturers and manufacturing combines who possess their own quasi-private distribution systems. It will discourage new entry into the manufacture and rebuilding of such parts and will stunt the growth of small firms already in the business.

47. Maremont's 1968 acquisition of Midlands/Sidles has resulted in the elimination of direct competition between the latter and the former Independent Jobbers Warehouse, acquired by Maremont in 1966. These were respectively the third and fourth largest warehouse distributors of automotive parts, accessories and equipment in the area of Colorado, Wyoming, Western Nebraska and Western Kansas which is served out of Denver, Colorado. The combined 1966 sales of these two important competitors amounted to about $4 million dollars or approximately 15 percent of all warehouse distribution sales in said area.

48. Maremont's acquisition of a one-fourth interest in Service-Items, Inc., afforded Maremont significant influence over the operation and control of one of only three nationwide suppliers of a full general service line of accessories and equipment, which commonly make up about 5 percent of an automotive parts jobber's purchases. Jobbers tend to buy service items, which are small and multitudinous, from a single reliable source in order to save bother and expense. To some extent, jobbers even purchase other items where they can buy all their service parts together. Thus, possession of a single service line affords a warehouse distributor a decisive competitive advantage. The only two other nationwide service lines available are

now in the service of the only two other nationwide chains of warehouse distributors. Maremont's ownership of a substantial stock interest in Service-Items, Inc. may in fact result in aligning the last free service line with Maremont's new warehouse distribution chain, seriously reducing or even eliminating its availability to other warehouse distributors and disadvantaging both such competiting distributors and the manufacturers and rebuilders—Maremont's competitors—whose automotive parts depend on such distributors to find a sales outlet.

VI. EFFECTS OF MAREMONT'S MANUFACTURING & REBUILDING ACQUISITIONS

49. A competitor with such disparate size and resources as Maremont possesses commands decisive competitive advantages not available to the multitude of very small firms which populate the automotive parts rebuilding industry. Such advantages include, although not exclusively, the power to acquire and pre-empt for its own products warehouse distribution facilities previously open to Maremont's competitors, including rebuilders. The free availability of such warehouse distribution is essential to the survival and growth of rebuilders, particularly to reach markets located some distance from their rebuilding plants. Maremont's rebuilder acquisitions yielded it a power to lessen competition in rebuildable parts markets referred to in Par. 43 above, which power it has now exercised by undertaking its distribution acquisitions.

50. Maremont's extension of its product line by means of its manufacturing and rebuilding acquisitions has (a) eliminated Maremont as a potential entrant by growth into its acquired firms' product markets, particularly the oligopolistic shock absorber market where Maremont, as a leader in making and marketing under-chassis parts, was among the most likely of all candidates for entry; and (b) yielded Maremont and exceptional competitive advantage over smaller, shorter-line competitors in all its automotive parts markets by combining most of the frequently-replaced automotive parts under one banner, thus synergizing the effectiveness of Maremont's automotive parts marketing effort as well as affording Maremont greater opportunity for so-called full-line forcing.

VII. ECKMAR CORPORATION AND EFFECTS OF CONTROL THEREOF

51. During 1964 and 1965, the three families which control Maremont (Maremont, Wolfson and Comar) acquired effective control of

Phillips Eckhardt Electronic Corporation, an Illinois corporation, changed the name of that corporation to Eckmar Corporation (hereafter "Eckmar"), and installed Arnold H. Maremont, president of Maremont as chairman of the board of Eckmar, James Pelts, son-in-law of Howard E. Wolfson, chairman of the board of Maremont corporation was made president of Eckmar. At the time this Maremont group acquired control of Eckmar, that corporation was engaged in the production and sale of a broad line of Christmas decorations and other non-automotive products. During 1966, Eckmar Corporation acquired the stock or assets of four chains of so-called home and auto stores: American Auto Stores, Inc., of Wilkes-Barre, Pennsylvania; Checker Sales Corporation of Cincinnati, Ohio; Original Tire Company of Cincinnati, Ohio; and Noah's Ark of Rochester, New York, thereby creating a chain of about 65 such home and auto supply stores. These acquisitions have given Maremont additional power to bargain with manufacturers of non-competing product lines to put Maremont products in warehouses or other outlets controlled by such now competitors in return for arrangements to put their products in Eckmar's home and auto stores.

VIII. VIOLATIONS CHARGED

52. Maremont's distribution acquisitions violate Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18), in that they may substantially lessen competition or tend to create a monopoly in the sale of each and every line of manufactured/rebuilt replacement automotive parts produced by Maremont in the entire aftermarket, in the wholesale sector thereof and in the warehouse distribution sector thereof, both nationally and in eacn geographic region referred to in Table II of Paragraph 43 in the following, among other, ways:

(a) By foreclosing Maremont's competitors from access to a substantial segment of each such market;

(b) By prompting similar substantial foreclosure in the same markets by other automotive parts manufacturers who will likely be led to make defensive or retaliatory acquisitions;

(c) by creating a multitude of opportunities for reciprocal trading in the same markets by automotive parts manufacturers who acquire aftermarket distribution facilities;

(d) By encouraging the combination of relatively small, single or short line manufacturers and rebuilders of automotive parts into larger, longer-line firms, decisively disadvantaging remaining small, single or short line manufacturers and rebuilders;

(e) By raising barriers to the entry of new manufacturers and rebuilders into each such market; and

(f) by increasing and/or perpetuating seller concentration in each such market.

53. Maremont's distribution acquisitions violate Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18), in that they may substantially lessen competition and tend to create a monopoly in the warehouse distribution of automotive parts, accessories and equipment, nationally and in each geographic region referred to in Table II of Paragraph 43 and locally, wherever Maremont's C&L chain competes, by accumulating in such a large chain of warehouses decisive competitive advantages of disparate buying, selling and other powers less available to smaller, independent warehouse distributors.

