

IN THE MATTER OF
MASTIC CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3086. Complaint, April 12, 1982—Final Order, April 12, 1982

This consent order requires Mastic Corporation, a manufacturer and seller of residential vinyl siding products, among other things, to cease paying for or disseminating any advertisement for vinyl siding that contains an energy related claim. The order requires the firm to distribute a copy of the order to all personnel engaged in the promotion of vinyl siding. Mastic Corporation is required to provide its distributors and retailers with a copy of the order together with a letter explaining its provisions.

Appearances

For the Commission: *Steven H. Meyer and Michael Dershowitz.*

For the respondent: *Daniel D. Nayer, Wilmer, Cutler & Pickering, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by that Act, the Federal Trade Commission, having reason to believe that Mastic Corporation, a corporation, hereinafter sometimes referred to 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 public interest, hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mastic is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 131 South Taylor St., South Bend, Indiana.

PAR. 2. Respondent is now, and for some time past, has been engaged in the manufacture, advertising, promotion, offering for sale, sale and distribution of residential vinyl siding products.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time past has caused, its residential vinyl siding products, when sold, to be shipped from its manufacturing plants in South Bend, Indiana and Stuarts Draft, Virginia to its distributors and retailers in various States of the United States. For the purpose

of inducing the purchase of its residential vinyl siding products by the consuming public, respondent disseminates and causes the dissemination of, and for some time past has disseminated and caused the dissemination of certain advertisements and promotional materials through the use of the United States mail. Accordingly, respondent maintains, and has maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Through the use of said advertisements and other promotional materials, respondent has made statements with regard to its vinyl siding products. Among these are statements that respondent's vinyl siding:

Conserves Energy

Lowers Fuel Bills

... is a Non-conductor of heat or cold

... is a 24.8% better insulator than aluminum

... helps to stop air infiltration

PAR. 5. By and through the use of statements set forth in Paragraph Four, respondent has represented and is now representing directly or by implication, that:

- a. vinyl siding, by itself, significantly conserves energy;
- b. vinyl siding, by itself, significantly lowers fuel bills;
- c. vinyl siding, by itself, significantly reduces heat loss through the exterior walls of a home;
- d. vinyl siding does not conduct heat or cold;
- e. vinyl siding is superior to aluminum siding because it significantly exceeds aluminum siding in insulation value;
- f. vinyl siding, in all cases, significantly reduces air infiltration into and out of a home.

PAR. 6. In truth and in fact, contrary to respondent's representations set forth in Paragraph Five:

- a. vinyl siding, by itself, does not significantly conserve energy;
- b. vinyl siding, by itself, does not significantly lower fuel bills;

c. vinyl siding, by itself, does not significantly reduce heat loss through the exterior walls of a home;

d. vinyl siding, like all materials, conducts heat; indeed, because it is a very thin material, vinyl siding has a high rate of conductance.

e. vinyl siding does not exceed aluminum siding in insulation value; there is little, if any, difference in the insulation value of vinyl and aluminum siding.

f. vinyl siding does not, in all cases, significantly reduce air infiltration into and out of a home; indeed, in many cases vinyl siding has little, if any, effect on air infiltration.

Therefore, said advertisements and promotional materials were, and are false, deceptive, misleading or unfair.

PAR. 7. At the time respondent made the statements and representations alleged in Paragraphs Four and Five, it did not possess and rely upon a reasonable basis for such representations. Therefore, the statements and representations set forth and alleged in Paragraphs Four and Five were and are unfair, deceptive, or misleading.

PAR. 8. By and through the use of the aforementioned advertisements and promotional materials, respondent has represented and is now representing, directly or by implication, that it had a reasonable basis for the statements and representations set forth and alleged in Paragraphs Four and Five. In truth and in fact, respondent had no reasonable basis for the statements and representations set forth and alleged in Paragraphs Four and Five. Therefore, said advertisements and promotional materials were and are unfair, deceptive or misleading.

PAR. 9. The use by respondent of the aforesaid false, misleading, unfair or deceptive advertising and promotional materials, and the placement in the hands of its distributors and retailers of the means and instrumentalities by and through which others have used the aforesaid false, misleading, unfair or deceptive advertisements and promotional materials have had, and now have, the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said statements and representations were and are true and complete, and into the purchase of respondent's vinyl siding products by reason of said erroneous and mistaken belief.

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

Trade Commission Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

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 Bureau of Consumer Protection proposed to present to the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

1. Respondent Mastic Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 131 South Taylor St., in the City of South Bend, State of Indiana.
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

For purposes of this order, the following definitions shall apply:

Advertisement means any illustration, depiction, written or oral

statement, or other representation, whether the same appears in a television or radio broadcast, newspaper or label, brochure, leaflet, circular, mailer, book insert, journal, catalog, sales promotion material, other periodical literature, billboard, public transit card, point of purchase display, or in any other media.

Energy related claim means any general or specific representation that, directly or by implication, describes or refers to energy savings, efficiency or conservation, fuel savings, insulating value, air infiltration, conductance of heat, or heat gain or loss.

