

Order

88 F.T.C.

IN THE MATTER OF  
RSR CORPORATION

*Docket 8959. Order, July 28, 1976*

Order to show cause and order granting temporary *in camera* treatment.

*Appearances*

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

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

ORDER TO SHOW CAUSE AND ORDER GRANTING TEMPORARY  
*In Camera* TREATMENT

On July 22, 1976, respondent filed a document styled "Motion to Strike Pages 19 through 25 of 'Complaint Counsel's Reply Brief.'" Respondent requested expedited treatment of its motion, alleging that the pages sought to be expunged contained information contained in *in camera* portions of the record in this proceeding.

The Commission has not as yet determined what disposition it will make of respondent's motion. However, pending a determination as to the alleged *in camera* status of the information contained in complaint counsel's brief it will order that this brief be maintained in the *in camera* portion of the docket of this case. The Commission notes, however, that *in camera* treatment should be granted sparingly. If respondent's allegation of *in camera* status is meant seriously as a separate claim from its motion to strike, respondent should specify within 15 days precisely those portions of pp. 19-25 which it believes should be maintained *in camera*, in the event that the motion to strike is not granted.

In addition, the Commission notes that the *in camera* findings of the administrative law judge filed in this matter contain information pertaining to market shares of RSR and Quemetco in 1971 and 1972 (I.D. 246-248, 256-258) and pertaining to the distances to which various plants of RSR and Quemetco shipped lead in those same years. (I.D. 217-218, 223) There is an obvious and substantial public interest in having decisions of the Commission contain, for public inspection and review, all information relevant to the Commission's determination. In light of this public interest, and in light of the fact that the information contained *in camera* is four to five years old, the Commission will order the parties within 15 days to show cause as to why the information

described below, to the extent that the Commission may determine it to be relevant, should not be made available to the public in the opinion of the Commission rendered in this matter. Therefore,

*It is ordered*, That the parties shall, within 15 days, file memoranda indicating for what reason, if any, the following categories of information may not be included in the opinion of the Commission in this matter and be made available to the public:

(1) *In camera* findings of the administrative law judge Nos. 246-248, 256-258 (whether or not CX 64 is placed on the public record).

(2) *In camera* findings of the administrative law judge 217-218, and 223, as well as other shipping distance figures derivable from CX 69-77, 79, including average plant shipping distance, percentage of plant production shipped to various States, and percentage of plant production shipped various distances.

*It is further ordered*, That pages 19-25 of complaint counsel's Reply Brief in this matter shall be maintained in the *in camera* portion of the record, pending Commission resolution of respondent's "Motion to Strike."

Order

88 F.T.C.

IN THE MATTER OF  
HORIZON CORPORATION

*Docket 9017. Order, July 28, 1976*

Denial of respondent's motion to quash subpoenas duces tecum.

*Appearances*

For the Commission: *Eugene Kaplan, Lemuel W. Dowdy, John M. Tifford and Paul L. Chassy.*

For the respondent: *Basil Mezines, Stein, Mitchell & Mezines, Washington, D. C. J. Michael Brennan and Samuel Pruitt, Jr., Gibson, Dunn & Crutcher, Los Angeles, Calif.*

ORDER DENYING MOTION TO QUASH SUBPOENAS DUCES  
TECUM

The administrative law judge ("ALJ") has certified to the Commission respondent's motion to quash subpoenas duces tecum issued to Aetna Business Credit, Inc., and FNB Financial Co.,<sup>1</sup> both of which, according to the motion, are respondent's creditors.<sup>2</sup> The subpoenas were issued by the Assistant Director of Marketing Practices, Bureau of Consumer Protection, in connection with an investigation of Unnamed Promoters and Sellers of Interests in Subdivided Land, File No. 742 3193 under Part II of the Rules of Practice.

Respondent asserts that the subpoenas seek information directly related only to matters involved in the instant adjudicatory proceeding, and that, accordingly, application for the subpoenas should have been made to the ALJ under Section 3.34. Respondent further argues that complaint counsel are attempting to circumvent the Commission's ruling in *Electronic Computer Programming Institute, Inc.*, 3 CCH Trade Reg. Rep. ¶21,039 (November 11, 1975) [86 F.T.C. 109], that the law judges should not permit the discovery or introduction of evidence relevant only to Section 19 of the F.T.C. Act<sup>3</sup> and the ALJ's statements to complaint counsel during a May 3, 1976, prehearing conference that any additional subpoenas against respondent would have to be "very specific and very limited and you are going to have to demonstrate relevancy beyond any doubt. My advice is to wait until you get full

<sup>1</sup> An investigational subpoena has also issued to Ford Motor Credit Company. See Opposition and Answer by Complaint Counsel to Respondent's Motion to Quash Subpoenas Duces Tecum Issued to Respondent's Creditors and to Enjoin Complaint Counsel from Obtaining Documents Pursuant to these Subpoenas and Other Relief at 2. According to complaint counsel none of the subpoenaed companies has moved to quash or modify its subpoena. *Id.* at 9.

<sup>2</sup> The ALJ denied respondent's motion to enjoin complaint counsel from seeking or accepting documents or testimony from Aetna, FNB, or others through any Commission process other than that authorized by the Part III rules.

<sup>3</sup> Section 19 authorizes the Commission to bring consumer redress actions in State and Federal courts.

compliance [with the subpoenas already issued] and give me one more subpoena.”

Complaint counsel respond that the purpose of the aforesaid subpoenas is to determine whether any of respondent's lenders have themselves violated Section 5 and not to obtain “backdoor discovery” against Horizon. Complaint counsel note that respondent has tentatively offered to supply complaint counsel with information bearing on Section 19 relief.