54. All of Maremont's distribution acquisitions since C&L violate Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18), in that they may substantially lessen competition and tend to create a monopoly nationally in warehouse distributors' purchases of automotive parts, accessories and equipment, particularly from small manufacturers and rebuilders thereof,

(1) By eliminating actual competition between the original C&L chain and Maremont's later distribution acquisitions and also among the latter in the making of such purchases;

(2) By eliminating each of said acquired firms as an independent buying entity in the market;

(3) By significantly increasing the level of buyer concentration among automotive warehouse distributors; and

(4) By aggravating an incipient trend to oligopsony among automotive warehouse distributors.

55. Maremont's acquisition of the assets of the automotive divisions of Midlands/Sidles violates Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18), in that it may substantially lessen competition and tend to create a monopoly in the warehouse distribution of automotive parts, accessories and equipment in the trade area of Colorado, Wyoming, Western Kansas and Western Nebraska, by:

(a) Eliminating competition between Midlands/Sidles and Maremont's Denver C&L warehouse, formerly Independent Jobbers Warehouse;

(b) Eliminating Midlands/Sidles as an important independent competitor; and

(c) Increasing seller concentration significantly in this market.

56. Maremont's acquisition of 25 percent of the common stock of Service-Items, Inc., violates Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18), in that it may substantially lessen competition and tend to create a monopoly throughout the United States and in all regional and local submarkets thereof in the manufacture and warehouse distribution of each and every line of automotive parts, accessories and supplies made or rebuilt by Maremont by decisively disadvantaging competing manufacturers, rebuilders and warehouse distributors.

57. Maremont's rebuilding acquisitions violate Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18), in that they may substantially lessen competition and tend to create a monopoly in the rebuilding of those automotive parts, accessories and equipment which Maremont rebuilds, nationally and regionally, by injecting into an arena of very small businesses a competitor of size and power greatly disparate to all pure rebuilders, who has, in fact, used that disparate power, *inter alia*, to obtain a desisive competitive advantage through acquisition of distribution facilities not available to such small firms as pure automotive parts rebuilders.

58. Maremont's acquisitions of mannfacturers and rebuilders of automotive parts other than mufflers, pipes and miscellaneous exhaust system parts violate Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18), in that they may substantially lessen competition and tend to create a monopoly in the nationwide manufacture/rebuilding and sale of each of those parts manufactured/rebuilt by Maremont other than mufflers, pipes and miscellaneous exhaust system parts, because they have provided Maremont with decisive competitive advantages over short-line automotive parts manufacturers and in individual instances, notably Maremont's acquisition of Gabriel, a leading shock absorber producer, have eliminated one of the most likely potential competitors in the acquired firm's product market.

59. Maremont's plan to continue making distribution acquisitions until it has established a nationwide network of warehouse distributors constitutes an unfair method of competition in commerce and an unfair practice in commerce violative of Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45) because in light of its acquisitions to date each and every additional distribution acquisition may substantially lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

DECISION AND ORDER IN DISPOSITION OF THIS PROCEEDING

The Commission having issued complaint in this docketed matter on July 1, 1968, charging the respondent named therein, Maremont Corporation, an Illinois corporation, with violation of Section 7 of the amended Clayton Act, and said respondent and counsel supporting the complaint having subsequently filed request pursuant to § 2.34(d) of the Commission's Rules to have the matter withdrawn from adjudication, and the Commission having granted such request by its order of December 7, 1970; and

Respondent Maremont Corporation ("Maremont") and counsel supporting the complaint ("Complaint Counsel") having entered into an agreement containing a consent order, which agreement further contains an admission by Maremont for purposes of this proceeding only, of all the jurisdictional facts set forth in the complaint in this proceeding; a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by Maremont of any allegations of fact, other than the jurisdictional facts, or that the law has been violated as set forth in the complaint, as it is to be amended; and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having thereupon accepted the consent agreement and placed such agreement on the public record for a period of thirty (30) days and having considered all comments received, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commisson hereby makes the following jurisdictional findings, and enters the following order in disposition of the proceeding:

1. Respondent Maremont Corporation is a corporation organized and existing under the laws of the State of Illinois, with its principal office located at 168 North Michigan Avenue, Chicago, Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

The Commission having considered all the facts and circumstances and without adjudication of any issue of fact or law, and in settlement of the proceeding and all issues raised by the complaint, now issues this order, in which the following words shall have the following meanings:

"Respondent" shall mean Maremont Corporation, an Illinois corporation, and shall include all its subsidiaries, affiliates, officers,

directors, agents, employees, and representatives, as well as any and all successors and assigns to any substantial portion of Respondent's automotive business other than any assets divested under this order.

"Divestiture" shall mean a transfer by Respondent of all the assets of a business as a going business in its historic marketing area to one other than Respondent.

"Assets" shall mean the property (whether owned or leased) used by Respondent in carrying on a business of wholesaling automotive parts, accessories and equipment and shall include, but not restrictively, all buildings and grounds, machinery, equipment, supplies, inventory, accounts receivable, trade names and trade marks, franchises, good will, customer lists and employment and other contract rights insofar as assignable.

"Warehouse distributor" or "warehouse" shall refer to any of Respondent's 35 wholesalers of automotive parts, accessories and equipment which are listed by location in Appendix A [p. 245 herein], all of which are represented to be in operation unless therein expressly described as closed.

"Jobber store" or "store" shall refer to any of Respondent's 153 wholesalers of automotive parts, accessories and equipment which are listed by location in Appendix B [p. 246 herein], all of which are represented to be in operation unless therein expressly described as closed.

