

Complaint

88 F.T.C.

IN THE MATTER OF

FURNITURE CORPORATION OF AMERICA, T/A
FURNITURE LEASING OF AMERICA, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2849. Complaint, Oct. 26, 1976 — Decision, Oct. 26, 1976*

Consent order requiring a Miami, Fla., furniture leasing company, among other things to cease failing to maintain adequate records; and to follow prescribed procedures to locate and make proper refunds to past and present eligible customers.

Appearances

For the Commission: *Francis X. McDonough, Jr.*

For the respondent: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Furniture Corporation of America, a corporation, doing business as Furniture Leasing of America, Inc., hereinafter sometimes referred to as respondent, has 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 Furniture Corporation of America, doing business as Furniture Leasing of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 2400 N.W. 72nd Ave., Miami, Florida.

PAR. 2. Respondent Furniture Corporation of America, doing business as Furniture Leasing of America, Inc., is now and for some time past, has been engaged in the advertising for lease and the leasing of furniture and related accessories, which when leased are transported to consumers located in various States of the United States. Thus, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said furniture and related accessories in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

Respondent has established and operates a number of branches for

the purpose of leasing furniture and related accessories in the States of Massachusetts, Connecticut and Florida.

PAR. 3. Respondent Furniture Corporation of America, doing business as Furniture Leasing of America, Inc., at all times mentioned herein, has been, and now is, in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, with individuals, firms and corporations engaged in the leasing of furniture and related accessories of the same kind and nature as those leased by respondent.

PAR. 4. In the ordinary course and conduct of its business, respondent requires its customers to deposit money with it to ensure that such customers fully perform all of the terms, conditions and covenants contained in respondent's lease agreement and to ensure that the leased items are returned to respondent in the same condition in which such items were delivered to its customers, ordinary wear excepted. Upon termination of a customer's lease, respondent determines whether the customer has fully performed all of the terms, conditions and covenants contained in the lease agreement and whether such leased items are returned in the same condition respondent delivered them. After making this determination, respondent transmits this information to its principal place of business where the information is recorded in the customer's file and dollar assessments or charges are made in those instances where the customer fails fully to perform the terms, conditions and covenants of the lease agreement or fails to return the leased items in the same condition respondent delivered them.

Such assessments necessitate deductions from the deposited money which in turn result in a determination that respondent will either retain the full amount or a portion of the customer's deposited money. If no assessment is made, respondent's records indicate that the customer's deposited money may be returned.

PAR. 5. When a customer, who is determined by the respondent to be eligible for return of his deposited money does not specifically request the return of the deposit and does not within a designated period of time supply respondent with a current address to which the deposit may be mailed, the respondent clears the customer's lease deposit from the customer's account by a bookkeeping entry. In such case, respondent does not return or refund any portion of the outstanding lease deposit to the customer. Respondent thus absorbs into its operating income the outstanding amounts of such lease deposits due its customers.

Respondent at no time informs or attempts to inform its customers that they have returnable deposits due. Respondent at no time voluntarily returns returnable deposited money unless specifically requested by its customers nor in any way notifies such customers that

their deposits will be returned on demand. Respondent, Furniture Corporation of America, doing business as Furniture Leasing of America, Inc., through such acts and practices has failed to return substantial dollar amounts of lease deposits to its customers in a substantial number of instances.

PAR. 6. By failure to notify its customers that they have returnable deposits due them; by requiring that their customers specifically request the return of such deposits before respondent will return the outstanding amounts of the deposits; by failing to return such outstanding lease deposits to its customers and by absorbing such deposits into its own operating income, respondent caused a substantial number of its customers to be deprived of substantial sums of money rightfully theirs, therefore, the acts and practices described in Paragraph Five above were and are unfair.

PAR. 7. The acts and practices of respondent set forth in Paragraphs Five and Six above, were and are all to the prejudice and injury of the public and constituted and now constitute, unfair acts and practices, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its

complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Furniture Corporation of America is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 2400 N.W. 72nd Ave., Miami, Florida. Such corporation does business as Furniture Leasing of America, Inc.

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

ORDER

It is ordered, That respondent Furniture Corporation of America, a corporation, doing business as Furniture Leasing of America, Inc., its successors and assigns, and its officers, and its representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the handling of customers' money deposited as a condition precedent to or in conjunction with the signing of a consumer lease agreement incident to the leasing of furniture, related accessories or any other personal property, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Failing to determine, prior to the negotiation of a lease agreement with two or more legally unrelated lessees, which person will be designated by the joint lessees to be the recipient of the information relating to the lessees' returnable deposit in the event that respondent is obligated to return any portion of the deposit to such customers.

2. Failing to incorporate the following language into respondent's "Lease Pickup Form":

It is imperative that you obtain the lessee's forwarding address for a Deposit Refund. If lessee is not sure of the address, ask if we can send the refund care of a friend or relative. If you cannot obtain an address, send the lessee Form A and so note below:

Street Apt.

City State Zip Code

If "care of," specify who

If above not available, Form A Sent
on -----.

3. Failing to complete the appropriate portion of the addition to respondent's "Lease Pickup Form," as it is described in Paragraph 2.

4. Failing to send to each customer, or designated lessee in instances where a designation as provided for in Paragraph 1 has been made, from whom respondent has failed to obtain an address to which the lessee's returnable deposit is to be sent, within three (3) business days after the lessee notifies respondent that it may pick up its furniture, and related accessories, the following notice and detachable postage paid business reply postcard:

FORM A

Dear Lessee:

We have scheduled the pickup of your furniture as requested. It is important that you inform us of an address to which we can send your Deposit, if we find you are entitled to it being refunded.

If you are not sure of your forwarding address, we would be happy to send it care of a friend or relative.

Please fill in the form below, tear along the perforated line and mail it to us. The postage is prepaid.

Thank you for your assistance.

FURNITURE LEASING OF AMERICA, INC.

DEPOSIT REFUND REQUEST

LESSEE: _____

LEASE AGREEMENT NUMBER: _____

SEND REFUND TO: _____

Street Apt. No.

