

## Interlocutory Order

## IN THE MATTER OF

## BORDEN, INC.

*Docket 8978. Interlocutory Order, Apr. 5, 1977*

Order granting motion by Department of Commerce to file brief as *amicus curiae*; accepting brief as filed; and granting counsel 30 days to file responsive briefs.

## ORDER

On March 8, 1977, the United States Department of Commerce moved for leave to file a brief as *amicus curiae* in this appeal. The Department's brief was conditionally filed therewith. Complaint counsel and counsel for respondent Borden, Inc. have informally indicated to the Office of the Secretary that they do not intend to file in opposition to the motion.

While the Commission's Rules of Practice do not expressly provide for the filing of *amicus curiae* briefs, we have granted *amicus* treatment to certain filings under section 3.14, which governs intervention in Commission proceedings. See, e.g., *Corning Glass Works*, 82 F.T.C. 1082 (March 22, 1973). Section 3.14 is broadly drafted, providing for orders permitting intervention "to such extent and upon such terms as are provided by law or as otherwise may be deemed proper."

A motion for leave to file a brief *amicus curiae* addresses the discretion of the tribunal. As the term itself and the tradition from which it arises make clear, the role of the *amicus* is not to vindicate its own rights but to clarify for the tribunal the broad implications of the question before it. The brief of the Department of Commerce fits squarely within this role.

It would obviously have been preferable to receive this motion and brief at an earlier stage of the appeal.<sup>1</sup> At this point, all briefs have been filed and oral argument heard. Absent special circumstances, leave to file at this point might well be denied to avoid the disruption and possible delay attendant on granting it. In the present instance, however, the importance of the issue involved and the uniqueness of the Department's perspective outweigh these considerations.

*It is therefore ordered,* That the motion for leave to file a brief as *amicus curiae* be granted, that the brief be accepted as filed, and that complaint counsel and counsel for respondent Borden, Inc., have thirty days to file responsive briefs, if they so desire.

<sup>1</sup> The U.S. Courts of Appeals, by way of analogy, require generally that an *amicus* brief be filed no later than that of the party the brief will support. Rule 29, Federal Rules of Appellate Procedure.

Interlocutory Order

89 F.T.C.

IN THE MATTER OF  
THE RAYMOND LEE ORGANIZATION, INC., ET AL.

*Docket 9045. Interlocutory Order, Apr. 5, 1977*

Order determining that record does not establish any violations of the code of professional responsibility.

ORDER

The administrative law judge has certified to the Commission certain allegations made by respondents that complaint counsel and other Commission personnel have made improper statements concerning respondents and other members of the idea promotion industry. The Commission, of course, expects counsel appearing before this agency to comply with Disciplinary Rule 7-107 (H).<sup>1</sup>

The Commission has determined that only the alleged comments made by counsel of record ought to be considered in the context of this adjudicative proceeding. The Commission has also determined that the record does not establish any violations of the Code of Professional Responsibility.

*It is so ordered.*

<sup>1</sup> The rule provides that during the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to: (1) Evidence regarding the occurrence or transaction involved. (2) The character, credibility, or criminal record of a party, witness, or prospective witness. (3) Physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to such. (4) His opinion as to the merits of the claims, defenses, or positions of an interested person. (5) Any other matter reasonably likely to interfere with a fair hearing.

## Complaint

IN THE MATTER OF  
GENERAL ELECTRIC COMPANYCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket 9049. Complaint, July 29, 1975 --- Decision, Apr. 7, 1977*

Consent order requiring a Fairfield, Conn., manufacturer of television sets and other electrical household appliances, among other things, to cease misrepresenting the comparative superiority, special features and reliability of their products through use of unsubstantiated advertising claims.

*Appearances*

For the Commission: *Walter B. Fisherow* and *James H. Skiles*.

For the respondent: *James Bruce*, Fairfield, Conn. and *White & Case*, New York City and Washington, D.C.

## 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 General Electric Company, a corporation 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 General Electric Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 3135 Easton Turnpike, Fairfield, Connecticut.

PAR. 2. Respondent General Electric Company is now and for some time past, has been engaged in the production, advertising, and sale of consumer electronic products, including color television receivers, which when sold are shipped to purchasers 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 consumer electronic products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent General Electric Company 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, with individuals, firms and corporations engaged in

the sale and distribution of consumer electronic products of the same general kind and nature as those produced and sold by respondent.

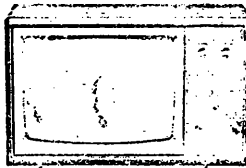
PAR. 4. In the course and conduct of its said business, respondent General Electric Company has disseminated or caused the dissemination of, certain advertisements concerning the said products by the United States mail and by various means in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products, and has disseminated and caused the dissemination of advertisements concerning said products by various means for the purpose of inducing and which is likely to induce, directly, or indirectly, the purchase of said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Typical of the representations and statements contained in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are the following print advertisements which have been reproduced, attached to this complaint, and made a part hereof:

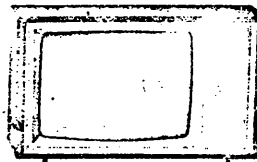
# WHICH COLOR TV REQUIRED LESS SERVICE IN 1973?