"1969 dollar sales volume" shall refer to those figures appearing in one certain letter of even date herewith from Respondent to the Commission stating the 1969 dollar sales volume of each of Respondent's 35 warehouses with aggregate 1969 sales of $81.1 million listed in Appendix A [p. 245 herein] of Respondent's 153 stores with aggregate 1969 sales of $38.35 million listed in Appendix B [p. 246 herein] which statements are warranted there by Respondent to be true 1969 sales volumes and are accepted by the Commission for all purposes of this order. Such figures are received *in camera* and shall not be released for a four-year period without Commission approval except insofar as they are revealed herein or, in the judgment of the Commission's staff, should be released to particular bona fide prospective divestiture transferees.

"Group" shall mean all warehouse distributors and/or jobber stores divested to a single transferee, whether in one or more separate transactions and whether or not at the same time. "Group" may refer to a single warehouse or store.

"West Coast" refers to the 3 States of California, Oregon and Washington.

I DIVESTITURE OF WAREHOUSES AND STORES

It is ordered, That:

A. Basic Divestiture

Respondent shall as soon as possible and in any event no later than 48 months from the date of service of this order divest itself absolutely and unconditionally, on terms and to transferees approved in advance by the Commission, of all interest, direct or indirect, in all the assets of the following warehouse distributors and jobber stores having aggregate 1969 sales of $100.37 million:

(1) all of Respondent's 28 warehouse distributors identified in Appendix A as being located elsewhere than in the State of California and having aggregate 1969 sales of $62.02 million; and

(2) all of Respondent's 153 jobber stores identified in Appendix B and having aggregate 1969 sales of $38.35 million.

Divestiture of warehouses accounting for no less than 50 percent of the 1969 dollar sales volume of the warehouses to be divested hereunder and of store accounting for no less than 30 percent of the 1969 dollar sales volume of all such stores to be divested hereunder shall be completed within 24 months of the date of service of this order. The warehouses to be divested under this order shall be divested to no less than 4 different transferees, all completely independent of each other. No such divestiture transferee shall acquire, whether by one or more transactions, more than 7 warehouses or more than $20 million aggregate 1969 sales, except that Respondent may divest all 9 of its West Coast warehouses to a single transferee if it so elects in accordance with Paragraph I–B below. The jobber stores to be divested under this order shall be divested to no less than 3 different transferees, all completely independent of each other. No such divestiture transferee shall acquire, whether by one or more transactions, jobber stores with more than $13 million aggregate 1969 sales. If all the requirements of this Paragraph are otherwise satisfied, one or more warehouses and one or more jobber stores may be divested to the same transferee; notwithstanding this provision no jobber store shall be divested to a transferee of West Coast warehouses with 1969 sales in excess of $20 million. All numerical limits fixed by this Paragraph are to be followed strictly and without deviation therefrom.

B. Alternative Divestiture

If but only if, within 24 months after service of this order on Respondent, it elects to divest itself of all 7 California warehouses

identified in Appendix A which it would otherwise be permitted to retain under Paragraph I–A above, and within that period in good faith submits to the Commission a contract or contracts to dispose of all 7 California warehouses wanting only Commission approval to be binding on Respondent, then within 48 months from the date of service of this order Respondent may elect to retain 6 other warehouses which had aggregate 1969 dollar sales volume not exceeding $16 million and accordingly the aggregate 1969 sales volume of the other 29 warehouses divested or to be divested shall in such case be at least $65.1 million. All numerical limits fixed by this section are to be followed strictly and without any deviation therefrom.

C. Common Ownership

None of the assets to be divested under this order shall be transferred, directly or indirectly, to anyone who, at the time of such divestiture, is an owner, officer, director, employee or agent or under the control of Respondent. Nor shall any divestiture transferee at the time when any such assets are divested be related to any other divestiture transferee under any provision of this order as parent, subsidiary or affiliate or by virture of any interlocking ownership, direction or control, nor shall any such transferees then have any common employees, unless all devestiture assets acquired by such related parties in the aggregate could have been acquired by a single transferee without violating any rules laid down in Paragraph I–A or any other provision of this order.

D. Credit Transactions

If any sale by Respondent to effect divestiture of assets under this order is not entirely for cash, Respondent is not prohibited from retaining, accepting or enforcing a bona fide lien, mortgage or deed of trust to secure the payment of any balance due: *Provided, however,* That except with the advance approval of the Commission the Respondent shall neither extend nor guarantee credit to any divestiture transferee for a term of more than five years. It shall be a provision of any financing contract between Respondent and a divestiture transferee that the transferee may at any time prepay all or part of such debt without penalty. If Respondent shall reacquire any divestiture assets by virtue of such lien, mortgage or deed of trust, Respondent shall redivest itself of all such assets within one year or the remainder of the four-year period provided in Paragraph I–A

herein (whichever is longer) in substantially the same manner as above provided.

E. Conservation of Assets

1. Pending divestiture, the Respondent shall make every reasonable effort to maintain all the warehouses and jobber stores to be divested in good operating condition with such replacements and additions and such effective overall organization as may be necessary to divest them as viable competitive entities: *Provided, however*, That nothing contained herein shall be deemed to require the Respondent to continue to operate any warehouse or jobber store which has become so unprofitable that sound business judgment requires its closing or which warehouse or store is rendered inoperative as a result of force majeure or other event beyond the control of the Respondent. Notwithstanding the foregoing, except for Respondent's warehouses at New Berlin, Wisconsin, and Sioux Falls, South Dakota, no warehouse shall be closed under any circumstances on grounds of alleged unprofitability for a period of two years from the date of service of this order.

2. Whether the operation of a particular warehouse has become so unprofitable during the pendency of divestiture that sound business judgment requires its closing shall be determined on the basis that such operation shall have yielded an aggregate operating loss during the last previous two calendar years, taken together, and no acquirer of the warehouse as a going business on reasonable terms appears to be available. An "operating loss" occurs when the total operating revenues of a warehouse fail to cover its total reasonable operating costs. "Operating costs" shall not include taxes on net income or any provision for the general and administrative overhead of national headquarters. Other general and administrative expense, provision for doubtful accounts and inventory adjustments shall be deemed to be reasonable if they do not exceed by more than one-third either the industry average as a percentage of sales during the most recent available period as shown by ASIA and AWDA reports or Respondent's own nationwide experience for warehouses of similar size. Corrections to year-end statements to reflect differences between actual year-end physical inventory and interim estimated figures shall not be deemed to be "inventory adjustments" for the purposes of this paragraph: *Provided, however*, That such adjustments shall be based on a complete physical verification of inventory of such warehouse regularly performed on an annual basis for each of the preceding three calendar years.