City State Zip Code

If refund is to be sent care of another, give their name:

THANK YOU FOR YOUR COOPERATION.

Furniture Leasing of America, Inc.
 Post Office Box 480225
 Miami, Florida 33148 (305) 592-5590

5. Failing to perform the following steps, no later than thirty (30) business days after the expiration of the lease agreement, after determining that a customer has fully performed the terms, conditions and covenants contained in the lease agreement and has returned to respondent all leased items in the same condition in which they were delivered, ordinary wear excepted, and is thus due either a full or a partial return of the deposit:

a. Determine whether the customer's file contains an address to which a returnable deposit is to be forwarded. If so respondent shall forward a check in the appropriate amount to the customer or his designee at the address given. If not, respondent is to perform those steps detailed in Paragraphs 5b and 5c below.

b. Determine the name and address of the customer's parents, present employer and a listed personal reference of the customer from data set forth in the customer's credit application filed by the customer incident to the consummation of the lease agreement. Forward the notice, entitled "We Need Your Help" and described below, to the parents of the customer, if their name and address is available in the customer's file, or both the present employer and one personal reference of the customer listed in the customer's file.

WE NEED YOUR HELP

The individual listed below recently rented furniture from Furniture Leasing of America and is due the return of a money deposit which will be sent to him/her as soon as we can determine his/her correct address and/or telephone number.

If you know his/her address and/or telephone number, please complete the following, tear along the perforated line and mail to us. The postage is prepaid.

Thank you for your help.

FURNITURE LEASING OF AMERICA, INC.

* * * * *

Lessee

Street Apt.

City State Zip Code

Area Code Telephone Number

c. Send an envelope containing the "WE NEED YOUR HELP" notice, described in Paragraph 5b, to the customer's current address, as it appears in the customer's file, requesting an address correction, on the envelope, from the United States Postal Service.

d. If the customer's telephone number is received from any source, respondent shall use it to attempt to contact the customer and determine the customer's forwarding address.

e. If the customer's forwarding address is received from any source, respondent shall refund the appropriate amount of the deposit to the customer at the forwarding address.

f. If no address or telephone number, or information which would directly lead to the discovery of the address or telephone number of the customer, is received within ninety (90) days after the termination of the customer's lease, the customer's lease file or a complete summary thereof, including a notation of the specific amount of money due the customer, will be maintained by respondent for a period of 3 years from the date the lease terminated, during which period of time any request by the customer for the return of the deposit due will be immediately honored. At the end of the 3 year period, the relevant state law will govern the appropriate disposition of customers' deposited money.

6. Failing to keep adequate records which may be inspected by Commission staff members, upon reasonable notice, which (1) substantiate that respondent is following the procedures specified in Paragraphs 1 through 5 of this order and (2) readily disclose the disposition of each customer's deposit and reasons therefor.

It is further ordered, That respondent will refund all returnable deposits to customers whose leases terminated on or after January 1, 1973 and which have not been refunded as of the effective date of this order. Respondent, in refunding the above-described money, will follow the procedures detailed in Paragraph 5 of this order. Respondent will fully comply with the provisions of this paragraph no later than three (3) months after the effective date of this order.

It is further ordered, That respondent, after the effective date of this order, shall include a copy of this order in each of its training manuals, and require each present and future employee who is or becomes

charged with implementing any portion of this order to read a copy of this order and to sign a statement acknowledging that they have read this order.

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

Commissioner Dole did not participate by reason of absence.

Order

88 F.T.C.

IN THE MATTER OF
RSR CORPORATION

Docket 8959. Interlocutory Order, Nov. 2, 1976

In Camera treatment of listed information withdrawn to the extent that it may appear in publicly available portion of any decision the Commission may issue in this matter.

Appearances

For the Commission: *Annthalia Lingos, K. Keith Thurman, and James C. Egan, Jr.*

For the respondent: *Robert L. Wald, Wald, Harkrader & Ross, Washington, D.C.; and Merrill L. Hartman, Hewett, Johnson, Swanson & Barbee, Dallas, Tex.*

ORDER WITHDRAWING *In Camera* TREATMENT

On July 28, 1976, the Commission ordered the parties to show cause why certain information to which the administrative law judge (ALJ) had accorded *in camera* treatment at the trial of this matter should not be placed on the public record [88 F.T.C. 206]. This information included market share figures for RSR and Quemetco in 1971 and 1972, lead production figures for RSR and Quemetco in 1971 and 1972, and information concerning the distances to which various RSR and Quemetco plants shipped their output during 1971 and 1972.

By response of August 12, 1976, respondent has indicated that it would not object to publication of market share figures or production figures, but it would object to the making public

the second sentence of *in camera* finding 217, the second sentence of *in camera* finding 218, and shipping distance figures derived from CX 69-77 and CX 79 showing average plant shipping distance, percentage of plant production shipped to various states, and percentage of plant production shipped various distances, on the ground that disclosure of such data may assist competitors in determining the identity of some of RSR's customers.

One reason for the requirement that proceedings of this sort be decided "on the record" is to permit the public to evaluate the fairness and wisdom with which the decisions of public agencies have been made, and to permit affected parties to draw guidance from those decisions in determining their future conduct. This consideration mandates that to the maximum extent possible, information of relevance to the Commission's determination be made part of the record available for public inspection. At the same time, *in camera* treatment of certain relevant information may be appropriate where

the prospective injury from disclosure outweighs the public interest in full knowledge. In the course of a trial an administrative law judge may be required to balance these competing interests on scores of occasions, as the parties seek *in camera* treatment for various exhibits. The granting of such treatment, however, cannot bind the Commission to withhold information from the public record indefinitely where no justification therefor exists.

In this case, we have concluded that the public interest requires that certain of the information accorded *in camera* treatment by the ALJ be made part of the public record. As to some of this, *e.g.*, market shares of the competing parties, surely the most fundamental sort of information in any merger case, respondent does not object.

