UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Joseph J. Simons, Chairman**
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of **Rent-A-Center, Inc., a corporation.**	**DOCKET NO. C-4716**

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 ("Commission"), having reason to believe that Rent-A-Center, Inc. ("RAC"), a corporation, hereinafter sometimes referred to as "Respondent," has violated the provisions of said Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint stating its charges in that respect as follows:

Nature of the Case

1. This action concerns purchase agreements of consumer rental contracts between RAC and other rent-to-own ("RTO") companies that were executed between 2015 and 2018.

2. In the traditional brick and mortar retail RTO industry, each RTO company operates stores that compete in small geographic markets. Each store derives income through rental contracts executed with its customers. When an RTO company chooses to close a store, it must decide what to do with the store's active consumer rental contracts. If the RTO company has a store nearby, it will transfer the closed store's consumer rental contracts to its nearby store. However, when the RTO company does not have a store nearby, it will attempt to sell the closed store's consumer rental contracts to a

competing RTO company that has a store in close proximity to the closing store. This unilateral decision to sell a closed store's consumer rental contracts to a competitor is common in the RTO industry.

3. The conduct challenged in this complaint involves the instances when RAC did not make a unilateral decision to sell a closed store's consumer rental contracts to a competitor. RAC instead entered into reciprocal purchase agreements whereby RAC agreed to close an RTO store or stores and sell the closed store's or stores' consumer rental contracts to an RTO competitor, contingent on that RTO competitor agreeing to close a different RTO store or stores and sell those closed store's or stores' consumer rental contracts to RAC.

4. These reciprocal purchase agreements included reciprocal non-compete agreement clauses, whereby RAC and the RTO competitor agreed not to compete within a specified geographic market for a specific time-period, typically three years, in the area or areas where the stores were closed.

5. The reciprocal purchase agreements with reciprocal non-compete agreement clauses constitute an unfair method of trade, violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

Respondent

6. Respondent Rent-A-Center, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal address at 5501 Headquarters Drive, Plano, Texas 75024.

Jurisdiction

7. At all times relevant herein, RAC has been, and is now, a corporation as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

8. The acts and practices of RAC, including the acts and practices alleged herein, are in commerce or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

Overview of the Traditional Brick and Mortar Rent-to-Own Industry

9. The traditional brick and mortar RTO industry focuses on renting durable goods, such as furniture, appliances, and electronic goods, to customers who lack access to traditional credit. RTOs operate large-format stores carrying a selection of new and returned merchandise.

10. The primary traditional brick and mortar RTO customers are "unbanked" individuals who have little to no access to traditional credit. Customers do not need to satisfy a credit check or have a bank account to qualify for RTO contracts. Previously rented items are typically refurbished and re-rented at the same weekly or monthly rate as new items, but for shorter contract terms.

11. As the industry name connotes, consumers do not buy the merchandise outright, but rather take possession after entering rental contracts with the RTO firm. The contracts are formally structured as short-term contracts (typically one week or one month) that renew when the consumer makes the current lease payment. The customer only acquires ownership of the merchandise at the end of all the renewals, which is typically in 12 – 24 months.

12. Due to the nature of these at-will, short-term leases, each RTO transaction creates a stream of recurring revenue that may terminate at any time, should a customer choose to return the rented merchandise before the end of all the renewals.

13. Customers often make payments in-person at the RTO store where they entered into the consumer rental contract. When an RTO company closes a store, it must decide what to do with the recurring revenue stream from the existing rental contracts. Often, the RTO company will transfer contracts to one of its other nearby locations, but if the new location is more than a few miles away from the original store, consumers may be unwilling or unable to continue making payments, and they are likely to return the merchandise. Thus, when an RTO company does not have another store near the closing store, it will often sell the contracts to a competitor with a nearby store rather than risk losing the value of these existing contracts by attempting to transfer them to one of its own more distant stores.

14. Since the number of RTO stores has fallen significantly in the past two decades, the unilateral sale of active rental contracts to competitors through agreements, which typically include non-compete agreement clauses, has been relatively common.

The Reciprocal Purchase and Non-Compete Agreements

15. From June 2015 to May 2018, RAC entered into a small number of reciprocal purchase agreements. These agreements codified the contingent and reciprocal nature of the simultaneous sales transactions using the following (or similar) language:

> Reciprocal Purchase Agreements. RAC and [ ] acknowledge that they have entered into a separate agreement whereby [ ] has agreed to purchase certain assets [active rental contracts] belonging to and used by RAC in its rental business at certain RAC locations, all as is specifically provided therein ("[ ] Purchase Agreement"). RAC and [ ] agree that the RAC Purchase Agreement and the [ ] Purchase Agreement are mutual and conditioned upon the other, and that [ ]

and RAC shall simultaneously perform their obligations under both agreements on their respective Effective Dates, or not at all.

16. The reciprocal purchase agreements also explicitly require the selling party to exit and remain out of the market for a specified period, using the following (or similar) language:

> Non-competition. [ ] agrees to not engage in any rent-to-own, rental purchase, or other substantially similar business including the renting or selling of rims and tires, either directly or indirectly, for its or their own account or for another, during the Non-Compete Time and within the Non-Compete Territory specified in the Addendum, if any.
>
> **Non-Compete Time:** [ ] agrees that the Non-Compete time will be Three (3) years following the Effective Date.
>
> **Non-Compete Territory:** [ ] agrees that the Non-Compete Territory will be within a Ten (10) mile radius of the Rental Locations, except the following items shall be deemed excluded from the Non-Compete Territory and non-compete obligations of [ ], even if they are located within the Non-Compete Territory: (i) any existing store location of [ ] as of the Effective Date and (ii) any kiosk location operated by [ ] within a third-party retailer, whether currently existing or hereafter acquired or established.

Anticompetitive Effects of the Reciprocal Purchase and Non-Compete Agreements

17. The relevant product market or line of commerce in which to analyze the competitive effects of RAC's challenged conduct is the traditional brick and mortar retail RTO business.

18. The relevant geographic market for traditional brick and mortar retail RTO business consists of a small radius, such as two miles around an urban RTO store or ten miles for a rural RTO store.

19. RAC's conduct, as alleged herein, had the capacity, tendency, and potential effect of restraining competition unreasonably and injuring consumers and others in the following ways, among others:

    a. Unreasonably restraining brick-and-mortar RTO retail industry competition in the geographic markets impacted by the reciprocal purchase and non-compete agreements through store closures that may not have occurred absent the reciprocal purchase agreements, leading to:

        i. Impairing quality and service competition in the affected geographic markets; and

ii. Reducing the number of locations and product selection available to consumers.

20. The reciprocal purchase and non-compete agreements have the effect of allocating geographic markets between existing horizontal competitors.

Lack of Procompetitive Efficiencies

21. RAC did not offer procompetitive efficiencies that outweigh the anticompetitive effects of certain Reciprocal Asset Purchase Agreements.

22. Any legitimate objectives of RAC's conduct as alleged were achievable through less restrictive means.

Violations Alleged

23. As set forth above, RAC violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by negotiating and executing these reciprocal purchase and non-compete agreements.

24. The acts and practices of RAC, as alleged herein, constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

IN WITNESS WHEREOF, the Federal Trade Commission, having caused this Complaint to be signed by the Secretary and its official seal affixed, at Washington, D.C., this eleventh day of May, 2020, issues its complaint against Respondent.

By the Commission, Commissioners Chopra and Slaughter dissenting.

April J. Tabor
Acting Secretary

SEAL: