

Order

IN THE MATTER OF
THE BENDIX CORPORATION, ET AL.

Docket 8739. Interlocutory Order, March 29, 1973.

Order reversing action of the administrative law judge authorizing a subpoena to the Commission's Secretary, and quashing said subpoena.

ORDER REVERSING ACTION OF ADMINISTRATIVE LAW
JUDGE AUTHORIZING SUBPOENA TO COMMISSION SECRETARY

This matter is before the Commission pursuant to Section 3.23 (a) of the Commission's Rules of Practice to review the order of the administrative law judge dated February 15, 1973, which granted respondents' application for a subpoena directing Charles A. Tobin, Commission's Secretary, to produce a "staff memorandum * * * asking for permission to conduct or recommending the 'investigation into the Acts and Practices of Companies Manufacturing Automotive Parts, Accessories and Equipment.'"

In March 9, 1973, upon its own motion, the Commission placed this matter on its docket for review.

As a result of such review, the Commission has determined the document in question is an intra-agency memorandum reflecting the mental processes of the agency in considering the initiation of the investigation and, hence, not appropriate for discovery; therefore

It is ordered, That the administrative law judge's order of February 15, 1973, be, and hereby is, reversed and the subpoena issued pursuant thereto is hereby quashed.

IN THE MATTER OF
HORIZON INDUSTRIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED
VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE
FLAMMABLE FABRICS ACTS

Docket C-2371. Complaint, Mar. 29, 1973—Decision Mar. 29, 1973.

Consent order requiring a Dalton, Georgia, manufacturer and seller of carpets and rugs, among other things to cease manufacturing for sale, selling, importing, or distributing any product, fabric, or related mate-

Complaint

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rial which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Horizon Industries, Inc., a corporation formerly trading as Tile Company of America, Inc., and Peter Spirer, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, 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 Horizon Industries, Inc., a corporation formerly trading as Tile Company of America, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Respondent Peter Spirer is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and carpet tiles, with their principal place of business located at Interstate 75 and Connector #3, Dalton, Georgia.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacturing for sale, sale and offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as the terms "commerce" and "product," are defined in the Flammable Fabrics Act, as amended, which products fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were carpets and carpet tiles, styles "Tritones" (and "Fancy That") (manufactured between April 16 and July 2, 1971); "Tempo;" "Aqua-

ius;" and "Melody" (the latter style in dye lot numbers 1003, 1004 and 1055), all subject to Department of Commerce Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1-70).

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted, and now constitute unfair methods of competition and unfair deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) 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. Respondent Horizon Industries, Inc., a corporation formerly trading as Tile Company of America, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Respondent Peter Spierer is an officer of the corporation. He formulates, directs, and controls the acts, practices and policies of the said corporation.

Respondent corporation is engaged in the manufacture and sale of carpets and rugs. Its office and principal place of business is located at Interstate 75 and Connector #3, Dalton, Georgia.

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

ORDER

It is ordered, That respondents Horizon Industries, Inc., a corporation formerly trading as Tile Company of America, Inc., its successors and assigns, and its officers, and respondent Peter Spierer, individually and as an officer of said corporation and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from manufacturing for sale, selling offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling, or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint, of the flammable nature of said products and effect the recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring

them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the provisions of this order with respect to customer notification, recall and processing or destruction shall be applicable to the products designated in subparagraph one of Paragraph Two of the complaint giving rise to this order, and any other lots of Style Melody determined to be in violation of the Flammable Fabrics Act, as amended, prior to the date of acceptance, by the Commission of the final compliance report.

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (5) any disposition of said products since July 16, 1971, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or carpet tile currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or carpet tile.

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

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

Decision and Order

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

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

Complaint

IN THE MATTER OF

BEN STROLL FURS, INC., ET AL.

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

Docket C-2371. Complaint, April 2, 1973—Decision, April 2, 1973.

Consent order requiring a New York City manufacturer of fur products, among other things to cease misbranding, falsely invoicing and guaranteeing furs, and to make refunds to consumers who purchased misbranded or deceptively invoiced furs.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Ben Stroll Furs, Inc., a corporation, and Ben Stroll, a/k/a Benjamin Strulowitz, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Fur Products Labeling 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 Ben Stroll Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Ben Stroll, a/k/a Benjamin Strulowitz is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 333 Seventh Avenue, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and

have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the rules and regulations promulgated thereunder.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the rules and regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored when such was the fact.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, dyed, tip-dyed or otherwise artificially colored, in violation of Section 5(b) (2) of the Fur Products Labeling Act.