Vinyl siding product means any vinyl siding product made from vinyl and used for residential purposes, and includes siding which is directly backed with material such as backerboard or drop-in panels. For purposes of this order, *vinyl siding product* does not include *siding systems*, which are a combination of vinyl siding and any other product(s) which contain *insulation* as that word is defined by the Commission's Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation, 16 CFR Part 460 (1980).

PART I

It is ordered, That respondent Mastic Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any vinyl siding product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from disseminating, causing to be disseminated, or paying in whole or in part for any advertisement which contains an energy related claim.

PART II

It is further ordered, That for a period of five years following the date of service of this Order, respondent deliver a copy of this Order to all present and future employees, personnel, or agents and representatives of respondent engaged in the creation, design, printing or dissemination of any advertisement promoting respondent's vinyl siding products; and that respondent obtain a signed statement acknowledging receipt of the order from each said person or entity.

PART III

It is further ordered, That respondent shall:

1. Within thirty (30) days after the date of service of this order, send the following material via first class mail to every person or firm that has been a distributor of respondent's vinyl siding products during the year prior to the date of service of this order, and to every person or firm that has been a retailer of respondent's vinyl siding products that respondent can identify from the warranty registration cards which, between July, 1980 and the date of service of this order, were both issued by and returned to respondent:

- a. a copy of this order, and
- b. a cover letter which informs the recipient in plain and readily understood language that Mastic has agreed with the Federal Trade Commission not to make energy related claims for its vinyl siding products, that the recipient should make no energy related claims for Mastic's vinyl siding products in the future, and that the recipient should stop using any Mastic promotional material which contains any energy related claims.

2. Supply to the Federal Trade Commission upon request the names and addresses of those parties to whom respondent distributed the material required by Paragraph 1 of PART III of this order.

PART IV

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

PART V

It is further ordered, That the respondent 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.

IN THE MATTER OF

BRUNSWICK CORPORATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5
OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE
CLAYTON ACT

Docket 9028. Final Order, Aug. 14, 1980—Modifying Order, April 29, 1982

This order modifies the Commission's final order issued on August 14, 1980, 96 F.T.C. 151, by adding Paragraphs IX and X to the order, in accordance with the decision and judgment of the Eighth Circuit Court of Appeals. The new paragraphs: (1) limit Yamaha's liability in this matter solely to violations of Section 5 of the Federal Trade Commission Act; and (2) insures that nothing in the order prevents respondents from imposing upon themselves, their dealers and distributors, vertical restraints in connection with the sale by them for resale in the U.S. of outboard motors.

MODIFIED ORDER TO CEASE AND DESIST

The Commission having issued a final cease and desist order herein on August 14, 1980, and such order having been modified and affirmed by the United States Court of Appeals for the Eighth Circuit, and the Supreme Court having denied the petition for certiorari filed by respondents Brunswick Corporation and Mariner Corp.:

Now, therefore, *it is ordered*, that the aforesaid order to cease and desist be, and hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read as follows:

For the purposes of this Order:

a) *Brunswick* shall mean the Brunswick Corporation, together with its present and future domestic and foreign subsidiaries, affiliates, joint ventures, related corporations (including Mariner Corp.), and corporations controlled by Brunswick Corporation; and all successors to Brunswick Corporation and their domestic and foreign subsidiaries, affiliates, joint ventures and related corporations; and all corporations controlled by the successors of Brunswick Corporation.

b) *Yamaha* shall mean Yamaha Motor Co., Ltd., together with its present and future domestic and foreign subsidiaries, affiliates, joint ventures, related corporations, and corporations controlled by Yamaha Motor Co., Ltd.; and all successors to Yamaha Motor Co., Ltd. and their domestic and foreign subsidiaries, affiliates, joint ventures

and related corporations; and all corporations controlled by the successors of Yamaha Motor Co., Ltd.

c) *Mariner* shall mean Mariner Corp., together with its present and future domestic and foreign subsidiaries, affiliates, joint ventures, related corporations, and corporations controlled by Mariner Corp.; and all successors to Mariner Corp. and their domestic and foreign subsidiaries, affiliates, joint ventures and related corporations; and all corporations controlled by the successors of Mariner Corp.

I.

It is ordered, That within 90 days of the date this Order becomes final, Brunswick and Mariner shall sell to Yamaha, and Yamaha shall buy from Brunswick and Mariner, all capital stock, bonds, debentures, and other securities and other interests held by Brunswick and Mariner in Sanshin Kogyo Co., Ltd. ("Sanshin"). The purchase price shall be equal in dollars to the value of the net tangible assets per share, computed and adjusted to the last day of the six month term immediately preceding the date of the sale.

II.

It is further ordered, That, on or before 90 days from the date this Order becomes final, Brunswick, Yamaha, and Mariner shall rescind in all respects the Joint Venture Agreement, and the agreements attached thereto, entered into on November 21, 1972, and all agreements modifying the Joint Venture Agreement and the agreements attached thereto, shall consider them null and void, and shall cease and desist from observing or enforcing the terms of said agreements.

III.