3. The judgment of Respondent that a particular warehouse should be closed shall be communicated in writing to the Commission at least 90 days before the proposed closing, together with a full statement of (1) the reasons for such closing; (2) in case unprofitability is alleged, the warehouse's sales and profitability history; (3) the unavailability of a transferee of the warehouse as a going business including the identity of all parties unsuccessfully approached by Respondent; (4) Respondent's plans, if any, for the disposition of the warehouse's assets, the consideration to be received therefor and the identity of proposed transferees so far as then known; and (5) such other information, including production of and/or access to original accounting records, as the Commission may require for consideration of the proposed warehouse closing. Any request for supplementary information shall be made in writing within 30 days after receipt of Respondent's original submission.

Unless, within 90 days after receipt by the Commission of information on items (1) through (4) or within 45 days after receipt of any supplementary information requested within 30 days after receipt of the original submission (whichever date is later), the Commission shall notify Respondent in writing that the closing is disapproved, setting forth the reasons therefor, Respondent may then but only then proceed to effectuate such planned closing. The provisions of this paragraph I E–3 to the contrary notwithstanding, no further notice or approval by the Commission, except insofar as required under paragraph I E–5, shall be required if Respondent closes either or both of its warehouses in New Berlin, Wisconsin, and/or Sioux Falls, South Dakota.

4. Whether a jobber store has become unprofitable during the pendency of divestiture so that sound business judgment requires its closing shall rest in the good faith judgment of Respondent: *Provided, however*, That the Commission must be notified in writing of any such proposed closing at least 30 days before it is to be effectuated. Such notice shall include a description of the store or stores to be closed, the reasons for such closing, including a sales and profit history of such store(s), the identity of any proposed purchaser (s) of any assets of said store(s) and the terms of any such transfer(s).

5. It shall be a condition of any closing by Respondent of either a warehouse distributor or a jobber store that:

(a) No part of the assets of such warehouse or jobber store, other than inventory to be returned to its original manufacturer, shall be transferred (except in the ordinary course of business), either before or after such closing, to anyone other

than Respondent not approved in writing in advance by the Commission.

(b) Respondent shall receive no consideration for such closing other than the direct consideration in case or its equivalent given by a transferee pursuant to Section (a) of this paragraph I E–5.

6. The identity and 1969 dollar sales of any warehouse listed on Appendix A which is closed by Respondent shall thereafter automatically be attributed to Respondent's other warehouse located within 200 miles of said closed warehouse for the purpose of determining (a) whether the number and the aggregate 1969 dollar sales of all warehouses to be retained by Respondent and/or (b) whether the number and aggregate 1969 dollar sales of any group of warehouses to be divested hereunder fall within the requirements of the order. The identity and 1969 sales of a closed warehouse shall not be attributed to more than one warehouse divested in the same group nor more than once in determining the number of warehouses or amount of dollar sales which Respondent may retain or must divest under Paragraphs I–A or I–B. Notwithstanding any of the foregoing, if Respondent elects to close its warehouses at New Berlin, Wisconsin and/or Sioux Falls, South Dakota, the 1969 sales of such warehouses shall be attributed to Respondent's warehouse at St. Paul, Minnesota. For a period of one year from the date of Respondent's election whether to sell or keep the last warehouse located within 200 miles of a closed warehouse, no warehouse retained by Respondent shall sell or service any former customers of the closed warehouse, except a warehouse to which the 1969 sales of the closed warehouse have been attributed pursuant to the foregoing provisions.

II CHAMPION PARTS REBUILDERS, INC.

It is further ordered:

(a) That Paragraph 4.16 of the Note Agreement between Respondent and Champion Parts Rebuilders, Inc., dated April 2, 1969, shall be cancelled effective as of the date of the service of this order: and

(b) That the Common Share Purchase Warrant issued to Respondent by Champion Parts Rebuilders, Inc., on April 2, 1969, shall be cancelled automatically on payment in full of the three notes provided for in said Note Agreement and, in any event, shall be cancelled no later than April 1, 1974; except that this subparagraph (B) shall be null and void if the Respondent, within one (1)

year from the date of service of this order, divests itself irrevocably of ownership of said Warrant for a fixed consideration to a purchaser approved by the Commission. Respondent represents that it now has no actual or potential equity interest in Champion Parts Rebuilders, Inc.

III FUTURE ACQUISITIONS

It is further ordered, That Respondent, for a period of ten (10) years from the date of service of this order, shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital or assets (except merchandise purchased in the usual course of trade for consumption or resale by the respondent) or any warrant, option or other right to acquire any share capital or other equity interest or right to participate in earnings of any concern, corporate or noncorporate, engaged in the manufacture or remanufacture or wholesale distribution of automotive replacement parts, accessories, or equipment anywhere in the United States and shall also cease and desist from entering into any agreement or understanding with any such concern whereby Respondent obtains the market share of such concern, unless and until the Commission in its sole and final discretion, on petition filed by Respondent, specifically permits such acquisition by Respondent.

IV SALES THROUGH OWN WAREHOUSES

It is further ordered, That, during the period of divestiture pursuant to Paragraph 1 herein and for so long thereafter as Respondent continues to own any of the automotive parts warehouses listed in Appendix A, each year a minimum of two-thirds (⅔) of such retained warehouses' aggregate dollar purchase requirements for each and every product line, considering each product line separately and including shock absorbers as a line but excluding exhaust system parts, shall be manufactured by and purchased from manufacturers other than Respondent shall not be sold under any of Respondent's own manufacturer brands. Dollar purchase requirements shall include internal transfers valued at Respondent's then current warehouse distributor prices.