With respect to shipping distance information, we note that in their presentation of this case both sides devoted extensive discussion to the issue of how far secondary lead recyclers can and do ship their output to customers. Respondent contended that this question is of great importance in the definition of an appropriate market within which to evaluate the challenged merger, and the ALJ devoted numerous findings to the issue. The Commission has determined that disclosure of certain aggregated data revealing average plant shipping distances, percentages of plant production shipped to certain states, and percentages of the production of various plants shipped various distances is important to a full public understanding of the points at issue between the parties in this case and before the Commission for resolution.

The Commission has further concluded that disclosure of such information is most unlikely to result in injury of the slightest sort to respondent, in view of its age (4-5 years), and in view of its aggregated character which would render extremely speculative any inferences to be drawn therefrom by competitors as to the customers of RSR. The Commission further notes that the public transcript already contains numerous references to identified customers of respondent, and respondent has not objected to public disclosure of the ALJ's *in camera* finding I.D. 223, which mentions numerous particular customers and plants to which RSR and Quemetco did or did not ship lead in 1971 and 1972. In light of this it does not appear that respondent itself anticipates any real injury from the proposed disclosure.

Under the circumstances, the Commission has determined that the public interest weighs overwhelmingly in favor of disclosure of the aforementioned information to the extent it is relevant to the Commission's decision in this matter.

Accordingly, the Commission hereby affords notice to the parties that, effective ten days from the date of service of this order, *in camera* treatment of the indicated information will be withdrawn, to the

extent that it may appear in the publicly available portion of any decision the Commission issues in this matter. Therefore:

It is ordered, That, effective ten days from the date of service of this order, *in camera* treatment of the following information be, and it hereby is, withdrawn, to the extent that it may appear in the publicly available portion of any decision the Commission may issue in this matter:

(1) Information contained in *in camera* findings of the ALJ Nos. 246-248, 256-258, including tonnage figures for RSR and Quem- etco derived from CX 64, but not tonnage figures for other companies;

(2) Information contained in *in camera* findings of the ALJ 217-218 and 223, as well as other aggregated shipping distance figures derivable from CX 65, 69-77, 79, including average plant shipping distance, percentage of plant production shipped to various states, and percentage of plant production shipped various distances, stated in terms of ranges, *e.g.*, (0-100 miles).

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF

HERBERT R. GIBSON, SR., D/B/A THE GIBSON TRADE
SHOW, ET AL.

Docket 9016. Interlocutory Order, Nov. 2, 1976

Denial of petition for reconsideration of Commission's order denying motion to withdraw matter from adjudication for settlement purposes.

Appearances

For the Commission: *John J. Hemrick* and *Andre Trawick, Jr.*

For the respondents: *Bardwell D. Odum*, Dallas, Tex., *David A. Donohoe*, *Akin, Gump, Strauss, Hauer & Feld*, Wash., D.C., and *John M. Gillis*, *Gillis, Rogers & Taylor*, Dallas, Tex.

ORDER DENYING PETITION FOR RECONSIDERATION

Respondents Herbert R. Gibson, Sr. and Belva Gibson petition for reconsideration of the Commission's order of September 21, 1976, denying their motion to withdraw this matter from adjudication for settlement purposes. They ask that the Commission await a decision by the administrative law judge on their Motion to Recommend Commission Acceptance of the Proposed Consent Order before determining whether there is a sufficient likelihood of settlement to warrant a withdrawal from adjudication.

The instant petition must be denied since it does not set forth "new questions raised by the decision * * * upon which the petitioner had no opportunity to argue before the Commission" as required by Section 3.55 of the Rules of Practice. The Commission has, however, reviewed respondents' Motion to Recommend, the accompanying memorandum, and complaint counsel's answer and adheres to its view that there is not a "likelihood of settlement." Rules of Practice, Section 3.25(b).

In their September 29 answering memorandum, complaint counsel argue that a combination of remedies consisting of "the Gibson Trade Show being required to go out of business or operate non-profit * * * is essential to adequately protect the public interest." The Commission would be willing to consider alternative consensual relief to those remedies, if it can be devised, in view of respondents' representations in their June 24 memorandum that they are willing to agree to "a guarantee (under pain of substantial monetary penalties) that there will be a high, impenetrable wall between the business of respondent

H.R. Gibson, Sr. and that of the licensor and licensees of Gibson Discount Centers.”¹ We are not satisfied that respondent’s present proposal accomplishes such a separation, however, and as noted by the administrative law judge in his certification, other deficiencies in the proposed agreement make it clear that there is no present likelihood of settlement. Accordingly,

It is ordered, That the aforesaid petition be, and it hereby is, denied. Commissioner Dole did not participate by reason of absence.

¹ For example, the statutory prohibition in Section 2(c) of Robinson-Patman speaks in relevant part of “an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of” the buyer. 15 U.S.C. § 13(c).

IN THE MATTER OF
USLIFE CREDIT CORPORATION, ET AL.

Docket 9057. Interlocutory Order, Nov. 2, 1976

Rejection of ALJ's certification of question whether testimony of certain witnesses should have been stricken on basis of complaint counsel's inability to produce certain interview notes.

Appearances

For the Commission: *Michael E. K. Mpras* and *Robert L. Patterson*.
For the respondents: *Bill Norton* for Uslife, Schaumburg, Illinois; *Tony Davey* for Uslife, New York City; and *Edward W. Keane, Bruce E. Clark, Sullivan & Cromwell*, New York City.

ORDER REJECTING CERTIFICATION

The administrative law judge has certified to the Commission the question whether the testimony of certain witnesses should have been stricken on the basis of complaint counsel's inability to comply with the ALJ's order requiring the production of certain interview notes. The Commission has concluded, however, particularly in the absence of an application for review, that the certification of this issue is unnecessary and is accordingly rejected. The ALJ may proceed to render an initial decision in this matter and the parties are free to raise the question of exclusion of evidence on appeal to the Commission. Since the Commission may consider the ruling on appeal and, if it concludes the ALJ improperly excluded the evidence, make other findings as are appropriate, the certification does not present the type of "controlling question of law or policy" which merits interlocutory consideration under Section 3.23(b) of the Rules of Practice.