It is further ordered, That from the date this Order becomes final, Brunswick and Mariner shall cease any and all representation on the board of directors of Sanshin, cease and desist from taking any steps to nominate, seat, or admit any representatives of Brunswick and Mariner to the board of directors of Sanshin, and cease and desist from exercising any of the rights of a shareholder of Sanshin except the right to receive dividends.

IV.

It is further ordered, That from the date this Order becomes final, neither Brunswick nor Mariner shall enter into, continue to be a party to, or enforce any agreement which in whole or in part prevents a manufacturer, seller, or distributor of outboard motors from manufacturing, selling, or distributing such motors in the United States, its territories or possessions.

V.

It is further ordered, That from the date this Order becomes final, Yamaha shall not enter into, continue to be a party to, or observe any agreement which in whole or in part prevents Yamaha from manufacturing, selling, or distributing outboard motors in the United States, its territories or possessions.

VI.

It is further ordered, That Brunswick, Yamaha, and Mariner shall, for a period of three years from the date this Order becomes final, cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, all or any part of the stock or share capital of any concern, corporate or noncorporate, engaged in the production, distribution or sale of outboard motors in or for the United States, or capital assets pertaining to such production, distribution or sale of such motors in or for the United States.

VII.

It is further ordered, That Brunswick, Yamaha, and Mariner notify the Federal Trade Commission at least 30 days prior to any proposed change in its corporate structure such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any change in the corporation which may affect compliance obligations arising out of this Order.

VIII.

It is further ordered, That Brunswick, Yamaha, and Mariner shall within 120 days of the date this Order becomes final, submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which Brunswick, Yamaha,

and Mariner each intends to comply or has complied with this Order. Brunswick, Yamaha, and Mariner shall submit such other information as may from time to time be requested by the Commission.

IX.

Nothing in this Order or in the opinions of the Commission in this case shall be construed as a finding or conclusion that Yamaha has violated Section 7 of the Clayton Act. All findings and relief against Yamaha are based solely on Section 5 of the Federal Trade Commission Act.

X.

Nothing in this Order, including in particular Paragraphs IV or V hereof, shall prevent either Brunswick, Mariner, or Yamaha, respectively, from imposing upon itself, its dealers, or its distributors, ancillary vertical restraints in connection with the sale by it for resale in the United States of outboard motors.

IN THE MATTER OF
VINYL IMPROVEMENT PRODUCTS COMPANY
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3087. Complaint, April 30, 1982—Decision, April 30, 1982

This consent order requires Vinyl Improvement Products Company (VIPCO), a manufacturer and seller of residential vinyl siding products, among other things, to cease paying for or disseminating any advertisement for vinyl siding that contains an energy-related claim. The order requires the firm to distribute a copy of the order to all personnel engaged in the promotion of vinyl siding. Further, VIPCO must mail to each business entity which has sold or distributed its products during the previous year a letter which advises that vinyl siding by itself does not save energy.

Appearances

For the Commission: *Steven H. Meyer and Michael Dershowitz.*

For the respondent: *Joseph J. Lyman, Lyman, Kyhos & Rales,*
Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by that Act, the Federal Trade Commission, having reason to believe that Vinyl Improvement Products Company, a corporation, hereinafter sometimes referred to 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 public interest, hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Vinyl Improvement Products Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1441 Universal Drive, Columbus, Ohio.

PAR. 2. Respondent is now, and for some time past, has been engaged in the manufacture, advertising, promotion, offering for sale, sale and distribution of residential vinyl siding products.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time has caused, its residential vinyl siding products, when sold, to be shipped from its manufacturing plant in Columbus, Ohio to its distributors and retailers in various States of

the United States. For the purpose of inducing the purchase of its residential vinyl siding products by the consuming public, respondent disseminates and causes the dissemination of, and for some time has disseminated and caused the dissemination of certain advertisements and promotional materials through the use of the United States mail. Accordingly, respondent maintains, and has maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Through the use of said advertisements and other promotional materials, respondent has made statements with regard to its vinyl siding products. Among these are the following statements:

Conserve energy

* * * * *

Lowers your fuel bills summer and winter

Enjoy a significant savings on heating costs . . .

* * * * *

Vinyl does not retain heat or cold . . . This resistance to heat and cold makes vinyl a superior Energy Saving material for insulation.

. . . can really help protect the home against expensive energy loss. Because it is solid vinyl, which does not readily transfer heat or cold, it helps keep out winter's freezing and summer's sweltering temperatures.

* * * * *

. . . insulates 1000 times better than ordinary aluminum siding.

Better insulation value than traditional siding such as aluminum or steel.

PAR. 5. By and through the use of statements set forth in Paragraph Four, respondent has represented and is now representing directly or by implication, that:

- a. vinyl siding, by itself, significantly conserves energy;
- b. vinyl siding, by itself, affords significant fuel bill savings;
- c. vinyl siding, by itself, is an effective insulating material because it is heat resistant;
- d. vinyl siding is superior to aluminum siding because it significantly exceeds aluminum siding in insulation value;

PAR. 6. In truth and in fact, contrary to respondent's representations set forth in Paragraph Five:

- a. vinyl siding, by itself, does not significantly conserve energy;
- b. vinyl siding, by itself, does not afford significant fuel bill savings;
- c. vinyl siding, by itself, is not an effective insulating material and is not heat resistant; indeed, because it is a very thin material, vinyl siding conducts heat at a high rate.
- d. vinyl siding does not exceed aluminum siding in insulation value; indeed, there is little, if any, difference in the insulation value of vinyl and aluminum siding.

