

IX.

It is further ordered, That the provisions of this order shall not apply to any contract relating to the sale of petroleum coke produced at the refineries designated in the complaint when said coke is to be used as fuel substitute for coal, heating oil or natural gas.

X.

This order shall terminate and cease to be effective twenty years from the date of entry of this order.

Chairman Engman not participating.

IN THE MATTER OF

CORNING GLASS WORKS

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

Docket 8874. Complaint, January 13, 1972—Decision, June 5, 1973.

Order and opinion requiring a Corning, New York manufacturer, advertiser, seller, and distributor of Pyrex, Corning Ware, and Corelle Livingware brands of glass household products for food preparation, serving, and storage, among other things in connection with any fair trade programs of those products, to cease illegal price-fixing and refusal-to-deal activities. The respondent is also required to abrogate Wholesaler Fair Trade Contracts where resale is in free trade jurisdictions, and to abrogate fair trade contracts with retailers in signer-only states which were obtained by wholesalers in free trade states subject to the illegal boycott provision.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Corning Glass Works, a corporation, hereinafter referred to as respondent, has been and is now in violation of Section 5(a) (1) of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

COUNT I

PARAGRAPH 1. Unless otherwise required by context, the follow-

ing definitions shall apply for purposes of this count and the accompanying order to cease and desist:

(a) "State" means any State or Territory of the United States and the District of Columbia.

(b) "Fair trade law (or statute)" and "resale price maintenance law (or statute)" mean any state statute or provision thereof providing in substance that contracts permitting intra-state vertical resale price fixing, as such statutes are described in Sections 5(a) (2) and 5(a) (3) of the Federal Trade Commission Act, are valid and enforceable against signers or non-signers of such contracts, or against both, any other state law to the contrary notwithstanding.

(c) "Fair trade contract (or agreement)" and "resale price maintenance contract (or agreement)" mean any contract or agreement entered into pursuant to a fair trade statute.

(d) "Non-signer clause" means any provision of a fair trade statute which makes, is intended to make, or has been construed to make, the minimum or stipulated resale prices prescribed in fair trade contracts binding upon any reseller other than an actual signatory thereto; or which makes, is intended to make, or has been construed to make, any advertising, offer to sell, or sale, at less than said prices by such reseller actionable at the suit of any person.

(e) "Fair trade state" means any state having a fair trade statute which is valid and enforceable as to signers and non-signers, or only as to signers.

(f) "Non-signer state" means a fair trade state wherein the non-signer clause of the state's fair trade statute is valid and enforceable.

(g) "Signer-only state" means a fair trade state wherein no non-signer clause is included in the fair trade statute, or wherein the non-signer clause has been repealed or held invalid and unenforceable.

(h) "Free trade state" means any state wherein no fair trade statute has been enacted, or in which the last enacted fair trade statute has been repealed or held wholly invalid and unenforceable.

(i) "Reseller" means any purchaser of any of respondent's commodities who, in his regular course of business, sells (resells) such commodities, including but not limited to wholesalers and retailers.

(j) "Retailer contract (or agreement)" means respondent's fair

trade contract forms for retail resellers of commodities which bear, or the labels or containers of which bear, respondent's Pyrex, Corning Ware, or Corelle trademark, brand, or name. Copies of said contracts are incorporated by reference into this complaint and are attached hereto as Appendix A.

(k) "Wholesaler contract (or agreement)" means respondent's fair trade contract forms for wholesale resellers of commodities referred to in subparagraph (j) of this paragraph. Copies of said contracts are incorporated by reference into this complaint and are attached hereto as Appendix B.

(l) The words "lines," "merchandise," and "goods," whether used alone or in conjunction with the term "fair trade(d)," refer to commodities which bear, or the labels or containers of which bear, respondent's Pyrex, Corning Ware, or Corelle trademark, brand, or name; the words "wholesaler" and "retailer" refer to resellers of said commodities.

PAR. 2. Respondent Corning Glass Works is a corporation organized and existing under the laws of the State of New York and whose principal office address is Houghton Park, Corning, New York.

PAR. 3. Respondent's consolidated net sales during its fiscal year ended December 27, 1970 were in excess of five hundred ninety million dollars (\$590,000,000.00), a substantial portion of which sales were of respondent's fair traded lines.

PAR. 4. (a) Respondent is now and for some time last past has been engaged in the manufacture, advertising, offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of numerous commodities which bear, or the labels or containers of which bear, trademarks, brands, and names owned by respondent.

(b) Among said commodities are glass and glass ceramic products for food preparation, serving, and storage under the names Pyrex and Corning Ware, and tableware under the name Corelle.

(c) Respondent sells these lines of merchandise to wholesalers in Puerto Rico, the District of Columbia, and every state except Alaska, Nevada, New Hampshire, North Dakota and South Dakota.