RCA



GENERAL ELECTRIC



ZENITH

In 1973, independent surveys\* of recent color TV buyers showed that General Electric color required less service than any other U.S. brand. Not merely an opinion poll, this was a survey of actual TV owners. People like you, who expect the most in reliable TV performance for their money.

To get the kind of picture you expect for your money, go into a store and compare pictures. Ours against any other set.

The best way we know to buy color TV is to compare performance.

To help you compare, get GE's booklet, "How to Buy Color TV in Plain English." For the store nearest you, where you can pick it up free, call this special toll-free number anytime. 800-243-6000. Dial as you normally dial long distance. (In Connecticut, call 1-800-882-6500.)

PERFORMANCE  
TELEVISION

GENERAL  ELECTRIC

US. NEWS  
10/7/74

\*Details available on request.  
TV Receiver Product Dept., Pittsfield, Va.



**TRIC'S**


In 1973, independent surveys\* of recent color TV buyers showed that GE color required less service than any other U.S. make. Reassure yourself. This survey wasn't merely an opinion poll, but an independent survey based on hard facts reported by actual TV owners. Great values in black and white sets, too!

\*Details available on request.



**to Co. TV's—Each**  
**eral Electric History.**

**GE RELIACOLOR CHASSIS**




Model YA5504RW

• Tube-type  
• 70  
• 70-tuning

**ONLY \$348\***

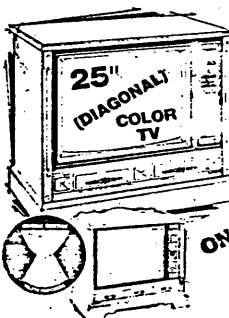
**100% SOLID-STATE MODULAR CHASSIS ONE TOUCH COLOR SYSTEM**



Model CD7314RW

• Spectra Blue picture tube  
• Automatic fine tuning control  
• 70 position "click-in" UHF tuning  
• UHF solid-state tuner

**ONLY \$348\***



Model MB9501MP

• 100% solid-state chassis uses less power than tube-type sets of comparable size • Black matrix Spectra Blue 25 inch picture tube • Hi-contrast picture control • 70 position "click-in" UHF tuning • Hi-contrast picture control • Hi-contrast picture control • Hi-contrast picture control • Hi-contrast picture control

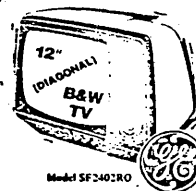
**ONLY \$648\***  
EITHER STYLE

**Portable!**


**PORTABLE**

• Received molded-in handle • 70 position "click-in" UHF tuning • "Daylight Bright" picture tube • High impact Polystyrene control in red-orange finish

**ONLY \$98\***



Model SF2402RO

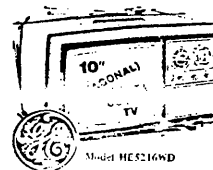


Model AM514P

**100% SOLID-STATE BUILT-IN UHF & VHF ANTENNAS**

• 100% solid-state chassis uses less power than tube-type sets of comparable size  
• Pre-set VHF fine-tuner • 70 position "click-in" UHF tuner • VHF & UHF

**ONLY \$233\***



Model HE5216WD

**SLOTTED MASK "IN-LINE" COLOR PICTURE TUBE SYSTEM**

• 70 position "click-in" UHF tuner • VHF pre-set fine tuning • UHF solid-state tuner • Luggage-type strap handle for easy portability

**\$243\***

Call 1: "National Sales Office" failed - General also Atlanta zone office

PAR. 6. Through the dissemination of these advertisements and others similar thereto not specifically set out herein, respondent has represented directly or by implication that General Electric color television sets purchased or in use in 1973 required less service in that year than Zenith or RCA color television sets.

PAR. 7. At the time of said representation, respondent did not possess and rely upon a reasonable basis for making such representation.

Therefore, the representation set forth in Paragraph Six was, and is, a deceptive or unfair act or practice.

PAR. 8. Through the use of these advertisements and others similar thereto not specifically set out herein, respondent had represented directly or by implication that independent surveys of persons who had bought a color television set in 1973 show that General Electric color television sets bought in that year required less service during the initial period of ownership than all other U.S. brands of color television sets bought in 1973.

PAR. 9. In truth and in fact, independent surveys of persons who had bought a color television set in 1973 did not and do not show that General Electric color television sets bought in that year required less service during the initial period of ownership than all other U.S. brands of color television sets bought in 1973.

Therefore, the representation referred to in Paragraph Eight was and is false, misleading and deceptive.

PAR. 10. Through the dissemination of the aforementioned advertisements and others similar thereto not specifically set out herein, respondent has represented directly or by implication, that independent surveys of persons who had bought a color television set in 1973 show that General Electric color television sets bought in that year will require less service than all other U.S. brands of color television sets bought in 1973.