Therefore, said advertisements and promotional materials were, and are false, deceptive, misleading or unfair.

PAR. 7. At the time respondent made the statements and representations alleged in Paragraphs Four and Five, it did not possess and rely upon a reasonable basis for such representations. Therefore, the statements and representations set forth and alleged in Paragraphs Four and Five were and are unfair, deceptive, or misleading.

PAR. 8. By and through the use of the aforementioned advertisements and promotional materials, respondent has represented and is now representing, directly or by implication, that it had a reasonable basis for the statements and representations set forth and alleged in Paragraphs Four and Five. In truth and in fact, respondent had no reasonable basis for the statements and representations set forth and alleged in Paragraphs Four and Five. Therefore, said advertisements and promotional materials were and are unfair, deceptive or misleading.

PAR. 9. The use by respondent of the aforesaid false, misleading, unfair or deceptive advertising and promotional materials, and the placement in the hands of its distributors and retailers of the means and instrumentalities by and through which others have used the aforesaid false, misleading, unfair or deceptive advertisements and promotional materials have had, and now have, the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said statements and representations were and are true and complete, and into the purchase of respondent's vinyl siding products by reason of said erroneous and mistaken belief.

PAR. 10. The acts and practices of respondent as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted and now constitute unfair methods of competition and unfair and deceptive acts and practices

in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

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 Bureau of Consumer Protection proposed to present to the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

1. Respondent Vinyl Improvement Products Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1441 Universal Drive, in the City of Columbus, State of Ohio.

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

For purposes of this order, the following definitions shall apply:

Advertisement means any illustration, depiction, written or oral statement, or other representation, whether the same appears in a television or radio broadcast, newspaper or label, brochure, leaflet, circular, mailer, book insert, journal, catalog, sales promotion material, other periodical literature, billboard, public transit card, point of purchase display, or in any other media.

Energy-related claim means any general or specific representation that, directly or by implication, describes or refers to energy savings, efficiency or conservation, fuel savings, insulating value, air infiltration, conductance of heat, or heat gain or loss.

Vinyl siding product means any vinyl siding product made from vinyl and used for residential purposes, and includes siding which is directly backed with material such as backerboard or drop-in panels. For purposes of this order, "vinyl siding product" does not include "siding systems," which are a combination of vinyl siding and any other product(s) which contain "insulation" as that word is defined by the Commission's Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation, 16 CFR 460 (1980).

PART I

It is ordered, That respondent Vinyl Improvement Products Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any vinyl siding product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from disseminating, causing to be disseminated, or paying in whole or in part for any advertisement which contains an energy-related claim.

PART II

It is further ordered, That respondent forthwith deliver a copy of this order to all present and future employees, personnel, or agents and representatives of respondent engaged in the creation, design, printing or dissemination of any advertisement promoting respondent's vinyl siding products; and that respondent obtain a signed statement acknowledging receipt of the order from each said person or entity.

PART III

It is further ordered, That respondent shall:

1. within thirty (30) days from the date of service of this order, send on Vinyl Improvement Products Company stationery, via first class mail, the letter attached hereto as Exhibit A, to each business entity which respondent's records show has been engaged in the offering for sale, sale or distribution of respondent's vinyl siding products directly or indirectly to the consuming public within one year prior to the date of service of this order; and
2. supply to the Federal Trade Commission upon request the names and addresses of those parties to whom respondent distributed the material required by Paragraph 1 of PART III of this order.

PART IV

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

PART V

It is further ordered, That the respondent 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.

EXHIBIT A

- ON VIPCO STATIONERY -

Dear Distributor or Retailer:

Some of the promotional materials which have been used for vinyl siding have contained claims that vinyl siding can produce energy savings. Because vinyl siding, by itself, does not save energy, we no longer make such claims. This is to advise you that you should stop representing that vinyl siding, itself, is an energy savings material.

You should note, however, that this applies only to energy savings claims made for vinyl siding alone, and not to advertising for insulation products such as Barrier Board. The labeling and advertising of insulation is covered by the FTC Home

Insulation Rule. Please remember that the Rule requires that the Fact Sheets we have distributed for Barrier Board must be given to the ultimate consumer whenever this product is sold. If you have any questions about the materials we have provided, or advertisements that you have developed, we would be pleased to advise you on such matters.