The Commission “\* \* \* may conduct such investigations as it deems necessary even though such investigations may cover ground which is already the subject of an adjudicative proceeding.” *FTC v. Waltham Watch Co.*, 169 F. Supp. 614, 620 (S.D.N.Y. 1959). Of course, investigational subpoenas should not be used to circumvent safeguards designed to ensure fair and expeditious trials. We have already held that it is not in the public interest to delay Part III proceedings by the discovery and reception of evidence relevant only to Section 19 issues. *Electronic Computer Programming Institute, supra*. However, the ALJ has the means of preventing the introduction of irrelevant evidence, or evidence obtained in violation of any orders he issues relating to the timing and scope of discovery.<sup>4</sup>

No showing having been made that the investigational subpoenas will deprive respondent of a prompt and fair trial<sup>5</sup> the Commission has determined to deny the aforesaid motion to quash.

*It is so ordered.*

<sup>4</sup> We do not mean to suggest that relevant evidence which happens to be obtained pursuant to the investigational subpoenas will necessarily be inadmissible. See Rules of Practice, Section 3.43(c).

<sup>5</sup> We disagree with complaint counsel that respondent lacks standing to move to quash the instant subpoenas. While a party may not ask for an order to protect the rights of another party or a witness if that party or witness does not claim protection for himself, see *Commercial Laundry v. Linen Supply Assn.*, 90 F. Supp. 470 (S.D.N.Y. 1950); 8 C. Wright & A. Miller, *Federal Practice and Procedure* §2035 at 261 (1970), he may seek an order if he believes his own interest is jeopardized. *Id.* Respondent, as the subject of an adjudicative proceeding, was entitled to raise its claim that the investigational subpoenas would jeopardize its procedural rights.

Modifying Order

88 F.T.C.

IN THE MATTER OF

## CROWN CENTRAL PETROLEUM CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT*Docket 8851. Complaint, July 14, 1971 — Modifying order, Aug. 3, 1976*

Order modifying an earlier order dated Nov. 26, 1974, 40 F.R. 12775, 84 F.T.C. 1493, by entering the modifying words "performance" before the words "quality" and "characteristic" in order provision 7(d) of the order.

*Appearances*

For the Commission: *Fauster J. Vittone* and *Jean F. Greene*.

For the respondent: *James H. Kelley* and *Leonard A. Tokus*, *Bergson, Borkland, Margolis & Adler*, Washington, D.C. and *Morton H. Sacks, Cable, McDaniel, Bowie & Bond*, Baltimore, Md.

## ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondent having filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and that Court having issued, on March 4, 1976, its order affirming the Commission's order to cease and desist entered November 26, 1974 [84 F.T.C. 1493], with the insertion of modifying words in one provision thereof:

*It is ordered*, That the Commission's order issued in this matter on November 26, 1974, be modified in accordance with the decision and judgment of the Court so as to read in full as follows:

*It is ordered*, That respondent Crown Central Petroleum Corporation, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, sale or distribution of Crown gasolines, or the additive CA-101, or any other product 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 any such product:

(a) Will produce or result in motor vehicle exhaust which is pollution free or generally pollution free; or

(b) Will eliminate or reduce air pollution caused by motor vehicles; or

(c) Will eliminate or reduce emissions from all or any number or group of motor vehicles in which it is used;

or that:

(d) Any gasoline or gasoline additive product has any other performance quality, performance ability or performance characteristic; or

(e) Tests, demonstrations, research or experiments have been conducted which prove or substantiate any of said representations; *unless* and only to the extent that each and every such representation is true and has been fully and completely substantiated by competent scientific tests. The results of said tests, the original data collected in the course thereof and a detailed description of how said tests were performed shall be kept available in written form for at least three years following the final use of the representation.

2. Representing directly or by implication that any such product has any effectiveness in reducing air pollution or any air pollutant or air pollutants without at the same time, in the same advertisement or other form of communication, conspicuously disclosing that not all of the harmful pollutants in automotive exhaust are affected by said product.

3. Representing directly or by implication that any product will reduce any emissions of pollutants from automobile exhaust by any percentage or numerical quantity unless in connection therewith there is a clear, accurate and conspicuous disclosure of the type of vehicle which can expect to achieve reductions of such magnitude and the approximate percentage of such vehicles in the general car population.

*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 respondent shall 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 affects compliance obligations arising out of the order.

*It is further ordered,* That respondent shall, within sixty (60) days after service of the order upon it, file with the Commission a written report, signed by the respondent, setting forth in detail the manner and form of its compliance with the order to cease and desist.

Modifying Order

88 F.T.C.

## IN THE MATTER OF

WEAVER AIRLINE PERSONNEL SCHOOL, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT*Docket C-2638. Complaint, Feb. 13, 1975 — Modifying order, Aug. 3, 1976*

Order modifying an earlier order dated Feb. 13, 1975, 40 F.R. 15872, 85 F.T.C. 237, adds to Paragraph 12(2)(c) of the order the provision that if money required to be deposited in the Escrow Funds cannot be distributed, respondent must make direct pro rata payments to eligible students within 60 days.

*Appearances*

For the Commission: *Walter E. Diercks* and *Lawrence M. Hodapp*.  
For the respondents: *Charles Edward Fairfax, III, Cahill, Gordon & Reindel*, New York City.