V BUYING AND SELLING PRACTICES

It is further ordered, That Respondent shall not engage in any systemic reciprocal buying and selling practices with any company which, itself or through a subsidiary or affiliate, engages in both the manufacturing and wholesaling of automotive parts, accessories or

equipment. This special prohibition shall expire 10 years from the date of service of this order.

VI COMPLIANCE REPORTS

It is further ordered, That Respondent within sixty (60) days from the date of service of this order, and every ninety (90) days therafter until it has fully complied with the provisions of this order, shall submit in writing to the Commission a report setting forth in detail the manner and form in which it intends to comply, is complying, and/or has complied with this order. All compliance reports shall include, among other things which may from time to time be required, a summary of all contacts and negotiations with all persons who are contacted by or who express to Respondent a possible interest in acquiring ownership of or control over the assets or warrant to be divested under this order, the identity of all such persons, copies of any proposed or executed sales contracts, copies of any internal corporate documents discussing such divestiture, and copies of any proposed plan of divestiture.

APPENDIX A

WAREHOUSES

Arizona:
Phoenix, 2320 West Sherman
California:
Bakersfield, 409 Sumner
Brisbane, 380 Valley Drive
Fresno, 311 West Amador
Oakland, 7955 Edgewater Drive
Sacramento, 151 Commerce Circle
San Diego, 1341 Commercial Avenue
Vernon, 4321 Exchange Avenue
Colorado:
Denver, 4747 South Whipple
Illinois:
Chicago, 3024 West 47th Street
Indiana:
Evansville, 2214 Highway 41, North
Fort Wayne, 4911 Industrial Road
Indianapolis, 439 N. Capitol Avenue
South Bend, 805 South Fellows
Iowa:
Des Moines, 2205 Bell Avenue
Michigan:
Dearborn, 4800 Stecker
Grand Rapids, 400 Mart Street
Minnesota:
St. Paul, 475 N. Prior Avenue
Nebraska:
Omaha, 7400 Pacific Street
Ohio:
Lima, 1221 Stewart Road
Valley View, 5500 Clover Leaf Highway
Oregon:
Portland, 2805 N.W. 31st Avenue
New York:
Dewitt, Chrysler Lane
Pennsylvania:
Harrisburg, 1917 N. Third Street
Pittsburgh, Campbell's Run Road Parkway West, Oakdale Exit
South Dakota:
Sioux Falls, 400 West 9th Street
Texas:
Abilene, 242 Sycamore
Dallas, 2016 Lucas Drive
Fort Worth, 901 Lake Street
Houston, 4701 Calhoun Street
Odessa, 1306 N. Grant
Waco, 1800 Franklin
Wichita Falls, 113 Henrietta

APPENDIX A—Continued

WAREHOUSES—Continued

Washington:
Seattle, 3434 Second Avenue South

Wisconsin:
New Berlin, 2215 S. 162nd Street

APPENDIX B

JOBBER STORES

Arizona:
Apache Junction, 9622 Apache Trail
Chandler, 151 S. Arizona
Coolidge, 466 West Central
Douglas, 1133 "G" Avenue
Mesa, 56 S. Robson
Nogales, 300 Arroyo Blvd.
304 Arroyo Blvd.
Phoenix, 720 S. 23rd Avenue
4918 North 35th Avenue
1813 E. Indian School Road
530 West Van Buren
Sierra Vista, 689 Fry Boulevard
Tucson, 530 N. Stone Avenue
1133 N. Alvernon Way
1434 S. Sixth Avenue
5028 E. 22nd Street

Indiana:
Anderson, 24 West 6th Street
Evansville, 1015 Main Street
10 S. Weinbach
2424 B North Governor
Fort Wayne, 245 W. Main
4911 Industrial Road
Greensburg, 915 East Main Street
Indianapolis, 432 N. Illinois Street
6019 East 34th Street
2006 S. Shelby
1621 North Tibbs
5352 North Tacoma
Logansport, 635 Burlington
Mishawaka, 119 East Front Street
New Haven, 634 Hartzell Road
Plainfield, 1215 Main Street
South Bend, 1149 S. Main
2214 Western Avenue
320 Dixieway North
Terre Haute, 207 Hulman
1605 Wabash Avenue

Iowa:
Ames, 402 East Lincolnway
Atlantic 403 Elm Street
Boone, 708 Arden Street
Centerville, Jackson & Haynes
Council Bluffs, 100 S. 16th Street
Des Moines, 2207 Bell Avenue
825 Grand
6110 S.W. 9th Street
Fort Dodge, 3011 Fifth Avenue South
Garner, 230 State Street
Indianola, 1010 N. Jefferson
Mason City, 714 S. Delaware
Missouri Valley, 206 East Erie
New Hampton, 21 West Main Street
Newton, 1730 First Avenue East
Onawa, 1014 Iowa Avenue
Perry, 1012 Second Street
Red Oak, 211 Coolbaugh Street
Shenandoah, 828 W. Thomas
Spirit Lake, 905 Lake Street

Kansas:
Great Bend, 3010 Tenth Street
Hoisington, 170 West 2nd Street
Kinsley, 508 Marsh
LaCrosse, 601 Main Street
Marysville, 719 Broadway Street
Norton, 102 W. Washington
Oakley, 112 Converse
Phillipsburg, 460 State Street

Minnesota:
Duluth, 416 East Superior
Red Wing, 909 W. Main Street

Nebraska:
Alliance, 324 West 3rd Street
Alma, 606 Main Street
Beatrice, 116 N. 7th Street
Bellevue, 2229 Madison Street
Broken Bow, 228 South 5th Street