PAR. 7. Respondents furnished false guaranties under Section 10(b) of the Fur Products Labeling Act with respect to certain of their fur products by falsely representing in writing that respondents had a continuing guaranty on file with the Federal Trade Commission when respondents in furnishing such guaranties had reason to believe that the fur products so falsely guaranteed would be introduced, sold, transported and distributed in commerce, in violation of Rule 48(c) of said rules and regulations under the Fur Products Labeling Act and Section 10(b) of said Act.

PAR. 8. The aforesaid acts and practices of respondents, as

herein alleged, are in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

PAR. 9. Respondents are now and for some time last past have been engaged in the manufacture for sale, sale and distribution of fur products. The aforesaid products are shipped or delivered from respondents' place of business in the State of New York to respondents' customers located in various other States of the United States. Respondents maintain, and have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 10. Respondents in the course and conduct of their business as aforesaid have sold and distributed in commerce fur products which were misbranded and falsely and deceptively invoiced as alleged in Paragraph Three through Seven hereinbefore. Respondents, through the aforesaid false and deceptive labels and invoices, obtained substantially higher prices for fur products than they would have obtained had the fur products been accurately labeled and invoiced in accordance with the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

The retention by respondents of the monies they received in the form of higher prices for the misbranded and deceptively invoiced fur products is a continuing deception and constitutes a deceptive act or practice and an unfair method of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. The aforesaid acts and practices of respondents as herein alleged were and are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce and an unfair method of competition within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having there-

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

The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) 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. Respondent Ben Stroll Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 333 Seventh Avenue, city of New York, State of New York.

The respondent Ben Stroll, a/k/a Benjamin Strulowitz is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Ben Stroll Furs, Inc., a corporation, its successors and assigns, and its officers, and Ben Stroll, a/k/a Benjamin Strulowitz, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or other devise, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur

product” are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Representing directly or by implication on a label that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

2. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

B. Falsely and deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term “invoice” is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b) (1) of the Fur Products Labeling Act.

2. Representing directly or by implication on an invoice that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered, That respondents Ben Stroll Furs, Inc., a corporation, its successors and assigns, and its officers and Ben Stroll, a/k/a Benjamin Strulowitz, individually and as an officer of said corporation, and respondents’ representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

It is further ordered, That respondents notify, by delivery of a copy of this order by registered mail, each of their customers listed in Schedule A, attached hereto, all of whom have purchased fur products which gave rise to this complaint, of the fact that such products were misbranded or falsely or deceptively invoiced.

It is further ordered, That respondents shall forthwith deposit in escrow with their attorney, as escrowee, Four Thousand Five Hundred and Eighty 00/100 (\$4,580.00) Dollars, which amount represents the difference between the sum actually received by the respondents in sales to their customers of 43 fur products identified by item number in Schedule A, attached hereto, which were misbranded or falsely or deceptively invoiced

as natural and the sum the respondents would have received for the same products had they been properly labeled and invoiced as dyed.

It is further ordered, That respondents make every prompt and diligent effort to ascertain the identity and the present address of, and the individual retail prices paid by each consumer who purchased the said 43 fur products manufactured by the respondents and identified by item number in Schedule A, attached hereto; and the respondents at the time and as part of the initial report of compliance which they shall file with the Commission within 60 days after service upon them of this order, as hereinafter set forth, shall include as part of that report a detailed account of the efforts made by them in obtaining the above information together with the results thereof.

It is further ordered, That following the respondents' initial report of compliance and its acceptance by the Commission, each consumer located by the respondents or by the Commission who has purchased any of the subject 43 fur products shall be sent by the respondents by registered mail a copy of this order and shall be paid a sum from the escrow amount arrived at as follows:

(1) Each of the consumers who have purchased any of the subject 43 fur products shall receive a percentage of the \$4,580.00 escrow. The percentage received by each shall be determined by ascertaining the total of the retail prices paid by the consumers for the 43 fur products and then determining the percentage that the individual consumer's retail price bears to the total of the retail prices.

(2) In the event that some of the consumers can not be located there shall be no reduction in the escrow amount of \$4,580.00, but rather the amount received by each consumer shall be calculated as described above except that the total of the retail prices used to ascertain the percentage of the escrow amount to be paid to the individual consumer shall be the total of the retail prices paid by the consumers who have been located for the respective fur products that they purchased.