(d) Respondent's wholesalers purchase said merchandise and resell it to retailers located in every state, the Commonwealth of Puerto Rico, and the District of Columbia.

(e) Except as set forth in Paragraph Five below, respondent's

wholesalers and retailers are free to, and many in fact do or could resell respondent's lines to resellers in other states.

PAR. 5. (a) Through contracts with all of its wholesalers and with all retailer vendees of said wholesalers, respondent now maintains, and for some time last past has maintained, a fair trade or resale price maintenance (sometimes hereinafter "RPM") program for each of its lines purchased for resale by said wholesalers and retailers. As to each such line, the RPM provisions of said contracts are now, and for some time last past have been, substantially the same as those contained in the sixth and seventh numbered sections of each of respondent's RPM contracts in Appendices A and B hereof.

(b) By means of these RPM contracts respondent has for some time last past established and maintained, and still does maintain, a minimum retail fair trade price for each item in each of its lines. Said prices are set forth in price lists which may be and are changed by respondent from time to time, and which are referred to as "schedule A" in respondent's wholesaler and retailer contracts. Recent versions of respondent's retail fair trade price lists are incorporated by reference into this complaint and are attached hereto as Appendix C.

(c) By means of its wholesaler contracts respondent has for some time last past established and maintained, and still does maintain, minimum wholesale fair trade prices for each of its lines by establishing and maintaining maximum percentages of discount from "Schedule A" (App. C) prices which respondent's wholesalers can grant when reselling respondent's merchandise for resale. Respondent's schedule of such discounts is referred to in section 6(a) of respondent's wholesaler contracts as "Schedule B." Recent versions of respondent's fair trade wholesale discount schedules are incorporated by reference into this complaint and are attached hereto as Appendix D.

(d) Respondent's retailer contracts (see section 6(2), App. A) and wholesaler contracts (see section 6(b), App. B) provide that no wholesalers or retailers may sell or transfer any of respondent's goods to any reseller who has not agreed with respondent to maintain respondent's fair trade prices. Respondent's wholesalers and retailers in effect may sell only to other resellers who have signed a fair trade contract.

(e) By the terms of the second sentence of section 7 of both the wholesaler and retailer contracts, both the price and customer

restriction provisions of section 6 of said contracts become operative and apply either (i) when the wholesaler or retailer party to the contract makes or would make a resale within a fair trade state, or (ii) regardless of whether such (first) resale occurs in a fair trade state or in a free trade state, when the merchandise will be transported to any fair trade state in which another resale will occur. Whenever, by the terms of respondent's wholesaler and retailer contracts, the resale price maintenance provisions thereof do not apply to a resale, the third sentence of section 7 of the wholesaler contract and a notice on the first page of schedule A make respondent's fair trade resale prices its suggested resale prices. All of respondent's wholesalers are supplied with both Schedules A and B, and all of respondent's retailers are supplied with Schedule A.

(f) In order to obtain signed retailer contracts, to ensure that its wholesalers comply with Section 6(b) of the wholesaler contract, and to ensure that all retail resellers of its goods are signers of its retailer contracts, respondent relies primarily upon, and in effect requires its wholesalers to obtain retailer contracts. In the normal course of business, respondent does not itself seek or obtain such contracts. Respondent permits its wholesalers to determine whether and with whom respondent will have retailer contracts. Respondent supplies its wholesalers with quantities of pre-signed, but otherwise blank, retailer contract forms on which the wholesaler then obtains the retailer's signature to ensure that only signers in fair trade states are able to obtain respondent's merchandise and that section 6(b) of his wholesaler contract is not violated. Respondent's wholesalers are not required to, and in fact do not, seek respondent's approval prior to causing respondent and any particular retailer to become parties to a retailer contract. Nor is there any procedure directly involving respondent which wholesalers use to determine whether any prospective customer has already signed a retailer contract prior to having purchased from another wholesaler. Therefore, fair trade state retailers who purchase, or have purchased, respondent's goods from more than one wholesaler are usually required to sign, and have signed, retailer contracts at the instance of each wholesaler from whom they have purchased. By this method, respondent is relieved of the necessity of itself obtaining retailer contracts before its wholesalers can sell to customers wishing to purchase respondent's goods. Together with section 6(b) of the wholesaler contract, this method minimizes the possibility of respondent's merchandise

being obtained by any non-signer retailer in any fair trade state, especially those in signer-only states.

(g) Respondent maintains and periodically circulates to all of its salesmen and wholesalers, a list of fair trade state retailers, and particularly non-signers in signer-only states, who have been reported as price-cutters with respect to respondent's merchandise and who refuse to sign a retailer contract. Respondent insists, under threat of suit for breach of contract or termination, that none of its wholesalers deal with any signer-only state retailer appearing on said list (the "blacklist"). Any signer in a signer-only state who violates his retailer contract will have said contract terminated by respondent, and the retailer's name will also appear on respondent's blacklist. Respondent represents to its salesmen and its wholesalers that the latter "must refuse to sell" such blacklisted retailers under the terms of the wholesaler contract. Respondent's use of the blacklist, respondent's fair trade enforcement policies and procedures, and many of respondent's views of the law applicable in this matter, are contained in respondent's Fair Trade Procedures booklet, a copy of which is incorporated by reference into this complaint and is attached hereto as Appendix E.