APPENDIX B—Continued

JOBBER STORES—Continued

Nebraska—Continued
Chadron, 820 West 3rd Street
Falls City, 1801 Chase Street
Fremont, 233 East 5th Street
Grand Island, 517-523 West 4th
Hasting, 218 N. Lexington
Holdrege, 219 Grant Street
Kearney, 2117 Avenue A
Lexington, 4th and Jefferson
Lincoln, 1621 M Street
4830 Wilshire Blvd.
McCook, 802 West C Street
Norfolk, 702 Norfolk Avenue
North Platte, 518 N. Chestnut
Omaha, 7410 Pacific Street
2413 Q Street
4535 S. 88th Street
6919 Maple Street
O'Neill, 121 S. 4th Street
Plattsmouth, 526 Main Street
Scottsbluff, 1409 First Avenue
Superior, 325 Commercial Avenue
Valentine, 210 South Main
York, 128 East 8th

New York:
Auburn, 25 Seminary Street
Batavia, 244 West Main Street
Elmira, William & 2nd Streets
Fulton, 570 S. Fourth Street
Geneva, 611 West Washington Street
Rochester, 2808 Dewey Avenue
2921 W. Henrietta Road
471 Ridge Road East
178 Charlotte Street
Rome, 278 E. Dominick Street
Utica, 143 Hotel Street
Watertown, 249 State Street

Ohio:
Cleveland, 1585 E. 40th
Lima, 119 N. McDonel
Route 81, Findlay Road
2133 Elida Road
Lyndhurst, 5125 Mayfield
Maple Heights, 17170 Broadway
Mentor, 8510 Mentor Avenue
Painesville, 1440 Mentor Avenue

Pennsylvania:
Altoona, 1917 Margaret Avenue
Barnesboro, 908 Philadelphia Avenue
Bedford, North Street
Chambersburg, 18 N. Second Street
Clearfield, 418 W. Second Avenue
Ebensburg, 219 W.High Street
Everett, South Street
Gettysburg, 535 York Street
Glenshaw, 970 William Flynn Hwy.
Harrisburg, 137 N. Tenth Street
Hollidaysburg, 509-11 Blair Street
Homestead, 201-03 W. Eighth Avenue
Johnstown, 945 Franklin Street
1129 Scalp Avenue
Lewistown, 45 Hale Street
Lock Haven, 206-212 Bellefonte Avenue
McKeesport, 820 Market Street
McKees Rocks, 431 Broadway
Philipsburg, Corner 15th and Pine
Pittsburgh, 5803 Centre Avenue
5033 Liberty Avenue
2305 W. Liberty Avenue
Rochester, 351 Brighton Avenue
Selinsgrove, 316 S. Market Street
Sharon, 39-51 S. Main Street
Shippensburg, 65 W. Burd Street
Somerset, 344 W. Main Street
State College, 616 W. College
Tyrone, 952-954 Logan Avenue
Williamsport, 243-51 W. Third Street
York, 190 Arsenal Road

South Dakota:
Brookings, 411 Fourth Street
Hot Springs, 206 S. Chicago
Madison, 218 S. Van Eps
Rapid City, 517 Third Street

West Virginia:
Kingwood, Route 7 East
Morgantown, 1029 University Avenue

Wisconsin:
River Falls, 421 North Main Street

IN THE MATTER OF

SAKS FUR COMPANY, INC., ET AL.

CONSENT ORDER, IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket C-1854. Complaint, Jan. 26, 1971—Decision, Jan. 26, 1971

Consent order requiring a New York City manufacturer and distributor of fur products to cease misbranding and falsely invoicing its furs.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Saks Fur Company, Inc., a corporation, and Arthur Schachner and Edna Schachner, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Saks Fur Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Arthur Schachner and Edna Schachner are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent including those hereinafter set forth.

Respondents are manufacturers and distributors of fur products with their office and principal place of business located at 143 West 29th Street, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs

which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored when such was the fact.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, dyed, tip-dyed or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 7. The aforesaid acts and practices of respondents as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs, Bureau of Consumer Protection proposed to present to the

Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Fur Products Labeling Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have violated the said Acts, 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 thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Saks Fur Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Arthur Schachner and Edna Schachner are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of said corporate respondent.

Respondents are manufacturers and distributors of fur products with their office and principal place of business located at 143 West 29th Street, New York, New York.

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 respondents Saks Fur Company, Inc., a corporation, and its officers, and Arthur Schachner and Edna Schachner, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution

in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Representing directly or by implication on a label that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

2. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b) (1) of the Fur Products Labeling Act.

2. Representing, directly or by implication, on an invoice that the fur contained in such fur product is natural when such is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent 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 the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That 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.

IN THE MATTER OF

SUTTER TEXTILE CO., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-1855. Complaint, Jan. 26, 1971—Decision, Jan. 26, 1971

Consent order requiring a New York City partnership which imports and distributes textile fiber products to cease importing and distributing any fabric or related material which fails to conform to the standards of the Flammable Fabrics Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Sutter Textile Co., a partnership and Allan Sutter, Robert Sutter and George Sutter, individually and as copartners trading as Sutter Textile Co., hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Flammable Fabrics Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sutter Textile Co. is a partnership trading as Sutter Textile Co. Its address is 257 West 39th Street, New York, New York.

Respondents Allan Sutter, Robert Sutter and George Sutter are individuals and copartners trading as Sutter Textile Co. They formulate, direct and control the acts, practices and policies of the said partnership including those hereinafter set forth.

Respondents are engaged in the importation, sale and distribution of textile fiber products, including, but not limited to fabrics.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, the importation into the United States and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, fabric, as the terms "commerce," and "fabric" are defined in the Flammable Fabrics Act, as amended, which fail to conform to an applicable standard or regulation continued in effect, issued or

amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove was a fabric identified as Quality 9800, a Swiss all cotton white organdy imported by Stern and Stern Textiles, New York, New York.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have violated the said Acts, 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 thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sutter Textile Co. is a partnership trading as Sutter Textile Co.