PAR. 11. In truth and in fact, independent surveys of persons who had bought a color television set in 1973 did not and do not show that General Electric color television sets bought in that year will require less service than all other U.S. brands of color television sets bought in 1973.

Therefore, the representation referred to in Paragraph Ten was and is false, misleading and deceptive.

PAR. 12. Respondent continued to disseminate the aforementioned advertisements, representing that 1973 survey evidence of service levels of General Electric color television sets is a reason to purchase such sets in 1974/75, when respondent knew of and had available to it subsequently acquired evidence of a substantially identical type and

quality which contradicted or was inconsistent with the 1973 survey evidence expressly relied upon.

PAR. 13. Therefore, at the time of the representation referred to in Paragraph Twelve respondent did not possess and rely upon a reasonable basis for making such representation, and the representation set forth in Paragraph Twelve was, and is, an unfair act or practice.

PAR. 14. Furthermore, through its continued dissemination of the aforementioned advertisements, respondent represented, directly or by implication, that it neither knew of nor possessed evidence which contradicted or was inconsistent with the 1973 survey evidence expressly relied upon.

PAR. 15. In truth and in fact, during the time respondent continued to disseminate the aforementioned advertisements, it did know of and possess evidence of an identical type and quality which contradicted or was inconsistent with the 1973 survey evidence expressly relied upon.

Therefore, the representation referred to in Paragraph Fourteen was false, misleading and deceptive.

PAR. 16. Through the use of these advertisements and others similar thereto not specifically set out herein, it was represented directly or by implication that respondent would upon request forward the true and complete details regarding the comparative service information obtained from surveys of recent color television set buyers conducted in 1973.

PAR. 17. In truth and in fact, upon request respondent did not and does not forward the true and complete details regarding the comparative service information obtained from the surveys of recent color television set buyers conducted in 1973.

Therefore, the representation referred to in Paragraph Sixteen was false, misleading and deceptive.

PAR. 18. The use by the respondent of the aforesaid false, misleading, deceptive or unfair statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 19. The aforesaid 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 and deceptive acts and practices and unfair methods of

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

#### DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission issued, 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 respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 3.25(c) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent General Electric Company 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 a principal place of business located at 3135 Easton Turnpike, Fairfield, Connecticut.

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 General Electric Company, a corporation, its successors and assigns, either jointly or individually, and respondent's officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, distribution or sale of any and all of the following household products manufactured or marketed by respondent: monochrome ( *i.e.*, black

and white) television receivers, color television receivers, clothes washers, clothes dryers, ranges, dishwashers, trash compactors, refrigerators, freezers, room air conditioners, stereophonic consoles and nonportable stereophonic sound systems and components (any or all of which products are hereafter referred to in this Part I as "such product(s)"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Advertising or offering such product(s) for sale by referring to any test, experiment, demonstration, study or survey, or any or all of the results thereof (hereafter "evidence"), which evidence is represented, either directly or by implication, as supporting, showing or proving:

(1) the existence or nature of any fact or product feature respecting such product(s) when such evidence does not support, show or prove such fact or product feature;

(2) that such product(s) is superior to any or all competing products in any respect unless such evidence supports, shows or proves that such product(s) is superior in each respect in which it is represented to be superior, and respondent either:

(a) identifies the particular aspect of such superiority and discloses the nature or extent of such superiority in terms reasonably understandable to the class of persons to whom the representation is directed (e.g., consumers, dealers or others); or

(b) has a reasonable basis for concluding that, in connection with the possession or use of such product(s), the nature or extent of such superiority will be discernible to or of benefit to the class of persons to whom the representation is directed:

(3) that any representation about such product(s) or any competing product applies to each type or model of such product(s) or competing product, when the evidence does not support, show or prove the application of such representation to each type or model of such product(s) or such competing product referred to, either directly or by implication;

(4) that such product(s) requires less service or has any other superior service characteristic when compared to any or all competing products unless the evidence at the time such representation is made supports, shows or proves such representation and:

(a) respondent clearly and conspicuously discloses the particular aspect of such product's(s') superior service characteristic which such evidence supports, shows or proves; or

(b) if respondent represents that such product(s) requires less service and such evidence supports, shows or proves that such product(s)

requires both less frequent and less costly service, then respondent need not make the disclosure required by this subparagraph (4);

or:

(5) that such product(s) is more dependable or more reliable when compared to any or all competing products unless the evidence at the time such representation is made supports, shows or proves such representation and respondent clearly and conspicuously discloses the particular aspect of such product's(s') greater dependability or reliability which such evidence supports, shows or proves.

B. Advertising or offering such product(s) for sale by referring to evidence to support, show or prove any representation covered by Paragraph A of Part I when such evidence is inconsistent with or contradicted by any valid, reliable or substantially identical evidence known to respondent unless at the time such representation is made:

(1) respondent relies on an affidavit by a person qualified by training or experience to evaluate such evidence who, relying on standards generally recognized by qualified experts in that particular field, concludes that the inconsistent or contradictory evidence may be disregarded; and

(2) the affidavit states the qualifications of the affiant and sets forth the generally recognized standards on which he relied in reaching his conclusion.