Sincerely,

VINYL IMPROVEMENT PRODUCTS COMPANY
(VIPCO)

Complaint

99 F.T.C.

IN THE MATTER OF
GENERAL ELECTRIC COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket C-3088. Complaint, May 4, 1982—Decision, May 4, 1982

This consent order requires a Fairfield, Conn. diversified, industrial company, among other things, to divest its stock in Applicon, a major producer of stand-alone, turnkey, interactive graphics computer aided design/computer aided manufacturing ("CAD/CAM") systems, under a two-part divestiture plan to be completed by March 31, 1982. Pending divestiture, the order prohibits GE from exerting any influence over Applicon's operations; voting its stock in a manner which would be contrary to that in which it votes all other shares; and obtaining, from Applicon, confidential information of any kind. Additionally, for a five-year period, any GE employee who was in any way affiliated with Applicon is barred from serving in any position in Calma Company, a Sunnyvale, Calif. subsidiary of United Telecommunications, Inc., including its board of directors; prohibited from disclosing confidential information received during their tenure with Applicon, and barred from intervening in any of Calma's business operations. GE is also prevented from discriminating against Applicon, when purchasing CAD/CAM systems and products and restricted, for a ten-year period, from acquiring any interest in any firm engaged in the manufacture and sale of CAD/CAM products without prior Commission approval.

Appearances

For the Commission: *George S. Cary, Daniel J. Yakoubian and Donna Bowling.*

For the respondent: *Joseph Handors*, in-house counsel, Fairfield, Conn.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, subject to the jurisdiction of the Commission, has acquired Calma Company ("Calma"), a wholly-owned subsidiary of United Telecommunications, Inc., in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. DEFINITIONS

1. For purposes of this complaint, the following definitions shall apply:

(a) *Respondent* shall mean General Electric Company, a corporation, and its subsidiaries, affiliates, successors, and assigns; and

(b) *Stand-alone, turnkey, interactive graphics computer aided design/computer aided manufacturing ("CAD/CAM") systems* shall mean computer hardware and software products consisting of: (i) a cathode ray tube display; (ii) various input devices including a standard alphanumeric keyboard, a programmable function keyboard, and an electronic pen and tablet; (iii) various output devices including plotters; (iv) a central processing unit consisting of one or more 16 or 32 bit minicomputers; and, (v) various operating systems and applications software packages.

II. RESPONDENT

2. Respondent is a corporation organized and doing business under and by virtue of the laws of the State of New York with its executive offices at 3135 Easton Turnpike, Fairfield, Connecticut.

3. Respondent is a diversified, industrial company with operations in consumer products and services, industrial products and components, technical systems and materials, power systems, coal mining, and industrial electronics. In 1979, Respondent had total assets of \$16.6 billion and total sales of \$22.5 billion.

4. At all times relevant herein, Respondent has been and is now engaged in commerce within the meaning of the Clayton Act, as amended, and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

III. CALMA COMPANY

5. At the time of the acquisition, Calma was a corporation organized and doing business under and by virtue of the laws of the State of California, with its principal executive offices at 527 Lakeside Drive, Sunnyvale, California.

6. Calma is engaged in the production and servicing of CAD/CAM systems. In 1979 Calma had U.S. sales of approximately \$21.0 million and was the third largest U.S. producer of CAD/CAM systems.

7. At all times relevant herein, Calma has been and is now

engaged in commerce within the meaning of the Clayton Act, as amended, and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

IV. APPLICON INCORPORATED

8. Applicon is a corporation organized and doing business under and by virtue of the laws of the State of Massachusetts, with its principal executive offices at 32 Second Ave., Burlington, Massachusetts.

9. Applicon is engaged in the production and servicing of CAD/CAM systems. In 1980, its total assets were \$28.8 million and its total U.S. sales were approximately \$37.0 million. In 1980, Applicon was the second largest U.S. producer of CAD/CAM systems.

10. From approximately June 1, 1971, Respondent has been and is now the largest single holder of common stock in Applicon.

11. From approximately June 1, 1971, Respondent has had and now has substantial opportunities to influence the business operations of Applicon.

12. At all times relevant herein, Applicon has been and is now engaged in commerce within the meaning of the Clayton Act, as amended, and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

V. ACQUISITION

13. On December 5, 1980, General Electric and United Telecommunications entered into an agreement under which Respondent agreed to purchase all the outstanding shares of Calma, for \$100 million plus additional incentive payments not to exceed \$70 million, which are contingent upon cumulative sales of Calma during the 4-year period of January 1, 1981 through December 31, 1984.

VI. TRADE AND COMMERCE

14. The relevant line of commerce in which to evaluate the effects of GE's acquisition of Calma is CAD/CAM systems and submarkets thereof, and the relevant section of the country is the United States as a whole.

15. Sales of CAD/CAM systems in the United States are substantial, amounting to an estimated \$213 million in 1979.

16. Applicon and Calma are and have been for many years substantial and actual competitors in the manufacture and sale of CAD/CAM systems.

17. In the year 1979 Applicon had sales of CAD/CAM systems in the United States of approximately \$37.0 million accounting for approximately 17.3% of total U.S. sales. Calma had sales of CAD/CAM systems in the United States of approximately \$21.0 million in 1979 accounting for approximately 9.8% of total U.S. sales.

18. Concentration in the manufacture and sale of CAD/CAM systems is high. In 1979, the top four firms accounted for approximately 69.3% and the top six firms approximately 83.8% of U.S. sales of CAD/CAM systems.