It is so ordered.

Commissioner Dole did not participate by reason of absence.

Complaint

88 F.T.C.

IN THE MATTER OF

PANDE, CAMERON & CO. OF NEW YORK, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2850. Complaint, Nov. 3, 1976—Decision, Nov. 3, 1976*

Consent order requiring a New York City importer and distributor of handmade rugs and carpets, among other things to cease enforcing and fixing established resale prices for its products. Further, respondent is prohibited from suggesting resale prices for the next three years and thereafter to indicate that any resale or retail price shown on pricing material is suggested or approximate only.

*Appearances*For the Commission: *Harold F. Moody.*For the respondent: *Edward G. Seitz, Gasperine & Savage, New York City.*

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 Pande, Cameron & Co. of New York, Inc., a corporation, and more particularly described and referred to hereinafter as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45), 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 with respect thereto as follows:

PARAGRAPH 1. Respondent Pande, Cameron & Co. of New York, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 295 Fifth Ave., New York, New York.

PAR. 2. Respondent has been and is now engaged in the importation, distribution and sale of handmade rugs and carpets. Respondent distributes and sells these products to retail dealers. In fiscal year 1974, the gross sales of the respondent were in excess of \$5,000,000.

PAR. 3. Respondent distributes and sells its products to retail dealers (hereinafter referred to as dealers) in the continental United States through salespersons and sales representatives who act under the direction and control and carry out the policies of respondent.

PAR. 4. In the course and conduct of its business as aforesaid, respondent causes and has caused, handmade rugs and carpets to be

shipped from the State in which they are warehoused to purchasers in other States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondent has been and is in substantial competition in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, with other persons, firms and corporations engaged in the importation, distribution and sale of handmade rugs and carpets.

PAR. 6. In the course and conduct of its business as aforesaid, respondent, in combination, agreement, or understanding with some of its dealers, or with the cooperation or acquiescence of others of its dealers has engaged in a course of action to unlawfully fix, establish, stabilize or maintain the suggested retail prices at which its products are resold. In furtherance of said course of action, respondent has engaged in, and is now engaging in, the following acts and practices, among others:

(a) Establishing agreements, understandings, or arrangements with its dealers, as a condition precedent to the granting or retention of a dealership, that such dealers will maintain its suggested retail prices;

(b) Informing certain of its dealers, by direct and indirect means, that respondent expects and requires such suggested retail prices, or such dealerships will be terminated;

(c) Obtaining from its dealers, cooperation and assistance in identifying and reporting dealers who advertise, or offer to sell, or sell said products at prices lower than its suggested retail prices;

(d) Encouraging salespersons, sales representatives, and other employees or agents of respondent to secure and report information identifying dealers who advertise, offer to sell or sell respondent's products at prices below the retail prices suggested by respondent;

(e) Threatening to terminate certain dealers who fail or refuse to observe and maintain respondent's suggested retail prices, or who advertise respondent's products at retail prices below the prices suggested by respondent; and

(f) Regularly furnishing dealers with price lists and supplements thereto containing suggested retail prices for respondent's products.

PAR. 7. By means of the aforesaid acts and practices, and more, respondent, in combination, agreement, or understanding with certain of its dealers and with the acquiescence of other of its dealers, has established, maintained and pursued a course of action to fix and

maintain suggested retail prices at which respondent's products will be resold.

PAR. 8. The aforesaid acts and practices of respondent have had the effect of hindering, lessening, restricting, restraining and eliminating competition in the resale and distribution of said products, and, thus, are to the prejudice and injury of the public, and constitute unfair methods of competition and unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Pande, Cameron & Co. of New York, Inc. (Pande) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business at 295 Park Ave., New York, New York.

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

ORDER

I

It is ordered, That respondent Pande, Cameron & Co. of New York, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the importation, distribution, offering for sale and sale of handmade rugs and carpets and other products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Establishing, maintaining or enforcing any contract, agreement, understanding or arrangement entered into with any distributor or retail dealer in respondent's products (hereinafter distributors and retail dealers are referred to as "dealers") fixing, establishing, maintaining or enforcing the suggested retail prices at which respondent's products are to be resold.

2. Requiring any dealer or prospective dealer to enter into any oral or written agreement or understanding that such dealer or prospective dealer will adhere to any resale price for respondent's products as a condition to receiving or retaining its dealership.

3. Requesting or requiring any dealer or prospective dealer, either directly or indirectly, to report any dealer, person or firm who does not adhere to the retail price suggested by respondent for any of said products, or acting on reports so obtained by refusing or threatening to refuse sales to any dealer, person or firm so reported;

4. Refusing to sell or threatening to refuse to sell to any dealer or prospective dealer who desires to engage in the sale of respondent's products for the reason that such dealer will not enter into an understanding or agreement with respondent to advertise or sell said products at respondent's suggested retail price.

5. Securing or attempting to secure any promises or assurances from dealers or prospective dealers regarding the prices at which such dealers will advertise or sell respondent's products, or requesting or requiring any dealer or prospective dealer to obtain approval from respondent for prices offered by said dealers in advertisements for respondent's products.

6. Terminating, threatening, intimidating, coercing, delaying shipments, or taking any other action to prevent or hinder the sale of respondent's products by a dealer because said dealer has advertised or sold, is advertising or selling, or is suspected of advertising or selling such products at other than prices that respondent may deem to be appropriate or has approved.

7. Requiring from dealers charged with price cutting or failure to adhere to suggested retail prices, promises or assurances of the observance of respondent's suggested retail prices as a condition precedent to future sales to said dealers.

8. Directing or requiring respondent's salesmen, or any other agents, representatives, or employees, directly or indirectly, to report dealers who do not adhere to such suggested retail prices, or to act on such reports by refusing or threatening to refuse sales to dealers so reported.

9. Publishing, disseminating, circulating or providing by any other means, any suggested retail price, unless it is clearly and conspicuously stated on each page of any pricelist, book, tag, advertising or promotional material or other document that the price is "suggested" and that the dealer is free to sell at whatever price he chooses.

10. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any dealer because said dealer advertises respondent's products at retail prices other than those which respondent deems appropriate or has approved.

II

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions and subsidiaries and to all officers, sales personnel, sales agents and sales representatives, and secure from each such entity or person a signed statement acknowledging receipt of said order.

III

It is further ordered, That respondent:

1. Notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other such change in the corporation which may affect compliance obligations arising out of the order.

2. For a period of three (3) years from the date this order becomes final, establish and maintain a file of all records referring or relating to respondent's refusal during such period to sell its products to any dealer, which file shall contain a record of a communication to each such dealer explaining respondent's refusal to sell, and which file will be made available for Commission inspection on reasonable notice.

It is further ordered, That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a

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

Commissioner Dole did not participate by reason of absence.

Complaint

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IN THE MATTER OF

MEDALIST INDUSTRIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2851. Complaint, Nov. 9, 1976—Decision, Nov. 9, 1976*

Consent order requiring a Milwaukee, Wisc., manufacturer of industrial, athletic and leisure time products, among other things to cease enforcing and fixing established resale prices for its products. Further, respondent is prohibited from suggesting resale prices for the next three years and thereafter to indicate that any retail or resale price shown on pricing material is suggested or approximate only.

*Appearances*For the Commission: *David W. DiNardi.*For the respondents: *Richard T. O'Neil, Michael, Best & Friedrich*
Milwaukee, Wisc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. §41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Medalist Industries, Inc., a corporation, and Allen-A Company, a corporation, and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act (38 Stat. 719, as amended; 15 U.S.C. §45), 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 with respect thereto as follows:

PARAGRAPH 1. Respondent Medalist Industries, Inc., is a corporation organized under the laws of the State of Wisconsin, with its principal office and place of business at 735 N. 5th St., Milwaukee, Wisconsin.

Respondent Allen-A Company (hereinafter sometimes referred to as Allen-A), a wholly-owned subsidiary of Medalist Industries, Inc., was organized as a Delaware corporation, with its office and principal place of business at 803 North Downing St., Piqua, Ohio.

PAR. 2. Respondent Medalist Industries, Inc. is a diversified manufacturer of industrial, athletic and leisure time products including athletic uniforms, gymnasium equipment, athletic training accessories, ski clothing, stylized, recreational tenniswear and other related items of wearing apparel. Respondent Medalist's annual volume of sales in calendar year 1973 was \$85.5 million.

Respondent Allen-A Company is engaged in the business of manufacturing, distributing and selling a wide variety of items of wearing apparel such as underskiwear, turtlenecks, stylized, recreational tenniswear, outerskiwear including parkas, ski pants and ski sweaters. Some of these items are sold under the name "Innsbruck." It distributes and sells to selected retail dealers located throughout the United States, who then resell to the general public.

Respondent Allen-A Company, under a license from Anba of Austria, is engaged in the business of manufacturing, distributing and selling fashion ski wear, stylized, recreational tenniswear, ski pants, parkas and other related items of wearing apparel. It distributes and sells these products under the name "Anba" to selected retail dealers located throughout the United States, who then resell to the general public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have been and are now engaged in commerce or their acts and practices affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, in that respondents have sold and caused and now cause said products to be shipped from the State in which they are manufactured or warehoused to other States of the United States for resale and distribution through selected retail dealers.

PAR. 4. In the course and conduct of their business in or affecting commerce, except to the extent that competition has been hampered or resurained by reason of the practices hereinafter alleged, respondents have been and are now in competition with other persons, firms and corporations engaged in the manufacture, sale and distribution of said products.

PAR. 5. Respondents, in combination, agreement, or understanding with certain of their authorized dealers, or with the cooperation or acquiescence of other of their dealers, have for the last several years been engaged in a planned course of action to fix, establish and maintain certain resale or retail prices at which said products are resold. In furtherance of said planned course of action, respondents have for the past several years engaged in the following acts or practices, among others:

- (a) Regularly furnishing their dealers with price lists and necessary supplements thereto containing certain resale or retail prices;
- (b) Establishing agreements, understandings, or arrangements with their dealers, one or more of whom are located in states which do not have fair trade laws, as a condition precedent to the granting of a dealership, that such dealers will maintain certain resale or retail prices;
- (c) Informing their dealers, by direct or indirect means, that

respondents expect and require such dealers to maintain and enforce certain resale or retail prices or such dealerships will be terminated;

(d) Permitting their dealers a maximum deviation of five cents from certain resale or retail prices on each item "in order to conform to store policy;"

(e) Requiring their dealers to agree not to sell or otherwise supply or furnish its products to anyone who is not an authorized dealer of the respondent;

(f) Soliciting and obtaining from their dealers cooperation and assistance in identifying and reporting any dealer who advertises, or offers to sell, or sells said products at prices lower than certain resale or retail prices, or the maximum five cents deviation; and

(g) Directing their salesmen, representatives and other employees to secure and report information identifying any dealer who fails to adhere to and maintain certain resale or retail prices, or the maximum five cents deviation, for said products.

PAR. 6. By means of such acts and practices, including but not limited to the foregoing, respondents, in combination, agreement, or understanding with certain of their authorized dealers and with the acquiescence of other of their authorized dealers, have established, maintained and pursued a planned course of action to fix and maintain certain resale or retail prices at which said products will be resold.

PAR. 7. The aforesaid acts and practices of respondents have been and are now having the effect of hampering and restraining competition in the resale and distribution of said products, and constitute unfair methods of competition in or affecting commerce, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 Boston Regional Office 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, their attorney 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, having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Medalist Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business at 735 N. 5th St., Milwaukee, Wisconsin.

Respondent Allen-A Company (Allen-A) is a wholly-owned subsidiary of Medalist Industries, Inc., and was organized as a corporation under the laws of the State of Delaware. Its office and principal place of business is located at 803 North Downing St., Piqua, Ohio.