C. Representing, directly or by implication, that the details of any evidence will be forwarded upon request, unless respondent furnishes a fair and accurate summary of all the details of such evidence as to all products to which such representation extends, including the methodology used and any qualifications respecting the applicability of the results.

D. Representing, directly or by implication:

(1) that such product(s), when compared to any or all competing products:

(a) is or will be more dependable or more reliable; or

(b) has required or does or will require less service or less frequent or less costly service,

*Unless* and only to the extent that respondent has a reasonable basis for such representation which, for the purpose of this subparagraph D(1), shall consist of competent and reliable studies, surveys or scientific or engineering tests. This definition of "reasonable basis" is subject to this exception: for a reasonable period following the introduction of a new feature or a new model of such product, respondent may make representations encompassed by this subpara-

graph D(1) on the basis of literature or generally recognized scientific or engineering principles, but only if respondent immediately undertakes competent and reliable studies, surveys or scientific or engineering tests relating to such representations. If the results of such studies, surveys or tests do not provide a reasonable basis for such representations with respect to the new feature or new model, respondent shall forthwith cease and desist from making such representations;

(2) that such product(s) when compared to any or all competing products has, had or will have any superior service characteristic other than frequency or cost of service, unless and only to the extent that respondent has a reasonable basis for such representation; or

(3) that such product(s) has, had or will have service needs or requirements, unless and only to the extent that respondent has a reasonable basis for such representation.

## II

*It is ordered.* That respondent General Electric Company, a corporation, its successors and assigns, either jointly or individually, and respondent's officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, distribution or sale of any and all monochrome (*i.e.*, black and white) television receivers and color television receivers manufactured or marketed by respondent (any or all of which products are hereafter referred to in this Part II as "such product(s)"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, with respect to the performance or a performance characteristic of such product(s):

(1) the existence or nature of any fact or product feature;

(2) that such product(s) is superior to any or all competing products in any respect; or

(3) that any representation about such product(s) or any competing product applies to each type or model of such product(s) or such competing product referred to, either directly or by implication,

*Unless* and only to the extent that respondent has a reasonable basis for such representation; *provided, however,* that this Paragraph A of Part II shall not apply to representations encompassed by subparagraph A(2) of Part I or Paragraph D of Part I.

B. Representing, directly or by implication:

(1) that such product(s) is superior to any or all competing products in

any respect unless such product(s) is superior in each respect in which it is represented to be superior, and respondent either:

(a) identifies the particular aspect of such superiority and discloses the nature or extent of such superiority in terms reasonably understandable to the class of persons to whom the representation is directed (*e.g.*, consumers, dealers or others); or

(b) has a reasonable basis for concluding that, in connection with the possession or use of such product(s), the nature or extent of such superiority will be discernible to or of benefit to the class of persons to whom the representation is directed;

or:

(2) that any representation about such product(s) or any competing product applies to each type or model of such product(s) or competing product when such representation does not apply to each type or model of such product or such competing product referred to, either directly or by implication.

### III

If the Federal Trade Commission hereafter promulgates any trade regulation rule or guide governing the advertising or offering for sale of any product governed by this order, which rule or guide is less restrictive than the corresponding provision(s) of this order, and respondent files a motion with the Federal Trade Commission to modify this order to correspond to such less restrictive rule or guide, the Federal Trade Commission shall rule upon respondent's motion within 120 days after such motion is filed or, if respondent's motion to modify is filed at least 60 days prior to the effective date of such rule or guide, then the Federal Trade Commission shall rule upon respondent's motion within 60 days after the effective date of such rule or guide. Should the Federal Trade Commission fail to rule upon respondent's motion to modify within such time periods, then such rule or guide shall automatically be deemed to modify and replace the corresponding provision(s) of this order.

### IV

The provisions of Parts I and II of this order will not apply for a period of one year from the date of signature of this order to printed materials other than media advertisements and point of purchase displays.

## v

*It is further ordered,* That respondent shall forthwith distribute a copy of this order to each of its operating divisions engaged in the preparation or placement of advertisements of any product listed in Part I.

*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 may affect compliance obligations arising out of this order.

*It is further ordered,* That respondent shall, within sixty (60) days after the effective date of this order, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with this order.

Complaint

89 F.T.C.

IN THE MATTER OF  
NATIONAL SERVICE INDUSTRIES, INC., T/A CERTIFIED  
LEASING COMPANY

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

*Docket C-2876. Complaint, Apr. 7, 1977 --- Decision, Apr. 7, 1977*

Consent order requiring an Atlanta, Ga., furniture leasing corporation, among other things, to cease failing to maintain adequate records for three years following the expiration date of leases; and follow prescribed procedures to locate and make proper refunds to qualified customers. Additionally, the order requires respondent to furnish lessees with detailed written notices, and prohibits the use of these notices in the collection of delinquent debts.