19. On a *pro-forma* basis, the acquisition of Calma increased the 1979 four-firm concentration from approximately 69.3% to approximately 78.2% and reduced the number of substantial competitors to five from six.

20. Barriers to entry into the manufacture and sale of CAD/CAM systems are substantial.

VII. EFFECTS OF THE ACQUISITION

21. The effect of the acquisition of Calma by Respondent may be substantially to lessen competition and to create a monopoly in the manufacture and sale of CAD/CAM systems in the United States in the following ways, among others:

- (a) substantial actual and potential competition between Applicon and Calma and other firms in the manufacture and sale of CAD/CAM systems has been substantially lessened;
- (b) already high concentration in the manufacture and sale of CAD/CAM systems has been increased; and
- (c) the likelihood of eventual deconcentration may be lessened.

VIII. THE VIOLATION CHARGED

22. The aforesaid acquisition constitutes a violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of the acquisition of Calma Company (hereinafter "Calma"), by

General Electric Company (hereinafter "GE"), and GE having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge GE with violations of the Federal Trade Commission Act and the Clayton Act; and

GE, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by GE of all the jurisdictional facts set forth in the aforesaid draft of complaint and the relevant line of commerce, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by GE 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 GE has 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. GE is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with executive offices located at 3135 Easton Turnpike, Fairfield, Connecticut.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of GE, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That for the purposes of this order the following definitions shall apply:

1. *GE* means General Electric Company, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its offices at 3135 Easton Turnpike, Fairfield, Connecticut, as well as its directors, officers, employees, agents, its divisions, subsidiaries, controlled affiliates, successors,

assigns, and the directors, officers, employees, or agents of GE's divisions, subsidiaries, affiliates, successors, or assigns.

2. *Calma* means Calma Company, a wholly-owned subsidiary of United Telecommunications, Inc., and a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal offices at 527 Lakeside Drive, Sunnyvale, California, as well as its directors, officers, employees, agents, its divisions, subsidiaries, successors, assigns, and the directors, officers, employees, or agents of Calma's parents, divisions, subsidiaries, affiliates, successors, or assigns.

3. *Applicon* means Applicon, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal offices at 32 Second Ave., Burlington, Massachusetts, as well as its directors, officers, employees, agents, its divisions, subsidiaries, successors, assigns, and the directors, officers, employees, or agents of Applicon's divisions, subsidiaries, affiliates, successors, or assigns.

4. *Eligible Person* means any individual, corporation (including subsidiaries thereof), partnership, joint venture, trust, unincorporated association, other business or legal entity, or any combination thereof: (i) acquiring an amount of Applicon's stock that will not result in its ownership or control, directly or indirectly, of 250,000 or more shares of Applicon common stock; or (ii) acquiring Applicon stock on an established stock exchange (other than through a privately negotiated sale which is "crossed" on an exchange) or through a public offering; or (iii) acting as an underwriter for the purpose of reselling such shares pursuant to a secondary public offering.

5. *Initial Divestiture Period* shall mean the period through and including December 31, 1981.

6. *Final Divestiture Period* shall mean the period from the end of the Initial Divestiture Period through and including March 31, 1982.

7. *Documents* means all writings of every kind including, but not limited to, books, records, statements, minutes, reports, studies, memoranda, correspondence, agreements, print-outs, telegrams, diary entries, pamphlets, notes, charts, tabulations, releases, and purchase orders (including any notes, attachments, riders, modifications, etc.) in the possession, custody, or control of GE. The term *documents* also includes voice recordings and reproductions or film impressions of any of the aforementioned writings as well as copies of documents which are not identical duplicates of the originals and copies of documents the originals of which are not in the possession, custody, or control of the company. The term *documents* further

includes data compilations in machine readable form used in data processing, together with the programming instructions and other written material necessary to understand or use such data compilations.

8. *Relating to* means in whole or in part constituting, containing, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

9. *CAD/CAM product* means any stand-alone, turnkey, interactive graphics computer aided design/computer aided manufacturing system.

II.

It is further ordered, That:

1. GE shall divest absolutely during the Initial Divestiture Period to Eligible Persons at least two-thirds of the total number of shares of stock in Applicon held by GE either through a secondary public offering, the costs of which are to be borne by GE, through private placement, or according to the provisions of Securities and Exchange Commission Rule 144, 17 C.F.R. 230.144 (1980).

2. GE shall divest absolutely during the Final Divestiture Period, through private placements to Eligible Persons, all the remaining shares of stock in Applicon held by GE, with the exception that no more than 100,000 of such shares may be divested according to the provisions of Securities and Exchange Commission Rule 144, 17 C.F.R. 230.144 (1980).

III.

It is further ordered, That pending the divestiture required under Paragraph II of this order:

1. GE shall not, directly or indirectly, exert any control over or influence or interfere with any of the business decisions, operations or policies of Applicon.

2. No GE officer, employee, representative or agent shall serve in any Applicon position or on Applicon's Board of Directors.

3. GE shall cause its shares of stock in Applicon to be voted *pro-rata* according to the manner in which all other outstanding shares of common stock in Applicon are voted.