ORDER MODIFYING ORDER TO CEASE AND DESIST AND  
ORDER DISCONTINUING STAY

On May 18, 1976 [87 F.T.C.1288], the Commission issued an order to show cause why the Commission's order to cease and desist, issued February 13, 1975 [85 F.T.C. 237], in this proceeding, should not be altered and modified by language specified in the order. The modification was proposed to make clear that respondent General Educational Services Corporation's obligation to pay restitution would not be affected by the removal of monies from the escrow account which will be funded by certain students of respondent Weaver Airline Personnel School, Inc. Respondents, in their answer to the order to show cause, indicate that they and Commission's staff have negotiated a modification that differs from the modification proposed in the order to show cause by providing that respondent General Educational Services Corporation "shall make direct pro rata payments to" eligible Weaver students "if any of the sums required to be deposited into the Escrow Funds have been removed or cannot be distributed." The modification proposed in the order to show cause was not so specific, providing that General Educational Services Corporation "shall assure \* \* \* that the total sums required be deposited into the Escrow Fund for restitution are paid." We agree that the modification recommended by respondents is preferable, and we will order that the Commission's order to cease and desist be modified by the language recommended in respondents' answer to the order to show cause.

Accordingly, *it is ordered*, That the following language be added to Paragraph 12(2)(c) of the order:

*Provided, however,* That if, other than with the express written consent of the Federal Trade Commission, any of the sums required to be deposited in the Escrow Funds have been removed or cannot be distributed, then within sixty (60) days after the final date established for submission of student requests for restitution under this Paragraph, respondent General Educational Services Corporation shall make direct pro rata payments to the eligible Weaver students described in this Paragraph in the same amounts that each such eligible student would have received had such payments been made from the Escrow Funds, but the total amount so paid shall not exceed the total amount required to be deposited in the Escrow Funds.

\* \* \* \* \*

The Commission further ordered on May 18, 1976, the reopening of this proceeding so as to stay and suspend enforcement of compliance with the notification provision of Paragraph 12 of the order of February 13, 1975. Because the obligation of General Educational Services Corporation has now been clarified, the stay and suspension of compliance is no longer necessary and compliance will be required.

Accordingly, *it is ordered*, that the stay and suspension of compliance with Paragraph 12 of the order of February 13, 1975 be, and it hereby is, discontinued.

Complaint

88 F.T.C.

IN THE MATTER OF

## MAICO HEARING INSTRUMENTS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT*Docket 8927. Amended Complaint, April 30, 1976 — Decision, Aug. 4, 1976*

Consent order requiring a Minneapolis, Minn., manufacturer of hearing aids, among other things to cease imposing on its dealers customer and territorial restrictions and exclusive dealing requirements. The order also requires the firm, under certain circumstances, to make its products available to all qualified dealers, and to maintain, for a ten-year period, a file record of any refusal to sell.

*Appearances*

For the Commission: *Alan I. Leibowitz, L. Barry Costilo, James C. Donoghue and Dennis R. Carluzzo.*

For the respondent: *Thomas C. Kayser, Robins, Davis & Lyons, Minneapolis, Minn.*

## 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 the party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Maico Hearing Instruments, Inc. (hereinafter sometimes "Maico") is a corporation organized under the laws of the State of Minnesota, with its principal office and place of business at 7375 Bush Lake Road, Minneapolis, Minnesota.

PAR. 2. Maico is engaged in the business of manufacturing, distributing, selling and repairing of Maico brand hearing aids. It distributes and sells to selected retail dealers located throughout the United States, who then resell to the general public.

PAR. 3. In the course and conduct of its business respondent ships or causes to be shipped hearing aids from Maico facilities in the State of Minnesota to selected retail dealers throughout the United States. There is now and has been for several years a constant and substantial flow of respondent's hearing aids in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent that competition has been restrained by reason of the practices hereinafter alleged, respondent's selected retail dealers in the course and conduct of their business of offering for sale and selling Maico hearing aids are in substantial competition in commerce with one another and with dealers engaged in the offering for sale and selling of other brands of hearing aids; and respondent is in substantial competition in commerce with others engaged in the manufacturing, distributing, selling and repairing of hearing aids.

PAR. 5. Trade and commerce in the United States in hearing aids is substantial. In 1970, the total value of shipments amounted to approximately \$50 million at the manufacturers' prices, and is estimated to have exceeded \$175 million at retail prices. In 1970, about fifty domestic manufacturers, domestic subsidiaries of foreign manufacturers and domestic distributors of foreign manufacturers sold approximately 510,000 hearing aids through 5,000 retail dealers who employed over 10,000 salesmen.

PAR. 6. In 1970, the top four companies in the hearing aid industry, including Maico, accounted for approximately 50 percent of the dollar value of shipments; the top eight companies accounted for approximately 70 percent of such shipments; and the top twenty companies accounted for over 90 percent of the industry's shipments.

PAR. 7. In 1970, Maico, which has manufactured hearing aids since 1939, was the fourth largest manufacturer of hearing aids in the United States with sales in excess of \$3 million, representing more than 6 percent of the market.

PAR. 8. Hearing aids are sold by the manufacturers directly to the retail dealers, who resell the hearing aids to members of the general public. Wholesalers are rarely used in the distribution process.