*Appearances*

For the Commission: *Michael E.K. Mpras* and *Robert L. Patterson*.  
For the respondents: *Jack L. Lahr* and *Christopher Smith*, *Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C.

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 National Service Industries, Inc., a corporation, doing business as Certified Leasing Company, 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 National Service Industries, Inc., doing business as Certified Leasing Company, 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 1180 Peachtree St., N.E., Atlanta, Georgia.

PAR. 2. Respondent National Service Industries, Inc., through its various subsidiaries and divisions, operates numerous plants, including those engaged in the production or manufacture of furniture, safety and protective products, amusement parks, and is engaged in the leasing or retail selling of furniture, through its unincorporated operating division, Certified Leasing Company, which operates approximately 17 furniture leasing and retail selling stores in seven states.

PAR. 3. Respondent operates and controls retail stores which sell or lease furniture and other merchandise to be shipped and delivered from their warehouses and from the places of business of their various suppliers to their warehouses and retail stores for leasing to and purchase by the general public located in states other than those from which such shipments and deliveries originate. By these and other acts and practices, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in merchandise and services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the ordinary course and conduct of its aforesaid business, respondent enters into lease agreements with individual customers whereby such customers lease furniture from respondent for a set period of time. Under the terms of the lease agreement, consumer lessees are required to pay to respondent a security deposit which is usually equivalent to the charge of one month's furniture rental. Further, the lease agreement requires consumer lessees to perform other acts or fulfill conditions and covenants, including the return of leased items in the same condition respondent delivered to them, ordinary wear excepted, at the expiration or termination of the lease period. Upon expiration or termination of the lease, respondent determines to what extent a consumer lessee has complied with the conditions of the lease agreement. If all obligations, conditions or covenants have not been met, respondent makes deductions from the consumer lessees' deposited money in amount deemed adequate to cover the expenses or charges incurred because of the consumer lessee's failure to comply with the lease requirements, ordinary wear excepted.

After such deductions, if any, are made from the consumer lessee's security deposit, respondent's records indicate the amount of the consumer lessee's security deposit, if any, which is returnable to the consumer lessee.

PAR. 5. Respondent, seldom, if ever, informs or attempts to inform consumer lessees that there is a portion of the security deposit which is returnable to the consumer lessees. Furthermore, seldom, if ever, does respondent voluntarily return security deposit balances without consumer lessees' specific requests. In those instances where consumer lessees do not specifically request return of their security deposit balance, respondent often, if not always, removes the returnable balances from the consumer lessees' accounts, and transfers said balances into one of its income accounts.

PAR. 6. By failing to attempt to notify consumer lessees that there

is a portion of the security deposit which is returnable to the consumer lessees, by requiring that consumer lessees specifically request the return of the balance of any security deposit balance remaining after legitimate expenses under the lease have been charged against such deposit, and by transferring said returnable balances into one of its income accounts, respondent has caused a substantial number of consumer lessees 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 the respondent as herein alleged, 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 Washington, D. C. 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, as amended; and

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

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

1. Proposed respondent National Service Industries, Inc., doing business as Certified Leasing Company, is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Delaware with its office and principal place of business located at 1180 Peachtree St., N.E., Atlanta, Georgia.

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 National Service Industries, Inc., a corporation, doing business as Certified Leasing Company, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the leasing to consumers 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 request, both orally and in writing, at the time the lease agreement is signed with two or more legally unrelated persons, which person will be designated by the joint lessees to be the recipient of the lessees' returnable security deposit in the event that respondent is obligated to return the full security deposit or any portion thereof to such customers.

2. Failing to incorporate on the face of the lease agreement, in bold print, the following notice which shall be given to the lessee at the time the lease agreement is signed.

#### NOTICE

You may be entitled to a refund of all or a portion of your security deposit at the termination of this lease agreement. Retain this reminder so that you may send us a forwarding address where you can be reached so that we can promptly forward any balance of the security deposit due you.

3. Failing to request from the lessee, both orally and in writing, at the time the lease agreement is signed, a tentative forwarding address where the security deposit, or any portion thereof which may be returnable to the lessee, can be mailed if no updated forwarding address is received prior to or at the termination of the lease agreement.

4. Failing, when notice of termination of the lease agreement is received telephonically, to request from the lessee at that time a forwarding address.

5. Failing to send written notice by first class mail prior to the expiration of the term of the lease agreement to the lessee's last

known address requesting a forwarding address within five business days after receiving notification of the lessee's intent to terminate the lease agreement, if such forwarding address has not been received.

6. Failing to send by first class mail, with the envelope captioned "PLEASE FORWARD," the security deposit, or any portion thereof which may be returnable to the lessee, including an itemized accounting of respondent's charges against the lessee's security deposit within thirty (30) days from the termination of the lease agreement, to the lessee's updated forwarding address or to the tentative forwarding address obtained at the time the lease agreement was signed if no updated address has been received, or in the absence of the above, to the lessee's last known address; and failing in all other situations to provide within 30 days, by first class mail, such itemized accounting upon the oral or written request of the lessee.