(3) In no event shall any consumer receive more than 20 percent of the retail price originally paid by him, however, such payment shall not limit the consumer's rights or interests.

(4) Any amount remaining in the escrow account following full compliance by the respondents with this order

may be returned to them by the escrowee subject to the approval of the Commission.

It is further ordered, That in addition to the provisions hereinabove made regarding payment by the respondents to consumers who purchased the 43 misbranded or falsely and deceptively invoiced fur product, the respondents shall pay, to any other consumer who shows that prior to the effective date of this order he purchased a fur product manufactured and deceptively invoiced and/or misbranded by the proposed respondents, an amount equal to 20 percent of the wholesale price received by the respondents in the sale of the misbranded or falsely or deceptively invoiced fur product but in no event shall any payment made to a consumer under the provisions of this paragraph foreclose any of the consumer's rights or interests, nor shall any payment by the respondents provided for under this paragraph be made by them from the hereinabove described escrow fund of \$4,580.00.

It is further ordered, That in addition to the respondents sending a copy of this order to consumers who had purchased the 43 fur products as described hereinbefore, the respondents shall also send a copy of this order by registered mail to any other consumer known by them or who may become known by them to have purchased a fur product manufactured and misbranded or falsely or deceptively invoiced by the respondents prior to the effective date of this order.

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

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business and address, the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission an initial report of compliance in

writing setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That the respondents within sixty (60) days of their filing of the initial report of compliance and acceptance of the same by the Commission shall file with the Commission an additional report in writing setting forth in detail the manner and form in which they have complied with this order.

SCHEDULE A

<u>Stroll Inv. #</u>	<u>Date</u>	<u>Customer</u>	<u>Style/Item No.</u>
4191	7/11/68	Lockwood Furs	197/6331
"	"	" "	180/6327
4529	8/13/68	Lloyds	197/6682
"	"	"	101/4256
4607	8/20/68	I. E. Goodman	190/6708
"	"	" "	190/6340
4552	8/13/68	" "	199/6336
4476	8/5/68	Northern Furs	675/6649
"	"	" "	101/4273
5091	10/9/68	Evans Fur Co.	917F/6430
"	"	" " "	291F/6680
4793	9/6/68	" " "	199/6437
4711	8/29/68	" " "	968-8/6425
4694	8/28/68	" " "	917F/6428
"	"	" " "	981F/6429
"	"	" " "	953/6653
4360	7/25/68	" " "	585/6445
4264	7/17/68	" " "	875/6435

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<u>Stroll Inv. #</u>	<u>Date</u>	<u>Customer</u>	<u>Style/Item No.</u>
4257	"	" " "	875/6320
4244	7/16/68	" " "	875/6313
4414	7/31/68	Gold Label	195/6344
5149	10/14/68	H. D. Grossman	291F/6317
4627	8/21/68	Ben Herschaft	194/4259
"	"	" "	195/6668
4174	7/10/68	Robert Schechner	199/6348
9300	1/22/70	Giba-Friedman	635/5805
"	"	" "	915/5808
3357	12/30/70	Giba-Noblia, Inc.	817/1700
3494	1/15/71	A. I. Lipsey	9408/1703
3538	1/20/71	" "	9408/1701
6863	10/28/68	Lockwood Furs	197/6331
6857	10/18/68	" "	180/6327
9165	12/12/69	Mohl Fur Co.	875/5215
"	"	" " "	675/5222
"	"	" " "	675/5229
9010	12/1/69	" " "	824/4097
9056	12/3/69	Goldin-Feldman	525/5224
8974	11/25/69	Harfred	875/5228
9141	12/10/69	Evans Fur Co.	8225/4107
3494	1/15/71	A. I. Lipsey	9408/1703
3538	1/20/71	" "	9408/1701
9051	12/3/69	Pageant Furs	817/4288
8916	11/18/69	Goldin-Feldman	817/4279

IN THE MATTER OF
WESTERN STORECASTING, LIMITED, ET AL.

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

Docket C-2373. Complaint, April 2, 1973—Decision, April 2, 1973.

Consent order requiring a Canadian corporation in Vancouver, British Columbia, operating in-store broadcasting promotional plans, among other things to cease knowingly inducing and receiving discriminatory promotional allowances from suppliers, and participating in advertising arrangements resulting in unlawful discrimination among American retailer.