Approximately 60 percent of the retail sales of hearing aids occur as a result of an initial, direct contact between the hearing aid dealer and the hearing handicapped, while most of the remaining sales are made after the hearing handicapped are referred to dealers by medical doctors or hearing clinics. It is the practice among medical doctors and hearing clinics, after having determined that an individual may benefit from use of a hearing aid, to recommend a hearing aid to the patient by the brand name and model, rather than by its general performance characteristics. This is done on the basis of actual tests with hearing aids which have been placed with such doctors or clinics by either the manufacturers or dealers. Then, because the doctors and clinics do not sell hearing aids, the patient is referred to the hearing aid dealer in his locale who deals in the brand of hearing aid recommended. While the average price of a hearing aid to a dealer is about \$100, the average retail price to the hearing handicapped is about \$350. More than 50

percent of the persons with hearing impairment who purchase hearing aids are over 65 years of age.

PAR. 9. In the distribution and sale of their hearing aids, a number of the manufacturers of hearing aids for many years have used and pursued parallel courses of business behavior.

Among such courses of business behavior are the following:

(1) distributing and selling their hearing aids directly to selected retail dealers, refusing to deal with all other dealers;

(2) entering into agreements or understandings with their dealers, which agreements:

(a) establish territories within which the dealers may advertise and sell their products;

(b) require exclusive dealing in the manufacturers' products;

(c) assign sale or purchase quotas to be met by their dealers;

(d) encourage or require the use of the manufacturers' brand name in the dealers' trade style;

(e) restrict the classes of customers with whom their dealers may deal;

(f) require their dealers to submit the names and addresses of their customers to the manufacturers;

(g) permit the manufacturers to terminate such agreements without cause upon thirty days notice; and

(h) in the event of such termination permit the manufacturers to repurchase the terminated dealers' products purchased from such manufacturers;

(3) refusing to issue the express product warranty to consumers unless and until their dealers have reported the names and addresses of their customers to the manufacturers;

(4) encouraging or requiring their dealers to participate in cooperative advertising programs which preclude mention that the dealers offer competing brands of hearing aids for sale;

(5) engaging in extensive national brand advertising of their hearing aids;

(6) suggesting to their dealers retail prices for hearing aids which are often more than 300 percent above the manufacturers' prices to the dealers, with dealers generally selling at such suggested retail prices;

(7) selling repair parts and offering repair service only to their selected dealers, refusing to sell such parts to all others, including

independent repairmen or repair centers, and refusing to offer repair service to all other dealers.

The effect of the aforesaid parallel courses of business behavior has been to eliminate intra-brand and to hinder or suppress inter-brand competition in the hearing aid industry, and, further, to aggravate the unfair and anticompetitive effect of the acts and practices of the respondent as alleged in Paragraphs Ten and Eleven.

PAR. 10. In the course and conduct of its business of manufacturing, distributing, selling and repairing its hearing aids in commerce, Maico pursues the following course of action:

A. It requires its selected dealers to sell Maico hearing aids within assigned geographic territories;

B. It requires its selected dealers to deal exclusively in Maico hearing aids;

C. It fixes, establishes, controls and maintains the retail prices at which its selected dealers sell or repair Maico hearing aids;

D. It prohibits its dealers from dealing with certain potential customers;

E. It prevents others, not its dealers, from dealing in, or repairing Maico hearing aids;

F. It appropriates and uses for its own purposes the names and addresses of its dealers' customers.

PAR. 11. In furtherance of this course of action, respondent has been and now is engaged alone or with its dealers in the following acts and practices, among others:

(1) Respondent uses agreements or understandings which  
(a) require a dealer to sell Maico hearing aids within an assigned territory;

(b) require a dealer to achieve a sales quota fixed from time to time by Maico;

(c) prohibit a dealer from soliciting, selling, repairing or making delivery of any of Maico hearing aids outside the assigned territory;

(d) require a dealer to submit to Maico the name and address of each customer who purchases Maico hearing aids;

(e) provide that Maico has the right to terminate the contract for failure to make quotas at any time, or for violations of the terms thereof, upon thirty days written notice to the dealer;

(2) Respondent refuses to sell to all but a few dealers, selected in such a manner that each of such selected dealers enjoys territorial

exclusivity so that he is not in competition with any other dealer selling Maico hearing aids;

(3) Respondent requires its dealers to surrender to it all inquiries which are received from prospective purchasers residing outside of such dealers' assigned territories;

(4) Respondent refuses to issue Maico's express product warranty unless and until the dealer from whom the hearing aid was purchased forwards the retail purchaser's name and address to Maico;

(5) Respondent permits or requires its dealers to use the Maico brand name, in conjunction with a geographic identification of the dealers' locations, or otherwise, in the dealers' trade styles;

(6) Respondent supplies its dealers only with names of prospective customers arising in such dealers' assigned territories;

(7) Respondent offers to its dealers a cooperative advertising plan which provides that Maico will not share the cost of any dealer advertisement outside of his assigned territory, or which mentions in any way that the dealer also offers for sale other brands of hearing aids;

(8) Respondent issues to its dealers price lists or provides other means by which the retail prices for Maico products are set forth;

(9) Respondent requires its dealers to adhere to repair prices recommended by Maico, which prices are also made available to users of hearing aids;

(10) Respondent refuses to sell Maico repair parts or to provide schematics to all dealers, or to persons engaged in the business of repairing or servicing hearing aids;

(11) Respondent refuses to supply Maico promotional and advertising materials, price lists, hearing aid specifications or performance information to all dealers;

(12) Respondent prohibits its selected dealers from selling Maico hearing aids to other dealers of hearing aids;

(13) Respondent provides in its standard-form contract that Maico has the right to terminate the contract, at any time, upon thirty days notice to the dealer;

(14) Respondent provides in said contract that in the event of termination:

(a) a dealer is required to return to the respondent the names and addresses of Maico hearing aid users;

(b) Maico has the right to repurchase the terminated dealer's inventory of Maico products.