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

I. *It is ordered*, That respondents Medalist Industries, Inc., and Allen-A Company, and their subsidiaries, divisions, affiliates, successors, assigns, officers, directors, agents, representatives and employees, directly or indirectly, or through any corporate or other device, in connection with the manufacturing, distribution, advertising, offering for sale, or sale of underskiwear, turtlenecks, stylized, recreational tenniswear, outerskiwear including parkas, ski pants, ski sweaters, or related products (hereinafter referred to in this order as "said products") in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from:

A. Establishing, maintaining or enforcing any contract, agreement, understanding or arrangement fixing, establishing, maintaining, controlling, influencing or enforcing in any way or to any extent, directly or indirectly, the price at which any of said products is advertised, sold or offered for sale at retail.

B. Requiring any dealer or prospective dealer to enter into an oral or written agreement or understanding that such dealer or prospective

dealer will maintain any resale or retail price for any of said products as a condition of buying any of said products.

C. Requesting or requiring any dealer or prospective dealer, either directly or indirectly, to report any dealer, person or firm who does not adhere to any resale or retail price for any of said products, or acting on reports so obtained by refusing or threatening to refuse sales to any dealer, person or firm so reported.

D. Directing or requiring any of respondents' salesmen, or any other agent, representative, or employee, directly or indirectly, to report any dealer who does not adhere to any resale or retail price for any of said products, or to act on such reports by refusing or threatening to refuse sales to dealers so reported.

E. Threatening to terminate or terminating, either directly or indirectly, any dealer for failure to observe, maintain or advertise the respondents' suggested resale prices for said products.

F. Suggesting, for three (3) years from the date on which this order becomes final, any resale price whatsoever for any of said products, by pricelist, discount schedule, invoicing procedure, prepricing of commodities or their containers, or by any other means, to any reseller whose resale prices are not or cannot lawfully be controlled by respondents in the manner prescribed by law and this order.

G. Requiring, from any dealer charged with price cutting or failure to adhere to any resale or retail price, a promise or assurance to adhere to any resale or retail price for any of said products as a condition precedent to any future sales to said dealer.

H. After the expiration of the three-year period of time stipulated in order provision I (F) above, publishing, disseminating or circulating any pricelist, price book, price tag, advertising or promotional material, or other document indicating any resale or retail price without stating on each page of such list, book, tag, advertising or promotional material or other document that the price is suggested or approximate.

I. Requiring or inducing by any means, any dealer or prospective dealer to refrain, or to agree to refrain from reselling any of said products to any other dealer or distributor.

Provided, however, nothing hereinabove shall be construed to waive, limit or otherwise affect the right of respondents to enter into, establish, maintain and enforce in any lawful manner any price maintenance agreement excepted from the provisions of Section 5 of the Federal Trade Commission Act by virtue of the McGuire Act amendments to said Act.

II. *It is further ordered,* That the respondents shall within sixty (60) days after the service upon them of this order, mail a copy of this order

to each of their dealers of said products in the Commonwealth of Puerto Rico, the District of Columbia, and in those States which now, or during the five (5) year period of time following the service of this order, do not permit fair trade contracts, and, during the five (5) year period of time following the date of service of this order, to all future dealers in these jurisdictions at the time said dealers are opened as accounts, under cover of the letter annexed hereto as Exhibit A, and furnish the Commission proof of the mailing thereof.

III. *It is further ordered*, That respondents shall forthwith distribute a copy of this order to each of their operating divisions engaged in the manufacture, sale, marketing and distribution of said products and to all of their sales personnel connected with the sale, marketing, and distribution of said products and shall instruct each salesperson employed by them now or in the future to read this order and to be familiar with its provisions.

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

V. *It is further ordered*, That the respondents herein for a period of five (5) years from the date of this signing establish and maintain a file of all records referring or relating to respondents' refusal to sell said products to any dealer, which file shall contain a record of a communication to each such dealer explaining respondents' refusal to sell said products, and which file will be made available for Commission inspection on reasonable notice; and, annually, for a period of five (5) years from the date hereof, submit a report to the Federal Trade Commission listing the names and addresses of all dealers with whom respondents have refused to deal over the preceding year, a description of the reason for the refusal and the date of the refusal.

VI. *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.

Commissioner Dole did not participate by reason of absence.

EXHIBIT A

(Letterhead of Medalist-Allen-A-Company)

Dear Dealer:

Allen-A Company has entered into an agreement with the Federal Trade Commission

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relating to our distributional activities and pricing policy. A copy of the consent order entered into pursuant to that agreement is enclosed herewith.

Our parent company, Medalist Industries, Inc., is also a party to this consent agreement with the Federal Trade Commission, and the terms of the Agreement Containing the Consent Order to Cease and Desist and the Commission's Decision and Order are fully and equally applicable to our parent company, its subsidiaries and divisions.

Furthermore, we have entered into this agreement solely for the purpose of settling a dispute with the Commission, and the agreement and consent order is not to be construed as an admission that we have violated any of the laws administered by the Commission, or that any of the allegations in the complaint are true and correct. Instead, the order merely relates to our activities in the future.

In order that you may readily understand the terms of the consent order, we have set forth the essentials of the agreement with the Commission, although you must realize that the consent order itself is controlling rather than the following explanation of its provisions:

- (1) Our dealers in your area are free to set their own retail or resale prices for the products covered by the consent order.
- (2) We will not solicit, invite or encourage any dealer or any other person to report any dealer in your area not following any retail or resale price for any of said products, and, furthermore, will not act on any such reports sent to us.
- (3) We will not require or induce our dealers in your area to refrain from advertising said products at any price or from selling or offering said products at any price to any person.

Sincerely yours,

Alexander S. Flesh
Executive Vice-President
Allen-A Company

Enclosure

IN THE MATTER OF
HALEAKALA MOTORS, LTD.

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

Docket C-2852. Complaint, Nov. 15, 1976—Decision, Nov. 15, 1976

Consent order requiring a Wailuku, Maui, Hawaii, automobile dealer, among other things, to cease altering any invoices or other documents containing manufacturer's suggested retail price information; misrepresenting suggested retail prices; and including on extension stickers, any charges not specifically itemized.