COMPLAINT

The Federal Trade Commission, pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. Section 45), by virtue of the authority vested in it by said Act, having reason to believe that the parties named in the caption hereof and hereinafter more particularly described and referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, as hereinafter more particularly described, 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 respect thereto as follows:

PARAGRAPH 1. Respondent Western Storecasting, Limited, is a corporation organized, existing and doing business under and by virtue of the laws of the Province of British Columbia, Canada, with its principal office located at 515-850 West Hastings Street, Vancouver, British Columbia, Canada. Respondent Western Storecasting, Limited, is known as and referred to herein as "Western."

Respondent William R. Schieman is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is 1371 West 71st, Vancouver, British Columbia, Canada, and he is a citizen of the United States of America.

PAR. 2. Respondents, in connection with their business, have solicited, entered into and executed contracts and agreements with suppliers, located in the United States of America, which provide for Western to supply the following services and facilities

in connection with the sale and offering for sale of participating suppliers' products in certain IGA retail grocery stores located in western Washington, United States of America:

1. Arranging and providing for in-store sound broadcasts by prerecorded tapes of background music interspersed with commercial messages featuring the products of participating suppliers.

2. Advertising suppliers' products in the order and merchandising book of the participating retail grocery stores.

Said contracts and agreements provide that participating suppliers pay Western for the aforementioned services and facilities furnished by Western, through Western and to the participating IGA retail grocery stores.

PAR. 3. In the course and conduct of its aforementioned business during 1970 and 1971, Western solicited, entered into, and executed an agreement with the American Wholesale Grocery Company, a division of the Utah Wholesale Grocery Company, a Utah corporation, hereinafter referred to as "American."

Said agreement required Western to provide the following services and facilities in the IGA retail grocery stores who purchased from American and participated in the Western program:

1. Installation of tape decks and prerecorded tapes.

2. Arranging and providing for in-store sound broadcasts by prerecorded tapes of background music interspersed with commercial messages featuring the products of participating suppliers who sell through American.

In connection with this agreement, American furnished personnel and facilities to respondents for soliciting suppliers to enter the Western program in connection with the sale and offering for sale of the suppliers' products in western Washington, United States of America.

PAR. 4. In the course and conduct of their business, respondents executed contracts with certain IGA retail grocery stores. These contracts provided, in part, for said stores to purchase and promote all products and services advertised by all the suppliers participating in the in-store broadcasts.

PAR. 5. In the course and conduct of their business, respondents have engaged and are now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents send or cause to be sent, equipment, advertising materials, payments, communications, contracts, invoices and other items to and from their home offices in the Province of British Columbia, Canada, to and from the State of Washington in which the participating retail grocery stores are located.

In addition, many of the products sold and promoted in the retail grocery stores participating in the program have been transported from many States of the United States, in which said products were manufactured, prepared, or warehoused, to the State of Washington where said participating retail grocery stores are located.

PAR. 6. In the course and conduct of its business in commerce, and within the United States of America during 1970 and 1971, respondent Western has been the principal instrumentality and factor in negotiating and executing promotional and advertising arrangements between participating suppliers, American, and the participating retail grocery stores, wherein:

a. Participating suppliers have paid or contracted for the payment of something of value to respondent Western for the benefit of customers of such participating suppliers as compensation or in consideration for services and facilities furnished by or through said customers in connection with the sale or offering for sale of such participating suppliers' products, and wherein

b. Participating suppliers have contracted to furnish, contributed to the furnishing, and have furnished, through respondent Western, services and facilities connected with the sale or offering for sale of such participating suppliers' products to some of their retail grocery customers when respondents knew or should have known that the said payments for, or the said furnishing of, services and facilities were discriminatory in that neither respondents nor the participating suppliers offered and otherwise made available or accorded such payments for, or the furnishing of, services and facilities to all of said participating suppliers' customers, including those who do not purchase directly, competing with those so favored.

PAR. 7. By conceiving, authorizing and initiating the contracts with the participating retail grocery stores and with the participating suppliers, with the cooperation and assistance of American, as aforesaid, respondents controlled and determined the terms, conditions, rates, amounts, times, territories, and promotional arrangements between participating suppliers and their participating retail grocery customers.

Respondents knew or should have known that many of the participating suppliers did not offer or otherwise make available on proportionally equal terms the benefits of the payments, services and facilities of the Western program to all of their other retail customers, including those who did not purchase directly, competing with the favored participating retail grocery customers in the sale and distribution of such suppliers' products.