PAR. 12. The acts and practices of respondent enumerated hereinabove in Paragraphs Ten and Eleven, taken either individually or collectively, are oppressive, coercive, unfair and anticompetitive and have the tendency and capacity of hindering, suppressing or eliminating competition, or constitute unfair methods of competition, or unfair acts or practices with the following effects, among others:

(1) Competition between respondent and other manufacturers of hearing aids has been hindered and suppressed;

(2) Competition among dealers dealing in Maico hearing aids has been eliminated;

(3) Such dealers have sold or repaired Maico hearing aids at prices established by respondent;

(4) Such dealers have been deprived of their freedom to select their customers and otherwise to function as free and independent businessmen;

(5) Such dealers have been deprived of their ownership of, and freedom to maintain, confidential lists of their customers;

(6) Competition among dealers dealing in Maico hearing aids and dealers dealing in other brands of hearing aids has been hindered and suppressed;

(7) Retail dealers of hearing aids have been deprived of their freedom to act in the best interests of the hearing-impaired public;

(8) Consumers have been deprived of their right to fair and impartial recommendations from dealers in the selection of hearing aids for the alleviation of their hearing impairment;

(9) Consumers have been deprived of the benefits of free competition;

(10) Those engaged in the repairing or servicing of hearing aids in

competition with respondent have been deprived of their right to repair or service Maico hearing aids.

PAR. 13. The aforesaid acts and practices of respondent have the tendency unduly to restrict and restrain competition and have injured, hindered, suppressed, lessened or eliminated actual or potential competition, are to the prejudice and injury of the public, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges respondent Maico Hearing Instruments, Inc. with violating 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 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 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(b) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Maico Hearing Instruments, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 7375 Bush Lake Road, Minneapolis, Minnesota.

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 and its 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, sale or repair of its own brand name or trademark hearing aids, or hearing aid accessories, in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Entering into, maintaining, preserving, or enforcing, by refusal to sell or repair, setting of sales quota or equivalent thereof, termination or threat thereof, request, or in any other manner, any arrangement or method of doing business with a dealer of hearing aids and/or accessories which has the purpose or effect of precluding or preventing a dealer from selling the product of one or more other hearing aid manufacturers.

2. Refusing to make available promptly upon request:

(a) Respondent's hearing aids, respondent's hearing aid accessories which respondent sells or any of respondent's written materials relating to fitting and selling such hearing aids or accessories, to any dealer engaged in the sale of hearing aids; or

(b) repair or replacement parts for respondent's hearing aids or any of respondent's written materials relating to repairing or replacing such hearing aids, to any person engaged in the repair of hearing aids, when requested for such purpose, if respondent makes repair or replacement parts available to any dealer for such purpose; *provided, however*, that respondent may impose a ten dollar (\$10.00) minimum order requirement for such parts;

(c) repair service on a nondiscriminatory basis with respect to a hearing aid manufactured by respondent when requested by any dealer who sold such aid;

*provided, however*, that if no other provision of this order is violated thereby:

(i) Respondent may require as a condition to the availability from it of any of its products, services or materials, that the dealer or person referred to in 2(a), (b) and (c) above has received instruction or met standards necessary for the fitting, servicing, and/or repairing of respondent's hearing aids which are required at that time of all then existing dealers of respondent's products or all persons then engaged at the request of respondent in the repair of respondent's products, so long as such instruction, if made available to any dealer or person, is made available by respondent on reasonable terms and conditions to all dealers or persons wanting to deal in or repair respondent's products;

(ii) Respondent may refuse to make available directly from it any of its products or materials to any dealer or person if such requesting dealer or person is able promptly to obtain the product or materials

from another dealer or distributor at respondent's price to such dealer for a single unit (meaning the same price and discount terms available from respondent) plus a reasonable service charge not to exceed the sum of twenty five dollars (\$25.00), said sum to be adjusted annually by any increase or decrease after 1974 in the Consumer Price Index as published by the United States Government;

(iii) Respondent may refuse to make available directly from it any of its products, services or materials to any dealer or person on other grounds related to that dealer's or person's professional competence or ethical conduct, so long as such refusals are uniformly made where such grounds exist;

(iv) Respondent may refuse to make available directly from it any of its products or materials to any dealer or person if such requesting dealer or person will not agree to purchase a minimum initial order of five (5) of respondent's hearing aids on a cash with order basis.

3. Entering into, maintaining, preserving or enforcing by refusal to sell or repair, setting of sales quota or equivalent thereof, termination or threat thereof, request, report of sale, warranty limitation, use of names or addresses of a dealer's customers, or in any other manner, any arrangement or method of doing business which has the purpose or effect of restricting or limiting:

(a) the territory or area in which a dealer of respondent's hearing aids advertises, offers for sale, sells or repairs such products, or

(b) the person or persons with whom a dealer of respondent's hearing aids deals.

4. Failing to return any hearing aid submitted to respondent for repair directly to the dealer who submitted such product for repair unless otherwise instructed in writing by such dealer.

5. Fixing, establishing, stabilizing, maintaining or suggesting the prices at which a dealer of respondent's hearing aids may or shall advertise, offer for sale, or sell to the public, or a person repairing respondent's hearing aid may repair such products; *provided, however*, that nothing in this order shall prohibit respondent after ten years from the date of entry of this order from exercising any lawful rights it may then have under the Miller-Tydings Act, 50 Stat. 693 (1937) and the McGuire Act, 66 Stat. 632 (1952) with respect to hearing aids, accessories or parts.