4. GE shall not require Applicon to make available or communicate, and shall not seek to obtain or exploit, directly or indirectly, any of Applicon's trade secrets, proprietary or other confidential

business information of any kind, except in the ordinary course of GE's relationship with Applicon in its capacity as a licensor or licensee, lessor or lessee, purchaser or seller of any product, and except as such information may be required under applicable law to be disclosed in selling or disposing of Applicon stock.

IV.

It is further ordered, That:

1. GE shall return to Applicon forthwith upon issuance of this order all non-public documents containing trade secrets or proprietary or other confidential business information received from Applicon:

(a) which were obtained by an officer or employee of GE during such officer or employee's tenure as a director of Applicon;

(b) which were obtained by an officer or employee of GE in connection with discussions with Applicon regarding a possible joint venture;

(c) which, regardless of how obtained, (unless independently obtained by Calma prior to its acquisition by GE) disclose the functions, applications, design or features of any new Applicon product or enhancement to any existing product and the timing of the introduction of any new Applicon product or enhancement to any existing product (except to the extent disclosed in connection with the use or prospective use of Applicon products by GE); Applicon's actual or estimated costs or profit margins; Applicon's research and development plans, projects or expenditures; Applicon's business plans; or any Applicon decision to purchase or produce any component of any existing or new product;

and shall destroy all copies of such documents and all other documents containing Applicon trade secrets or proprietary or other confidential business information, which information was received in the manner described in 1(a) or 1(b) or is of the type described in 1(c).

2. For a period of five years after ceasing to be a director of Applicon no officer or employee of GE who obtained trade secrets, proprietary or confidential information or documents from Applicon during such officer or employee's tenure as a director of Applicon shall:

(a) disclose such information (including to other GE officers or employees);

- (b) exert any control over or influence or interfere in any way with the business decisions or operations of Calma;
- (c) cause Calma, directly or indirectly, to adopt policies preferred, suggested, or dictated by such director;
- (d) cause Calma to change its existing policies or methods of operations;
- (e) serve in any Calma position or on Calma's Board of Directors or in any GE position with responsibility for Calma; or
- (f) confer, advise, or consult with regard to Calma.

3. Officers and employees of GE who obtained Applicon trade secrets, proprietary, or other confidential business information or documents from any officer or employee of GE who obtained such information or documents during his tenure as a director of Applicon shall keep such information or documents confidential and shall not disclose (including to other GE officers or employees) or make use of such information or documents for five years from the final date of the director's term in office.

4. GE and each of its officers and employees shall keep confidential and not disclose (including to other GE officers or employees) any trade secrets or proprietary or other confidential business information obtained from Applicon during the course of discussions with Applicon regarding a possible joint venture and shall make no use of such information for a period of five years from the date of receipt of the information.

5. Paragraphs IV.3 and IV.4 shall not apply to information which appears in issued patents or printed publications independently available to GE, or which GE can show by written records is in GE's possession through channels independent of Applicon or was independently developed by GE officers or employees without use of information subject to paragraph IV of this order.

6. GE shall forthwith distribute a copy of this order to each of its operating divisions, and to present or future personnel, agents, or representatives having responsibilities relating to the subject matter of paragraphs IV.1 through IV.6, and shall secure from each such person a signed statement acknowledging receipt of such a copy. GE employees subject to paragraphs IV.2, IV.3 and IV.4 shall execute affidavits acknowledging receipt of this order.

V.

It is further ordered, That:

1. For a period of two years following the issuance of this order,

GE shall not adopt, promote, foster, permit, or condone, either formally or informally, any policy with regard to the purchase of any CAD/CAM product which discriminates against Applicon on any basis other than the relative merits of any such product in the application for which it is being purchased, and GE shall, in connection with the purchase of any CAD/CAM product, make its purchase decision based solely on sound business practice which requires using the best sources of supply of products that will provide the greatest total value; that is the best evaluated combination of quality, price, delivery, service and other elements of value.

2. GE shall not enforce its statement of Policy No. 20.11, issued December 7, 1966, entitled "Company Use of General Electric Products," or any amendments to such policy, to the extent that such policy or amendments thereto conflict with the mandate set out in paragraph V.1 of this order.

3. GE shall forthwith and semiannually during the 2-year period following issuance of this order, distribute a copy of this order to each of its officers and employees who are responsible for the purchase of any CAD/CAM product.

VI.

It is further ordered, That periodically, as the Commission shall require during the five years subsequent to the issuance of this order, GE shall submit in writing to the Commission a verified report setting forth in detail the manner and form in which GE intends to comply or has complied with this order.

VII.

It is further ordered, That GE notify the Commission at least thirty (30) days prior to any proposed change in GE 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 effect compliance obligations arising out of this order.

VIII.

It is further ordered, That, for a period of ten years from the date of issuance of this order, GE, its parents, divisions, subsidiaries, affiliates, successors or assigns shall not, directly or indirectly, acquire any stock, share capital or equity interest in, or assets used in the manufacture or sale in or to the U.S. of any CAD/CAM

products by any concern, corporate or non-corporate, engaged in the manufacture or sale of any CAD/CAM products without the prior approval of the Commission.