Appearances

For the Commission: *Charles S. Litzof.*

For the respondent: *James Krueger, Wailuku, Maui, Hawaii.*

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 Haleakala Motors, Ltd., hereinafter referred to as "respondent," has 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 Haleakala Motors, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii, with its office and principal place of business at Main and High Sts., Wailuku, Maui, Hawaii.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of new automobiles at retail.

PAR. 3. Respondent's volume of business is substantial and its acts and practices, as hereinafter set forth, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of its business, respondent receives, and has received, "delivery order" invoices from its supplier, General Motors Corporation. Each such invoice relates to an automobile which is delivered by the manufacturer to respondent, for sale to consumers. Each such invoice itemizes the factory equipment contained on said automobile, and shows the manufacturer's suggested list price for the basic automobile and for each item of factory equipment, transportation charges, and the total manufacturer's suggested retail price. Such

invoice resembles closely the manufacturer's "Monronev Sticker" label, which must be affixed to new automobiles, pursuant to 15 U.S.C. §1231, *et seq.*

PAR. 5. In the course and conduct of its business, respondent alters, and has altered, such "delivery order" invoices by substantially increasing the basic price of the automobile, as shown on such invoice, by adding substantial charges to such invoice, and by altering the total manufacturer's suggested retail price shown on such invoice to reflect such increases and additions.

PAR. 6. In the course and conduct of its business, respondent receives, and has received, automobiles from its supplier which do not have the "Monronev Sticker" label affixed to them, in the manner provided for in 15 U.S.C. §1231, *et seq.* In such cases, respondent affixes, and has affixed, to said automobiles the altered "delivery order" invoices referred to in Paragraphs Four and Five. By said practice, respondent is representing, and has represented that the prices shown on said altered invoice are the manufacturer's suggested retail prices, when in fact said altered invoice prices substantially exceed the manufacturer's suggested retail prices. Therefore, said practice is, and was, false, misleading, unfair or deceptive.

PAR. 7. In the course and conduct of its business, respondent shows or gives, and has shown or has given, to prospective customers, the original or a copy of the altered invoices referred to in Paragraphs Four and Five. By said practice, respondent is representing, and has represented, that the prices shown on said altered invoices are the manufacturer's suggested retail prices, when in fact said altered invoice prices substantially exceed the manufacturer's suggested retail prices. Therefore, said practice is, and was, false, misleading, unfair or deceptive.

PAR. 8. In the course and conduct of its business, respondent is now, and has been, attaching "extension stickers" adjacent to the Monronev Sticker labels on the windows of new automobiles. Said extension stickers itemize charges additional to those charges itemized or accounted for on the Monronev Sticker labels.

A. By and through the use of said extension stickers, respondent represents, and has represented, that additional charges are incurred by it for "Ocean Freight, Tolls, Marine Insurance, and Dockside Handling. Local Service." In truth and in fact, respondent does not incur charges additional to those charges itemized or accounted for on the Monronev Sticker labels, for ocean freight, tolls, or marine insurance. Such charges are included in the Monronev Stickers as amounts charged to respondent for transportation to the location at which the automobile is

delivered to respondent (cf., 15 U.S.C. §1232(f)(3)). Therefore, said representation is, and was, false, misleading, unfair and deceptive.

B. By and through the use of said extension stickers, respondent represents, and has represented, that the only additional charges respondent imposes are for "ocean freight, tolls, marine insurance and dockside handling. Local service." In truth and in fact, respondent imposes further additional charges by means of said extension stickers, for items not specifically itemized thereon, such as advertising costs and interest expense. Therefore, said representation is, and was, false, misleading, unfair and deceptive.

PAR. 9. Respondent has been at all times relevant hereto in substantial competition with others in the sale of new automobiles in or affecting commerce.

PAR. 10. The acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition and unfair or deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto 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 respondent 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 admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, 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 Haleakala Motors, Ltd. is a corporation organized,

existing and doing business under and by virtue of the laws of the State of Hawaii, with its office and principal place of business located at Main and High Sts., Wailuku, Maui, Hawaii.

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

ORDER

It is ordered, That respondent Haleakala Motors, Ltd., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of new automobiles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Altering in any manner, invoices, stickers, or other original documents or copies thereof, which contain manufacturer's suggested retail price information, where such price has been established by a manufacturer pursuant to 15 U.S.C. §1231, *et seq.*, except for relabeling as provided in 15 U.S.C. §1233(c).

2. Contradicting or negating, orally or in writing, directly or by implication, any information disclosed by a manufacturer pursuant to 15 U.S.C. §1232.

3. Misrepresenting, orally or in writing, directly or by implication, that respondent has incurred charges attributable to a new automobile which are in addition to those itemized, or accounted for, on the Monroney Sticker label for such automobile.

4. Including in the amounts contained in any representation of charges imposed by respondent in addition to those charges itemized or accounted for on the Monroney Sticker label, any amounts not attributable to a specifically-itemized additional imposed charge.

It is further ordered, That respondent 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 said corporation which may affect compliance obligations arising out of this order.

It is further ordered, That respondent forthwith distribute a copy of this order to each of its operating divisions, and to all present and future employees engaged in the advertising, offering for sale, or sale of new automobiles.

Commissioner Dole did not participate.

IN THE MATTER OF

FORD MOTOR COMPANY, ET AL. — DOCKET 9073

GENERAL MOTORS CORPORATION, ET AL. — DOCKET
9074*Interlocutory Order, Nov. 16, 1976*

Denial of (1) consolidated motions to stay portions of ALJ's orders of October 29 and November 2, 1976, requiring immediate action pending interlocutory appeal and Commission review of those orders; and (2) consolidated application for intervention and for disclosure of names of NADA members subpoenaed.