Respondents Allan Sutter, Robert Sutter and George Sutter are individuals and copartners trading as Sutter Textile Co. They for-

mulate, direct and control the acts, practices and policies of said partnership.

Respondents are engaged in the importation, sale and distribution of textile fiber products including, but not limited to, fabrics, with their office and principal place of business located at 257 West 39 Street, New York, New York.

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 respondents Sutter Textile Co., a partnership, and Allan Sutter, Robert Sutter and George Sutter, individually and as copartners trading as Sutter Co., or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric, or related material fails to conform to an applicable standard or regulation issued, amended or continued in effect, under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom has been delivered the fabric which gave rise to the complaint, of the flammable nature of said fabric and effect the recall of said fabric from such customers.

It is further ordered, That the respondents herein either process the fabric which gave rise to the complaint so as to bring it into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said fabric.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission an interim special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the fabric which gave rise to the complaint, (2) the amount of said fabric in inventory, (3) any action

taken and any further actions proposed to be taken to notify customers of the flammability of said fabric and effect the recall of said fabric from customers, and of the results thereof, (4) any disposition of said fabric since October 1969, and (5) any action taken or proposed to be taken to bring said fabric into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said fabric and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That 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.

IN THE MATTER OF

BAR-ZON FROCKS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C–1856. Complaint, Jan. 26, 1971—Decision, Jan. 26, 1971

Consent order requiring a New York City manufacturer and distributor of women's wearing apparel to cease violating the Flammable Fabrics Act by manufacturing or distributing any fabric which fails to conform to the standards of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Bar-Zon Frocks, Inc., a corporation and Sam Garfinkel, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under

the Flammable Fabrics Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Bar-Zon Frocks, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Sam Garfinkel is an officer of said corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporation.

The respondents are engaged in the manufacture, sale and distribution of women's wearing apparel and in the sale and distribution of fabrics, with their office and principal place of business located at 491 Seventh Avenue, New York, New York.

PAR. 2. Respondents now and for some time last past have sold and offered for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, fabric, as the terms "commerce" and "fabric" are defined in the Flammable Fabrics Act, as amended, which fabric failed to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such fabric mentioned hereinabove was 100 percent cotton white organdy fabric Style No. 8805 imported from Switzerland by Stern & Stern, Inc.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of the Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Bar-Zon Frocks, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Sam Garfinkel is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporate respondent.

Respondents are engaged in the manufacture, sale and distribution of women's wearing apparel and in the sale and distribution of fabrics, with their office and principal place of business located at 491 Seventh Avenue, New York, New York.

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

ORDER

It is ordered, That respondents Bar-Zon Frocks, Inc., a corporation, and its officers, and Sam Garfinkel, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale of shipment in commerce, any product, fabric or related material; or manufacturing for sale, selling or offering for sale, any product

made of fabric or related material which has been shipped or received in commerce as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material, fails to conform to an applicable standard or regulations continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom has been delivered the fabric which gave rise to this complaint, of the flammable nature of said fabric, and effect the recall of said fabric from such customers.

It is further ordered, That the respondents herein either process the fabric which gave rise to this complaint so as to bring it into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said fabric.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the fabric which gave rise to the complaint, (2) the amount of said fabric in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said fabric and effect and recall of said fabric from customers, and of the results thereof, (4) any disposition of said fabric since May 21, 1970, and (5) any action taken or proposed to be taken to bring said fabric into conformance with the applicable standard of flammablility under the Flammable Fabrics Act, as amended, or destroy said fabric and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent 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 the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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.

IN THE MATTER OF

ASSOCIATED CHINCHILLA BREEDERS, INC., ET AL.

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

Docket C-1857. Complaint, Jan. 27, 1971—Decision, Jan. 27, 1971

Consent order requiring a Minot, North Dakota, distributor of chinchilla breeding stock to cease making exaggerated earning claims, misrepresenting that it is feasible to breed chinchilla stock in garages and basements, that each female chinchilla will produce four live offspring per year, that its stock is hardy and free from disease, and misrepresenting the average price or range of prices realized from the pelts of chinchillas purchased from respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Associated Chinchilla Breeders, Inc., a corporation, and Bruce Tibbals, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Associated Chinchilla Breeders, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Dakota, with its principal office and place of business located at 530 20th Avenue, SW., Minot, North Dakota.

Respondent Bruce Tibbals is an individual and an officer of Associated Chinchilla Breeders, Inc. He formulates, directs and controls

the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said chinchillas, when sold, to be shipped from their place of business in the State of North Dakota to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said chinchillas in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of obtaining the names of prospective purchasers and inducing the purchase of said chinchillas, the respondents make numerous statements and representations in direct mail advertising and through the oral statements and display of promotional material to prospective purchasers by their salesmen, with respect to the breeding of chinchillas in the home for profit and without previous experience, the rate of reproduction of said animals, the expected income from the sale of their pelts, their hardiness and freedom from disease.

Typical and illustrative, but not all inclusive thereof, of the statement made in respondents' direct mail advertising and promotional literature are the following:

Raise Chinchillas A Family Business * * *
Odorless (Can Be Raised in Basement, Garage or Spare Room) * * *
In Their Spare Time Second Income

* * * * * * * *

Family Ranchers are a Large Part of This Fast Growing Fur Industry.

* * * * * * * *

Turn Extra Time and Room into a Part or Full Time Business for YOUR FUTURE.
Would You Like * * * Working With Animals Having Another Income Building a Future For You and Yours To Be a Part of One of the Nation's Fastest Growing Businesses

* * * * * * *

For Your Family's Sake—INVESTIGATE
The Work Can Be Very Pleasant and Profitable * * *

PAR. 5. By and through the use of the above-quoted statements and representations and others of similar import and meaning, but

not expressly set out herein, separately and in connection with statements and representations made by their salesmen and representatives to prospective purchasers and purchasers, the respondents have represented, and are now representing, directly or by implication, that:

1. It is commercially feasible to breed and raise chinchillas from breeding stock purchased from respondents in homes, basements or garages, and large profits can be made in this manner.