*It is further ordered:*

A. That respondent attempt to refund all security deposits or portions thereof due lessees whose lease terminated or expired within three months from the effective date of this order. In attempting to refund all returnable deposited money, respondent shall perform the following steps:

1. Determine whether the lessee's file contains an address to which a returnable deposit is to be forwarded. If so, respondent shall forward a check in that amount to the lessee or his designee at the address given.

2. If no forwarding address is given, respondent shall send a notice by first class mail, with the envelope captioned "PLEASE FORWARD," to the lessee's last known address informing such lessee that a refund is due him, and that he should immediately contact the respondent at the address or telephone number given, requesting an address correction.

3. If the letter is returned by the post office as undeliverable, respondent shall:

(a) Determine from information set forth in the lessee's credit application filed by the lessee incident to the consummation of the lease agreement the name and address of the lessee's parents, employer and a listed personal reference of the lessee.

(b) Forward the notice in the form set forth below, entitled "We need your help," to either the parents, employer, or one listed personal reference of the lessee, if such names and addresses are available in the lessee's file.

**WE NEED YOUR HELP**

The individual listed below recently rented furniture from Certified Leasing Company and placed a security deposit with us. The individual is entitled to a refund of all or a portion of such deposit, which refund will be sent as soon as we can determine a current address.

If you know the individual's current address and/or telephone number, please complete the following form and return it to us. The postage is prepaid.

Thank you for your help.

**CERTIFIED LEASING COMPANY**

_____		
Lessee		
_____		
Street		Apt.
_____	_____	_____
City	State	Zip Code
( )		
Area Code	Telephone Number	

B. That respondent shall not use the notices described in paragraphs 2. and A. 3.(b) of the order to collect or attempt to collect delinquent accounts.

C. That respondent maintain, for a period of three years from the date the lease was terminated or expired, adequate records including a complete summary of each lessee's file which (1) substantiate that respondent is following the procedures specified in the order, and (2) readily disclose the disposition of the lessee's security deposit and the reasons therefor, including a notation of the specific amount of money due the lessee from his security deposit; any request by such person within three years from the date the lease was terminated or expired for the return of the deposit due shall be honored by mailing the balance of said deposit within thirty (30) days from the date of receipt of such request.

D. That respondent deliver a copy of this order to all present and future administrative and sales employees engaged in any aspect of communicating with customers with respect to the leasing to

consumers of furniture or other personal property, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

E. That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent or its division 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 or its division which may affect compliance obligations arising out of the order.

F. 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 it has complied with this order.

## Complaint

IN THE MATTER OF  
SEARS, ROEBUCK AND CO.

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

*Docket 8993. Complaint, Sept. 17, 1974 -- Decision, Apr. 11, 1977*

Consent order requiring a Chicago, Ill., merchandising organization, among other things, to cease using bait and switch tactics and other unfair or deceptive strategies in the advertising and sale of major home appliances. The order further requires the firm to conspicuously post copies of advertisements in the proper departments of stores, and to have sufficient quantities of the advertised items available to meet reasonably anticipated demand.

*Appearances*

For the Commission: *James S. Teborek, James F. Drzewiecki, Robert C. Goldberg, Blanche Stein, and Thomas D. Massie.*

For the respondent: *Richard P. Robinson, Chicago, Ill., Lloyd S. McClelland, Chicago, Ill., Burton Y. Witzenfeld, Arnstein, Bluck, Witzenfeld & Minow, Chicago, Ill.*

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 Sears, Roebuck and Co., a corporation, 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 Sears, Roebuck and Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 925 South Homan Ave., Chicago, Illinois.

PAR. 2. Respondent is the largest merchandising organization in the United States. Respondent is now, and has been for some time last past, engaged in the advertising, offering for sale, sale and distribution of a wide variety of consumer products, including sewing machines, washers and dryers, and other major home appliances throughout the United States. The term "major home appliance" is defined herein as any home appliance in which there are two or more models in the product line and the most expensive model has a retail price in excess of (\$50.00) fifty dollars. Said respondent conducts said business by mail and telephone sales from catalogs and through its

## Complaint

89 F.T.C.

retail department stores located in each State of the United States. Sales by respondent's retail department stores are its most important source of sales. This complaint concerns respondent's sales of products through its retail department stores.

PAR. 3. In the course and conduct of its business as aforesaid, respondent ships, and causes to be shipped, sewing machines, washers and dryers, and other major home appliances to said retail department stores for sale to the purchasing public. Advertising and promotional material is prepared or caused to be prepared by respondent in Chicago, Illinois, and transmitted to respondent's retail department stores for their use. In the course and conduct of its business as aforesaid, respondent now causes and for some time last past has caused, the publication of said advertising, concerning sewing machines, washers and dryers, and other major home appliances in newspapers of general circulation. Respondent further engages in business, in commerce, consisting of the transmission and receipt of letters, invoices, reports, contracts and other documents of a commercial nature between respondent's headquarters and its retail department stores in the various states, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Typical and illustrative, but not all inclusive, of the major home appliances advertised and the statements made in such advertisements are the following:

## Sewing Machine Sale

## ZIG ZAG

Portable \* \* \*

Sews zig zag or straight stitches to make fashion clothing or to do everyday mending \* \* \* Sews buttonholes, sews on buttons, monograms.