6. Requiring that a dealer participating in respondent's cooperative advertising program must not state or imply, in such cooperative advertisements, that the dealer also deals in other brands of hearing aids; *provided, however*, that respondent may continue to prohibit in

such cooperative advertisement the stating of other brand names of hearing aids.

7. Requiring or coercing a dealer of respondent's hearing aids to submit to respondent the names or addresses of any customers of such dealer, or, with respect to such customer names or addresses obtained from a dealer after the effective date of this order, maintaining, using, publishing or disseminating them for any purpose, without securing the free and informed written consent of the dealer for each such purpose based upon full disclosure to the dealer of the specific uses and disseminations which would be made of the customer names. No such consent shall be sought for other than respondent's advertising and promotional programs for at least one hundred twenty (120) days from the date of respondent's initial shipment of hearing aids to a new dealer or, in the case of an existing dealer, at least sixty (60) days after service on the dealer of this order and letter attached hereto as Appendix A.

8. Preventing any dealer from using respondent's product (brand) name in connection with the advertising, offering for sale, sale or repair of any of respondent's products, except that respondent may protect its rights in such name recognized at law.

9. Failing to include and deliver with any of respondent's hearing aids sold by respondent any express product warranty for such product provided by respondent to the user.

## II

*It is further ordered,* That respondent shall:

(a) Forthwith distribute a copy of this order to each of its operating units, to its present corporate officers and to its present sales and repair personnel, and shall secure from each such officer, employee or other person, a signed statement acknowledging receipt of said order;

(b) Within thirty (30) days after service upon it of this order, distribute a copy of the letter attached to this order and made a part hereof as Appendix A to each of its existing hearing aid dealers and to every person known to it to be engaged in the repair of respondent's products;

(c) Within sixty (60) days after service upon it of this order, place a full-page advertisement in a trade journal or publication with circulation among hearing aid dealers, which advertisement shall clearly and conspicuously disclose the provisions of Part I of this order;

(d) Within one hundred and twenty (120) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order, including a list of all dealers and other persons on whom it has served a

copy of Appendix A, and a copy of the publication which includes respondent's advertisement required by this order;

(e) For a period of ten (10) years from the date hereof establish and maintain a file of all records referring or relating to respondent's refusal to sell to any hearing aid dealer, or person engaged in the business of repairing hearing aids, which file must contain a record of a communication to such dealers or persons explaining respondent's refusal to sell, 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 Commission listing the names of all dealers or persons with whom respondent has refused to deal over the preceding year, a description of the reason for the refusal, and the date of the refusal;

(f) 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 this order.

#### APPENDIX A

Dear

The Federal Trade Commission has entered a consent order affecting the hearing aid and accessory operations of Maico Hearing Instruments, Inc. which obligates it not to impose various restrictions upon dealers or to engage in certain other practices. The order is for settlement purposes only and does not constitute an admission that the law has been violated as alleged by the Commission. A copy of the pertinent provisions of the order is enclosed for your careful examination. If in the future you believe that any of its terms have been violated, the details may be reported in writing to:

Federal Trade Commission

Bureau of Competition

Washington, D.C. 20580

We welcome the opportunity to do business with you on terms which are in accordance with the letter and the spirit of the Federal Trade Commission order.

Yours very truly,

President, Maico Hearing Instruments, Inc.

## Complaint

## IN THE MATTER OF

## ANDREX INDUSTRIES CORPORATION, ET AL.

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

*Docket C-2831. Complaint, Aug. 11, 1976 — Decision, Aug. 11, 1976*

Consent order requiring a New York City manufacturer and seller of fabrics, among other things to cease misbranding and mislabeling wool products; misrepresenting the wool and other fiber content of their fabrics and further requires respondents to notify their customers that the fabrics they purchased were misbranded. The order further prohibits respondents from using the term "Angorama" in connection with products not substantially composed of "angora" fibers.

*Appearances*

For the Commission: *Jerry R. McDonald.*

For the respondents: *Hahn, Hessen, Margolis & Ryan, New York City.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Andrex Industries Corp., a corporation, and Stephen Gottdiener, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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 Andrex Industries Corp. 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 1430 Broadway, New York, New York.

Respondent Stephen Gottdiener is an officer of Andrex Industries Corp. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

Respondents are engaged in the business of manufacturing and selling fabrics including but not limited to wool products.

PAR. 2. Respondents, now and for some time past, have manufactured for introduction into commerce, introduced into commerce, transported, distributed, delivered for shipment, shipped, offered for sale, and sold in commerce as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain fabrics represented to contain wool and stamped, tagged, labeled, or otherwise identified by respondents as 70% polyester, 15% acrylic and 15% angora wool; whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the rules and regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were wool products, namely fabrics represented as containing wool, with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers.

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the rules and regulations promulgated thereunder in the following respect:

Samples, swatches or specimens of wool products used to promote or effect sales of such wool products in commerce, were not labeled or marked to show the information required under Section 4(a)(2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in violation of Rule 22 of the aforesaid Rules and Regulations.

PAR. 6. The acts and practices of respondents as set forth above

were, and are, in violation of the Wool Products Labeling Act of 1939 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, under the Federal Trade Commission Act, as amended.

PAR. 7. Respondents are now and for some time past have been engaged in the manufacture, offering for sale, sale, and distribution of certain products, namely fabrics. In the 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 mill in the State of North Carolina to purchasers 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 products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 8. Respondents in the course and conduct of their business have disseminated to prospective purchasers samples of wool products used to promote or effect sales of such wool products affixed to sample cards. The trademark, "Angorama," was conspicuously printed upon said sample cards representing, directly or indirectly, that said products contained angora wool whereas, in truth and in fact, said products did not contain angora wool but contained substantially different fibers.