IN THE MATTER OF
WESTERN GENERAL DAIRIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3089. Complaint, May 4, 1982—Decision, May 4, 1982

This consent order requires a Utah dairy cooperative to cease engaging in price discrimination in the sale and distribution of raw milk and dairy products, or communicating in any manner disparaging or derogatory information or opinions concerning competing firms. Commencing one year from its effective date, the order bars the cooperative from restricting, for more than six months, the sale or transfer of "base" by any of its members to any bona fide Grade A milk producer. ("Base" is a member's right to receive from the cooperative the going rate for raw milk.)

Appearances

For the Commission: *David M. Newman and Jerome M. Steiner, Jr.*

For the respondent: *Randon W. Wilson, Jones, Waldo, Holbrook & McDonough, Salt Lake City, Utah.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Western General Dairies, Inc., an incorporated cooperative association, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, 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 Western General Dairies, Inc. is an incorporated cooperative association organized, existing and doing business under and by virtue of the laws of the State of Utah;

Respondent during the period 1973 to 1975 acted as a marketing agent for Federated Dairy Farms, Inc., General Dairies, Inc., and Upper Snake River Valley Dairymen's Association, each an incorporated cooperative association, hereinafter collectively referred to as the "other cooperatives."

Respondent currently owns and operates and for some time last past has owned and operated a number of processing facilities, each

of which was previously owned or used by one of the other cooperatives.

Respondent has had as members in excess of ninety percent of those Grade A producers who were members of the other cooperatives prior to respondent's appointment as marketing agent.

PAR. 2. Respondent is now and for some time last past has been engaged in the sale and distribution of raw milk and dairy products, on its own behalf and on behalf of the other cooperatives, and respondent's members are now and for some time last past have been engaged in the production of raw milk.

PAR. 3. Respondent receives milk from its members who are located in the states of Utah and Idaho.

Respondent sells and distributes or has sold and distributed raw milk to independent processors in the States of Utah, Idaho, Wyoming, and Colorado. Respondent sells and distributes dairy products to wholesale and retail customers in the States of Utah, Wyoming, and Idaho, and to other states in the Western United States.

Respondent operates processing facilities in the States of Utah and Idaho.

There is now and has been at all times mentioned in this Complaint a pattern and course of commerce in respondent's products which is in and affects interstate commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this Complaint, respondent has been and is in substantial competition with other corporations, cooperative associations, individuals and partnerships engaged in the production, sale and distribution of raw milk and in the manufacture, sale and distribution of dairy products.

PAR. 5. In the course and conduct of its business as above described, respondent has for some time last past effectuated and pursued a policy throughout the states above mentioned, the purpose and effect of which is and has been to monopolize and control the supply of raw milk in those states and to monopolize and control the sale and distribution of dairy products in Utah and Southeastern Idaho.

PAR. 6. By various means and methods, respondent has effectuated and enforced the aforesaid practice and policy. To carry out said practice and policy, respondent adopted and employed the following means and methods among others:

- (a) By offering and granting advantageous prices and credit

terms to certain dairy products purchasers which were not offered or granted to other purchasers who compete with them in the resale of such products, it engaged in price discrimination among its purchasers, to the injury of its competitors in the manufacture, sale and distribution of dairy products;

(b) It and its agents, members and employees communicated derogatory information concerning the credit-worthiness of persons, firms, corporations and cooperatives which compete with respondent in the sale and distribution of dairy products;

(c) It has unduly restricted the sale or transfer of base by members desiring to leave the cooperative by conditioning such sale or transfer upon such members' cessation of Grade A milk production.

The above are the means and methods which respondent has used to monopolize and control the supply of raw milk and the sale and distribution of dairy products in the above mentioned states.

PAR. 7. The aforesaid acts and practices have had the capacity, tendency, and effect of hindering, eliminating or suppressing the competition in the production, sale and distribution of raw milk and the sale and distribution of dairy products in the States of Utah and Southeastern Idaho, thus tending to obstruct the free and natural flow of commerce and the freedom of competition in the channels of interstate commerce.

PAR. 8. The acts and practices of respondent, as herein alleged, were and are all to the prejudice of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce or unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. Certain of the acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

Chairman Miller did not participate.

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 San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Clayton Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, 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 Western General Dairies, Inc. is an incorporated cooperative association, organized, existing and doing business under and by virtue of the laws of the State of Utah, with its offices and principal place of business located at 195 West 7200 South, in the City of Salt Lake City, State of Utah.

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

For the purposes of this Order, the following definitions shall apply:

Respondent means Western General Dairies, Inc.

Raw Milk means raw, unprocessed cow's milk.

Dairy products means any products processed from raw milk and includes but is not limited to milk, skim milk, buttermilk, two percent milk, flavored milk, flavored milk drink, filled milk, whipping and table cream, half and half, sour cream, cottage cheese, concentrated milk, fortified milk, reconstituted milk or any mixture in fluid form of milk, skim milk or cream, ice milk, ice cream, powdered milk, butter, yogurt, cheese, or cheese products.

Producer means a person or firm which operates a farm which produces raw milk.