Your Choice

\$58

Cabinet Model

Sews straight stitches forward and reverse, even over seams! \* \* \*

\* \* \* \* \*

Portable Zig Zag Sewing Machine From Sears \* \* \* \$58

Sews on buttons, sews buttonholes; Does zig-zag or straight stitching

Mongrams, appliques, other fancy work For household linens, gifts

Sews forward and reverse for her convenience

PAR. 5. Through the use of the aforesaid statements and others not specifically set out herein, respondent has represented, directly and by implication, that the offers set forth in said advertisements are bona fide offers to sell the advertised sewing machines, washers and dryers, and other major home appliances at the prices mentioned in said advertisements.

PAR. 6. In truth and in fact, said offers were not, and are not bona fide offers to sell respondent's sewing machines, washers and dryers, and other major home appliances at the advertised prices, but, to the contrary were, and are, made to induce prospective purchasers to visit respondent's retail department stores.

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

PAR. 7. When prospective purchasers visit respondent's retail department stores in response to respondent's aforesaid advertisements and attempt to purchase the advertised sewing machines, washers and dryers, and other major home appliances at the advertised prices, respondent's salesmen make no effort to sell the advertised major home appliances, but, in fact, disparage the advertised sewing machines, washers and dryers, and other major home appliances in a manner calculated to discourage the purchase thereof, and attempt to, and often do, sell other sewing machines, washers and dryers, and other major home appliances to said prospective purchasers at higher prices. By way of disparaging said major home appliances, respondent's salesmen point out certain features that the advertised major home appliances are lacking without disclosing the absence of these features in respondent's aforesaid advertising. Among and typical, but not all inclusive of the disparaging statements and representations made by respondent's salesmen are the following:

1. The advertised sewing machines are noisy and not quiet running;
2. Certain of the aforesaid sewing machines will not sew straight stitch, zig zag stitch, or in reverse;
3. The advertised sewing machines do not have respondent's standard sewing machine guarantee and are not guaranteed for as long a period of time as respondent's more expensive sewing machine models;
4. Prospective purchasers will find it difficult to adjust the

advertised sewing machines to sew over seams in material on different thicknesses of material;

5. The advertised sewing machine will not sew buttonholes;

6. None of the advertised sewing machines are available for sale; and if the advertised machines are ordered, there will be long delays in delivery.

PAR. 8. In truth and in fact, the aforesaid disparaging statements and representations made by respondent's salesmen have the effect of discouraging prospective purchasers from purchasing the advertised sewing machines, washers and dryers, and other major home appliances and inducing said prospective purchasers to purchase other sewing machines, washers and dryers, and other major home appliances at higher prices.

PAR. 9. Respondent has advertised certain of its lower priced models of sewing machines, washers and dryers, and other major home appliances with the intention that respondent's salesmen will be able to make misleading comparisons between the lower priced models and higher priced models of said appliances.

PAR. 10. Respondent uses a method of compensating its salesmen of sewing machines, washers and dryers, and other major home appliances that rewards said salesmen for selling higher priced sewing machines, washers and dryers, and other major home appliances. At the same time respondent deters said salesmen from selling the advertised sewing machines, washers and dryers, and other major home appliances. This combination of circumstances has forced or encouraged respondent's salesmen of sewing machines, washers and dryers, and other major home appliances to use bait and switch sales tactics such as those described in Paragraphs Seven, Eight and Nine.

PAR. 11. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in commerce, with corporations, firms and individuals, engaged in the sale and distribution of sewing machines, washers and dryers, and other major home appliances of the same general kind and nature as those sold by respondent.

PAR. 12. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices has had, and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and to induce a substantial number thereof to purchase respondent's said sewing machines, washers and dryers, and other major home appliances at higher prices than said members of the

purchasing public had intended to pay by reasons of said erroneous and mistaken belief.

PAR. 13. The aforesaid 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, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Commissioner Thompson dissenting.

#### DISSENTING STATEMENT OF COMMISSIONER THOMPSON

Commissioner Thompson believes that, since no effort has been made in this matter to address the question of whether the products the customer is being "switched" to are themselves good buys or bad ones in relation to comparable items offered by competing outlets, there has been no showing of probable consumer injury here. In the absence of such a showing, he cannot find, as Section 5(b) of the FTC Act requires, that the "proceeding" instituted by the filing of this complaint "would be to the interest of the public. \* \* \*" 15 U.S.C. 45(b). Given a limited budget, an expenditure of resources to stop what the staff apparently concedes is a "victimless crime" necessarily means a comparable reduction in the number of cases this agency can bring that, unlike this one, involve real economic injury to the consuming public.