PAR. 9. Respondents in the course and conduct of their business as aforesaid have made statements on their sample cards and invoices setting forth the fiber content of certain of their products as 70% polyester, 15% acrylic, 15% angora wool whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

PAR. 10. The acts and practices set forth in Paragraphs Eight and Nine have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof.

PAR. 11. The aforesaid acts and practices of the respondents as herein alleged in Paragraphs Eight and Nine were, and are, all to the prejudice and injury of the public, and constituted, and now constitute, unfair and deceptive acts or practices in or affecting commerce, within the intent and meaning 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 New York 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, as amended, and the Wool Products Labeling Act of 1939; 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 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 Andrex Industries Corp. 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 1430 Broadway, New York, New York.

Respondent Stephen Gottdiener is an officer of said corporation. He formulates, directs and controls the acts, practices and policies of said corporation, and his principal office and 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 Andrex Industries Corp., a corporation, its successors and assigns, and its officers, and Stephen Gottdiener, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as

"commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products.

2. Failing to securely affix to or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

3. Failing to securely affix labels to samples, swatches or specimens of wool products, used to promote or effect the sale of such wool products, showing in words and figures plainly legible all the information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

*It is further ordered,* That respondents Andrex Industries Corp., a corporation, its successors and assigns, and its officers, and Stephen Gottdiener, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, or other device in connection with manufacturing, advertising, offering for sale, sale or distribution of fabrics in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Using the word "Angorama" or any word of similar import on sample cards or in any other manner in connection with any product that is not composed substantially of fibers entitled to be designated as "angora." *Provided, however,* that this order shall not be construed as prohibiting use of the word "Angorama" in connection with a product composed in substantial part of fibers entitled to be designated "angora" if such word is accompanied by a clear and conspicuous statement of the percentage by weight of the fibers contained therein.

2. Misrepresenting the amount or character of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto, or in any other manner.

*It is further ordered,* unless heretofore complied with, That respondents notify each of their customers that purchased the wool products which gave rise to this complaint of the fact that United States government tests have shown that such products were misbranded.

*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 individual respondent named herein promptly notify the Commission of each change in business or

employment status, which includes discontinuance of his present business or employment and each affiliation with a new business or employment, for ten (10) years following the effective date of this order. Such notices shall include respondent's current business address and a description of the business or employment in which he is engaged as well as a description of his duties and responsibilities. The expiration of the notice provision of this paragraph shall not affect any other obligations arising under this order.

*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 respondents 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 the order to cease and desist contained herein.

IN THE MATTER OF  
SUNSHINE ORIGINALS OF MIAMI, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION AND TEXTILE FIBER  
PRODUCTS IDENTIFICATION ACTS

*Docket C-2832. Complaint, Aug. 11, 1976 — Decision, Aug. 11, 1976*

Consent order requiring a Hialeah, Fla., garment manufacturer among other things to cease misbranding and falsely guaranteeing textile fiber products; failing to disclose legally required information concerning such products; and misrepresenting domestic and foreign branch offices.

*Appearances*

For the Commission: *Truett M. Honeycutt.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Sunshine Originals of Miami, Inc., a corporation, also doing business as Don Manuel of Miami, and Manuel Ramos and Manuel A. Ramos, Jr., individually and as officers of Sunshine Originals of Miami, Inc., hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Textile Fiber Products Identification Act, and it now appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sunshine Originals of Miami, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida. The respondent corporation maintains its office and principal place of business at 600 W. 18th St., Hialeah, Florida.

Respondents Manuel Ramos and Manuel A. Ramos, Jr., are officers of said corporation. They formulate, direct and control the practices of the corporate respondent. Their address is the same as that of the corporate respondent.

Respondents are engaged in the business of manufacturing garments including particularly men's sport shirts and women's blouses, substantial quantities of which are known in the trade as "irregulars," or "seconds."

Complaint

88 F.T.C.

## COUNT I

Alleging violation of the Textile Fiber Products Identification Act and the implementing rules and regulations promulgated thereunder, and of the Federal Trade Commission Act, as amended, the allegations of Paragraph One hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported, and caused to be transported after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the rules and regulations promulgated under said Act. Among such misbranded textile fiber products, but not limited thereto, were men's sport shirts offered by Sunshine Originals of Miami, Inc., which did not have labels affixed thereto disclosing:

- (1) The generic names of the fibers present in the order of predominance by weight;
- (2) The percentage of the fibers present by weight; and
- (3) The name or other identification, issued and registered by the Commission, of the manufacturer of the products or one or more persons subject to Section 3 with respect to such products.

PAR. 4. Respondents have furnished their customers false guaranties that textile fiber products were not misbranded or falsely invoiced by falsely representing in writing on invoices that they have filed a continuing guaranty under the Textile Fiber Products Identification Act with the Federal Trade Commission in violation of Rule 38(d) of the rules and regulations under said Act and Section 10(b) of such Act.

PAR. 5. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification

Act 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, under the Federal Trade Commission Act, as amended.

## COUNT II

Alleging violations of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraph One, hereof, are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 6. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products to be shipped from their place of business in the State of Florida to purchasers thereof located in various States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

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

PAR. 8. Respondents falsely and deceptively represented, directly or by implication, on textile fiber product labels that they maintain branch offices or other facilities in Rome, Italy; Madrid, Spain; and New York, New York; whereas, in truth and in fact, respondents do not maintain such facilities.