2. The breeding of chinchillas from breeding stock purchased from respondents, as a commercially profitable enterprise, requires no previous experience in the breeding, caring for and raising of such animals.

3. Chinchillas are hardy animals, and are relatively free from diseases.

4. Each female chinchilla purchased from respondents and each female offspring will produce at least four live offspring per year.

5. The offspring referred to in Paragraph Five subparagraph (4) above will have pelts selling for an average price of $20 per pelt, and that pelts from offspring of respondents' breeding stock generally sell for from $17 to $40 each.

6. A purchaser starting with three females and one male of respondents' chinchilla breeding stock will have an annual income of at least $5,000 from the sale of pelts in the third year.

PAR. 6. In truth and in fact:

1. It is not commercially feasible to breed or raise chinchillas from breeding stock purchased from respondents in homes, basements or garages, and large profits cannot be made in this manner. Such quarters or buildings, unless they have adequate space and the requisite temperature, humidity, ventilation and other necessary environmental conditions are not adaptable to or suitable for the breeding or raising of chinchillas on a commercial basis.

2. The breeding of chinchillas from breeding stock purchased from respondents as a commercially profitable enterprise requires specialized knowledge in the breeding, caring for and raising of said animals much of which must be acquired through actual experience.

3. Chinchillas are not hardy animals and are susceptible to pneumonia and other diseases.

4. Each female chinchilla purchased from respondents and each female offspring will not produce at least four live offspring per year, but generally less than that number.

5. The offspring referred to in subparagraph (4) of Paragraph Five above will not produce pelts selling for an average price of $20

per pelt but substantially less than that amount; and pelts from offspring of respondents' breeding stock will generally not sell for from $17 to $40 each since some of the pelts are not marketable at all and others would not sell for $17 but for substantially less than that amount.

6. A purchaser starting with three females and one male of respondents' breeding stock will not have an annual income of at least $5,000 from the sale of pelts in the third year but substantially less than that amount.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were, and are, false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of chinchilla breeding stock of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondents' chinchillas by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an ad-

mission by respondents 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 respondents Associated Chinchilla Breeders, Inc., and Bruce Tibbals have 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 and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedure prescribed in such Rule, the Commission hereby issues its complaint in the form contemplated by said agreement makes the following jurisdictional findings, and enters the following order:

1. Respondent Associated Chinchilla Breeders, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Dakota, with its office and principal place of business located at Sawyer, North Dakota.

Respondent Bruce Tibbals is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

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 respondents Associated Chinchilla Breeders, Inc., a corporation, and its officers, and Bruce Tibbals, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of chinchilla breedng stock, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. It is commercially feasible to breed or raise chinchillas in homes, basements, garages, or other quarters or buildings unless in immediate conjunction therewith it is clearly and conspicuously disclosed that the represented quarters or buildings can only be adaptable to and suitable for the breeding and raising of chinchillas on a commercial basis if they have the requisite space,

temperature, humidity, ventilation and other environmental conditions.

2. Breeding chinchillas as a commercially profitable enterprise can be achieved without knowledge or experience in the breeding, caring for and raising of such animals.

3. Chinchillas are hardy animals or are relatively free from diseases.

4. Each female chinchilla purchased from respondents and each female offspring will produce at least four live offspring per year.

5. The number of live offspring produced per female chinchilla is any number or range of numbers; or representing, in any manner, the past number or range of numbers of live offspring produced per female chinchilla of purchasers of respondents' breeding stock unless in fact, the past number or range or numbers represented are those of a substantial number of purchasers and accurately reflect the number or range of numbers of live offspring produced per female chinchilla of these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

6. Pelts from the offspring of respondents' chinchilla breeding stock sell for an average price of $20 per pelt, or that they generally sell for from $17 to $40 each.

7. Chinchilla pelts from respondents' breeding stock will sell for any price, average price, or range of prices; or representing, in any manner, the past price, average price or range of prices of purchasers of respondents' breeding stock unless, in fact, the past price, average price or range of prices represented are those of a substantial number of purchasers and accurately reflect the price, average price or range of prices realized by these purchases under circumstances similar to those of the purchaser to whom the representation is made.

8. Purchasers of respondents' breeding stock will realize earnings, profits, or income in any amount or range of amounts; or representing, in any manner, the past earnings, profits or income of purchasers of respondents' breeding stock unless, in fact, the past earnings, profits or income represented are those of a substantial number of purchasers and accurately reflect the average earnings, profits or income of these purchasers

under circumstances similar to those of the purchaser to whom the representation is made.

B. Misrepresenting in any manner the earnings or profits to purchasers or reproduction capacity of any chinchilla breeding stock.

C. Failing to deliver a copy of this order to cease and desist to all present and future salesmen and other persons engaged in the sale of respondents' products or services, and failing to secure from each such individual a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent 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 the order.

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.

IN THE MATTER OF

UNIVERSAL ELECTRONICS CORPORATION, ET AL.

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

Docket 8815. Complaint, May 26, 1970—Decision, Jan. 28, 1971

Order requiring a St. Louis Mo., distributor of radio and television tube testing devices and franchises for the sale of such products to cease misrepresenting that persons investing in respondents' franchises will receive any stated amount of income or any discounts from respondents on repeat business, that they will obtain profitable locations for their machines or can expect the sale of any certain number of tubes per day, that they will be granted exclusive territories in which to locate their machines, and that respondents will accept the return of, or aid in the resale of, the machines; respondents are also required to place in all franchise contracts a notification that such contracts may be cancelled within three days, and that respondents will refund all monies to customers cancelling contracts within this period.