#### SEPARATE STATEMENT OF CHAIRMAN ENGMAN

Concurred in by Commissioner Hanford

In contrast to Commissioner Thompson's characterization of the violation alleged in this case, I do not believe, nor do I think the staff concedes, that a blatant bait-and-switch advertising scheme constitutes a "victimless crime." I would consider this to be true even if there were a showing that the products which customers are switched to are comparable in price and quality to those offered by competing sellers.

Numerous prior Commission orders and the Commission's *Bait Advertising Guide* make it clear that Section 5 of the Federal Trade Commission Act is violated when a retailer advertises a low priced product to entice customers into his place of business and then, according to a preconceived selling plan, disparages the low priced item in an attempt to push a higher priced product on the customer. Such selling tactics are often accompanied by unreasonably low inventories of advertised items, high pressure sales methods once the customer is in the store, misrepresentations about the real value of

the advertised items, and, as alleged in this instance, employee discipline and compensation systems which discriminate unfairly against the sale of low priced, advertised merchandise.

The customer is victimized in bait-and-switch schemes because he or she makes the initial choice to patronize the advertiser's store rather than his competitors on the assumption that advertisements of low priced items have been made in good faith. In actuality, of course, the bait-and-switch advertiser has used the advertising as a deceptive gimmick to get the customer in his store first and thus to gain unfair advantage over his competitors. If the allegations of large scale bait-and-switch advertising in this complaint are proved through the adjudicative process, I would consider entry of an appropriate order very much in the public interest.

#### DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent with violation of Section 5 of the Federal Trade Commission Act, and the respondent having been served with a copy of the complaint; and

Respondent Sears, Roebuck and Co. 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 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 set forth in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having withdrawn the matter from adjudication for the purpose of considering the agreement containing consent order; 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, and having duly considered the comments filed thereafter pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Sears, Roebuck and Co. is a New York corporation with its office and principal place of business located at Sears Tower, Chicago, Illinois.
2. The Federal Trade Commission has jurisdiction of the subject

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## Decision and Order

matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## ORDER

## I

For purposes of this consent order, the following definition shall apply:

A. The term "major home appliance" includes (but is not limited to) home appliances within the following product lines sold by respondents: automatic laundry (washers and dryers); sewing machines; vacuum cleaners and sweepers; refrigeration products (refrigerators and chest or upright freezers); stoves, ranges and ovens; room air conditioners; humidifiers and dehumidifiers; televisions; dishwashers; floor polishers; and home audio electronic equipment.

## II

*It is ordered.* That respondent Sears, Roebuck and Co., a corporation, its successors and assigns, and respondent's employees, agents, representatives, including sales representatives, directly or through any corporation subsidiary, division, or other device, in connection with the advertising, offering for sale, sale and distribution of sewing machines, washers and dryers and other major home appliances, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Making representations directly or indirectly, orally or in writing, that any major home appliances are offered for sale when such representation is not a bona fide offer to sell such major home appliances.
2. Offering for sale any major home appliance when such offer is not a bona fide offer to sell such major home appliance.
3. Disparaging, in any manner, any major home appliance which is advertised or offered for sale.
4. Utilizing demonstrations or displays of any advertised major home appliance in which said appliance is made to appear defective for the purpose of discouraging its purchase.
5. Making, directly or by implication, orally or in writing, any false, misleading or deceptive comparisons between the advertised major home appliances and other home appliances of the same product line.
6. Failing to have available at each store to which the advertise-

ment applies, or at a warehouse facility serving each such store, quantities of advertised major home appliances sufficient to meet reasonably anticipated demands for such appliances, or failing to take orders for such reasonably anticipated demands from customers desiring to purchase advertised major home appliances or failing to deliver such ordered merchandise within a reasonable period of time after purchase by customers.

*It is further ordered.* That respondent maintain and produce for inspection and copying by a representative of the Federal Trade Commission for a period of three years following the date of publication of any local advertisement of sewing machines, washers and dryers and other major home appliances adequate records to document for the entire period during which each advertisement was run:

a. the total volume of sales in units of advertised major home appliances at the advertised price by each store to which the advertisement applies;

b. monthly inventory statements for each store to which the advertisement applies of the units of major home appliances featured in each advertisement;

c. the total volume of sales in units of major home appliances by stock or model number within the advertised product line by each store to which the advertisement applies.

The recordkeeping provision of this order shall be limited to major home appliances which have two or more models in the product line with a retail cost of \$100 or more, *provided, however*, no records need be created or maintained for any major home appliances sold at a retail price of \$35 or less each.

*It is further ordered.* That respondent shall forthwith cease and desist from disseminating, or causing the dissemination of any printed advertisement which represents that major home appliances are available for sale at a stated price at any of its stores, unless respondent clearly and conspicuously sets forth in each such advertisement:

Each of these advertised items is readily available for sale as advertised.

*It is further ordered.* That respondent shall post a copy of such advertisement, including a copy of the notice referred to in the previous paragraph, at a conspicuous place in the major home appliance department or departments of each store to which such advertisement applies, throughout the period to which the advertisement applies.