Appearances — Docket 9073

For the Commission: *Sharon S. Armstrong, Randall H. Brook, Barry E. Barnes, David R. Pender and Ronald G. Sims.*

For the respondents: *Robert L. Wald, Carleton A. Harkrader and Gloria P. Stewart, Wald, Harkrader & Ross, Washington, D.C.; Weil, Gotshal & Manges, New York City and Washington, D.C.; Mike Esler, Hoessler, Stamer & Esler, Portland, Ore.; David R. Larrony, Dearborn, Mich.; and Basil Mezines, Stein, Mitchell & Mezines, Washington, D.C., for the Intervenor, National Automobile Dealers Association.*

Appearances — Docket 9074

For the Commission: *Gregory L. Colvin, Sharon S. Armstrong, Sarah J. Hughes, Randall H. Brook and Ronald G. Sims.*

For the respondents: *James P. Melican, Jr. and Robert C. Weinbaum, Detroit, Mich.; John J. Higgins, New York City; Ira M. Millstein and Carl D. Lobell, Weil, Gotshal & Manges, New York City; Robert C. St. Louis and Charles E. Siljeg, Aiken, St. Louis & Siljeg, Seattle, Wash.; Howard Daniels, Weil, Gotshal & Manges, Washington, D.C.; and Basil Mezines, Stein, Mitchell & Mezines, Washington, D.C., for the Intervenor, National Automobile Dealers Association.*

ORDER DENYING CONSOLIDATED MOTIONS FOR STAY OF ORDERS
PENDING INTERLOCUTORY APPEAL AND FOR PERMISSION TO
INTERVENE

This matter is before us upon the applications of the National Automobile Dealers Association ("NADA") and four named dealers¹ acting on behalf of themselves and all other similarly situated NADA dealers, requesting an emergency stay of certain portions of the

¹ Brandy Ford, Inc., Fuller Ford Co., Inc., Berry Pontiac - GMC, Inc., and M&O Chevrolet Co.

administrative law judge's orders of October 29 and November 2, 1976, pending interlocutory appeal and Commission review of those orders.

On October 22 and 26, 1976, counsel for NADA filed consolidated motions for: permission to intervene for the purpose of filing motions to quash or limit subpoenas issued to a number of Ford and General Motors dealers; disclosure of the names of NADA members subpoenaed; an extension of time on behalf of NADA to move to quash or limit; and an extension of time on behalf of the four named dealers to move to quash or limit.

The administrative law judge's order of October 29, 1976, denied all motions filed on behalf of NADA, and his order of November 2, 1976, denied the motion on behalf of the four named dealers. The order of October 29, 1976, required NADA to "inform those dealers [who had failed timely to file motions to quash or limit] about this order immediately on its receipt," and required the subpoenaed dealers to "immediately file motions to quash or limit the subpoenas if they wish to challenge them." The order of November 2, 1976, directed the four named dealers to "file motions to limit or quash the subpoenas duces tecum served on them immediately upon notification of this order."

A consolidated motion for a stay of those portions of the administrative law judge's orders requiring immediate action, pending interlocutory appeal, was filed by counsel for NADA and the four named dealers on November 4, 1976. That motion was denied by the administrative law judge on the same day.

On November 5, 1976, counsel for NADA and the four named dealers filed the consolidated motion for a stay now before the Commission. As with the motion filed with the administrative law judge on November 4, 1976, this motion seeks to stay the portions of the law judge's orders requiring immediate action. On November 10, 1976, complaint counsel filed a reply to this motion for a stay.

Finally, a consolidated application for review of the administrative law judge's ruling on NADA's motion for permission to intervene and for disclosure of the names of NADA members subpoenaed was filed by NADA on November 8, 1976.

The basis for NADA's intervention motion is that the subpoenas directed to its member dealers raise issues as to which NADA has an interest not adequately represented by any of the named parties. Issues specified by NADA include the burden and expense of compliance with the subpoenas, public disclosure of confidential business records, and characterization of those records in the administrative proceeding.

In denying the intervention motion, the administrative law judge observed that the subpoenaed dealers can adequately represent their own interests by filing their own motions to quash or limit if they

believe the subpoenas are burdensome. He determined that intervention would complicate rather than simplify the issues raised by the subpoenas, due to the likely variations in response among the subpoenaed dealers.

As we stated in our order of July 13, 1976, affirming the orders of the administrative law judge granting limited intervention to NADA in this proceeding, the factors to be considered in determining whether justification exists to warrant intervention are the interests of the applicant, the applicant's potential contribution to the proceeding, the detriment to the public interest resulting from unduly complicating and prolonging the proceeding, and whether the applicant desires to raise substantial issues of law or fact which would not otherwise be properly raised or argued. See *Heublein, Inc.*, 82 F.T.C. 1826, 1829 (1973); *Firestone Tire & Rubber Co.*, 77 F.T.C. 1666, 1669 (1970).

Based upon our review of the pleadings filed by counsel for NADA and the four named dealers and by complaint counsel, we agree with the administrative law judge's determination that intervention by NADA to represent all subpoenaed member dealers is unwarranted and unnecessary. Those dealers who desire to challenge the subpoenas can adequately represent their own interests by filing motions to quash or limit pursuant to Rule 3.34(b) of the Commission's Rules of Practice. Any dealers who wish to utilize the services of NADA's legal counsel for responding to the subpoenas or otherwise may do so. However, we see no need for either the subpoenaed parties or the legal counsel of their choice to intervene in this proceeding for the purpose of raising legal issues regarding the third party subpoenas. Furthermore, the administrative law judge has determined that intervention by NADA to represent all subpoenaed member dealers would complicate rather than simplify the issues raised by the subpoenas. We cannot say this is in error. It does appear likely that dealers' responses to the subpoenas will not be identical; to the extent that there are variations in response, the responses will have to be individually considered by the law judge. As to issues concerning the burden and expense of compliance with the subpoenas and disclosure of business records of NADA members, the Commission's Rules of Practice charge the administrative law judge with responsibility for supervising discovery proceedings, issuing discovery orders and subpoenas, and determining the adequacy of subpoena returns. These Rules fully permit the subpoenaed dealers to move to quash or limit the subpoenas and to request *in camera* treatment for documents produced. The administrative law judge is in the best position to determine whether the subpoenas have been complied with in good faith and to determine the degree of protection to be afforded documents produced, subject to Commission review for