PAR. 9. Respondents falsely and deceptively represented on invoices that they had on file with the Federal Trade Commission a continuing guaranty under the Wool Products Labeling Act of 1939, when, in truth and in fact, respondents did not have such a continuing guaranty on file at the time of the representation.

PAR. 10. Respondents falsely and deceptively represented on invoices that they had on file with the Federal Trade Commission a continuing guaranty under the Flammable Fabrics Act, as amended, when, in truth and in fact, respondents did not have such a continuing guaranty.

PAR. 11. Respondents did not, in each applicable instance, mark their said men's sport shirts and women's blouses in a clear, conspicuous manner to disclose that they were "irregulars" or "seconds," so as to inform purchasers thereof of their imperfect quality. The purchasing public, in the absence of markings showing that men's sport shirts and women's blouses are "irregulars" or "seconds," understands and believes that they are of perfect quality. Respondents' failure to mark or label their products in such a manner as will disclose that said

products are imperfect, has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are perfect quality products and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 12. 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 dealers and other purchasers into the erroneous and mistaken belief that such statements and representations were, and are, true, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged in Paragraphs Six through Twelve, 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 and unfair methods of competition, in or affecting commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

#### 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 Atlanta Regional Office proposed to submit to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing the consent order, with 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, as amended, 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 making the following jurisdictional findings, and enters the following order:

1. Respondent Sunshine Originals of Miami, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 600 W. 18th St., Hialeah, Florida. Sunshine Originals of Miami, Inc. does business under its own name and as Don Manuel of Miami.

Respondents Manuel Ramos and Manuel A. Ramos, Jr. are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

#### ORDER

#### COUNT I

*It is ordered* that respondents Sunshine Originals of Miami, Inc., a corporation, doing business under its own name and as Don Manuel of Miami, its successors and assigns, and Manuel Ramos and Manuel A. Ramos, Jr., individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale, in or affecting commerce, or in the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in any other textile fiber product, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

1. Misbranding textile fiber products by:

a. Falsely or deceptively stamping, tagging, labeling, invoicing or otherwise identifying such products as to name or the amount of constituent fibers contained therein;

b. Failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible and conspicuous manner, each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act;

2. Furnishing a false guarantee that any textile fiber product is not misbranded or falsely or deceptively invoiced or advertised under the provisions of the Textile Fiber Products Identification Act.

## COUNT II

*It is further ordered,* That respondents Sunshine Originals of Miami, Inc., a corporation, doing business under its own name and as Don Manuel of Miami, its successors and assigns, and Manuel Ramos and Manuel A. Ramos, Jr., individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of shirts, blouses or any other articles of merchandise, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Falsely and deceptively representing, directly or by implication on textile fiber product labels or other instrumentalities, that respondents maintain branch offices or other facilities in Rome, Madrid, New York, or any other city or geographic area;

2. Falsely representing in writing that respondents have a continuing guaranty on file with the Federal Trade Commission under the provisions of the Wool Products Labeling Act of 1939;

3. Falsely representing in writing that respondents have a continuing guaranty on file with the Federal Trade Commission under the provisions of the Flammable Fabrics Act, as amended.

*It is further ordered,* That respondents Sunshine Originals of Miami, Inc., a corporation, doing business under its own name and as Don Manuel of Miami, its successors and assigns, and Manuel Ramos and Manuel A. Ramos, Jr., individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of shirts, blouses or other related textile or wool products which are "irregulars," "seconds," or otherwise imperfect, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Selling or distributing any such product without clearly and conspicuously marking thereon the word "irregular" or "second," as the case may be, in such degree of permanency as to remain on the product until the consummation of the consumer sale and of such conspicuousness as to be easily observed and read by the purchasing public;

2. Using any advertisement or promotional material in connection with the offering for sale of any such product unless it is disclosed therein that such article is an "irregular" or "second," as the case may be;

3. Representing in any other manner, directly or by implication, that such products are first-quality or perfect quality.

*It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, Sunshine Originals of Miami, Inc., 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 individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged, as well as a description of their duties and responsibilities.

*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 deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale or sale of any product or in any aspect of preparation, creation or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

*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.

Complaint

88 F.T.C.

IN THE MATTER OF  
THE HERTZ CORPORATION

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

*Docket C-2833. Complaint, Aug. 11, 1976 — Decision, Aug. 11, 1976*

Consent order requiring a New York City dealer in used motor vehicles, among other things to cease misrepresenting and/or failing to disclose material facts relating to the history of used motor vehicles offered for sale by respondent. Further, respondent is required to keep accurate repair records, and to advise prospective customers of their right to inspect these records; and, additionally, a statement as to the availability of repair records for inspection must be conspicuously disclosed on sales contracts and receipts.

*Appearances*

For the Commission: *Michael Dershowitz and Frank H. Addonizio.*  
For the respondent: *Jerrold G. Van Cise, Cahill, Gordon & Reindel,*  
New York City.

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 The Hertz Corporation, a corporation, 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 The Hertz Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 660 Madison Ave., New York, New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, and sale to the public of used motor vehicles and in the servicing and repair thereof.

PAR. 3. In the course and conduct of its aforesaid business, respondent causes, and for some time last past has caused, its used motor vehicles to be shipped from respondent's various rental fleet locations to its retail outlet locations in various States of the United States and the District of Columbia.

Accordingly, the respondent maintains and has maintained a substantial course and conduct of business in or affecting commerce as