PAR. 6. (a) Among the wholesalers and retailers under fair trade contract more fully described in Paragraph Five above, are wholesalers and retailers located in free trade states. Contracts with said wholesalers and retailers are now and for some time last past have been in effect. Names and addresses of respondent's free trade state wholesalers under such contracts are contained in respondent's January 1, 1971 wholesaler list, a copy of which is incorporated by reference into this complaint and is attached hereto as Appendix F. (The free trade state wholesalers are those with a year opposite their names; the year is that in which each became one of respondent's wholesalers.)

(b) As set forth in subparagraphs (a), (c) and (e) of Paragraph Five above, respondent has contracted to fix said free trade state wholesalers' and retailers' minimum resale (selling) prices whenever the sale is to a reseller in any fair trade state.

(c) Respondent's wholesaler and retailer fair trade contracts by their terms apply to resellers located within, and/or to resales made by said resellers within, jurisdictions having no statute, law, or public policy making contracts prescribing such minimum resale prices lawful with respect to intrastate sales, and into which

jurisdictions (free trade states) respondent has shipped or transported its merchandise for resale.

PAR. 7. Respondent's fair trade contracts with its free trade state wholesalers and retailers, insofar as said contracts purport to establish any fair trade minimum resale prices on respondent's lines, and any circumstances or conditions under which such prices shall apply to any resale, are now and since their inception have been—

(a) Outside the exemption from being declared unlawful under the Antitrust Acts and the Federal Trade Commission Act afforded certain fair trade contracts and agreements by Section 5(a)(2) of the Federal Trade Commission Act;

(b) An unlawful burden and restraint upon, and interference with, interstate commerce between free trade states and fair trade states within the meaning of Section 1 of the Sherman Act and Section 5(a)(4) of the Federal Trade Commission Act; and, therefore,

(c) Unlawful under, and in violation of, Section 5(a)(1) of the Federal Trade Commission Act.

COUNT II

PAR. 8. (a) The allegations of Paragraphs One through Five are incorporated herein by reference.

(b) Respondent's wholesaler and retailer contracts now contain, and for some time last past have contained, refusal-to-deal provisions substantially the same as those contained in Section 6(b) of respondent's wholesaler contract and Section 6(2) of respondent's retailer contract.

(c) As set forth in subparagraphs (a), (d), (e) and (f) of Paragraph Five above, respondent has used said provisions to force fair trade state resellers, primarily retailers, to become signers in order to obtain respondent's merchandise and has contractually required its free trade state resellers to deal only with signer retailers in fair trade states.

(d) Respondent thereby prevents its free trade state wholesalers and retailers from making sales of respondent's goods in interstate commerce to all non-signer retailers in all fair trade states, and more specifically, to such retailers in the signer-only states.

(e) Respondent's wholesaler and retailer contracts by their terms apply to resellers located, and/or to resales made, within jurisdictions having no statute, law, or public policy making con-

tracts so limiting a reseller's right to resell lawful with respect to intrastate sales, and into which jurisdictions (free trade states) respondent has shipped or transported its merchandise for resale.

(f) To the extent that section 6(b) of respondent's wholesaler contract and Section 6(2) of its retailer contract are intended to, or in fact do, restrict the right of non-signer retailers in signer-only states to purchase respondent's merchandise from free trade state resellers, or, alternatively, result in said retailers becoming signers, said provisions are also contrary to the statutes, laws, or public policies of said signer-only states, under which statutes, laws, or public policies non-signers may resell fair traded goods at less than their fair trade prices.

PAR. 9. Respondent's contracts with its free trade state wholesalers and retailers, insofar as said contracts in any way purport to restrict sales of respondent's goods by said free trade state resellers to fair trade state retailers, and particularly to non-signer retailers in signer-only states, are now and since their inception have been—

(a) Outside the exemption from being declared unlawful under the Antitrust Acts and the Federal Trade Commission Act afforded certain fair trade contracts and agreements by Section 5(a) (2) of the Federal Trade Commission Act;

(b) An unlawful burden and restraint upon, and interference with, interstate commerce between free trade states and fair trade states within the meaning of Section 1 of the Sherman Act and Section 5(a) (4) of the Federal Trade Commission Act; and, therefore,

(c) Unlawful under, and in violation of, Section 5(a) (1) of the Federal Trade Commission Act.

COUNT III

PAR. 10. (a) The allegations of Paragraphs One through Five are incorporated herein by reference.

(b) As appears on the face of respondent's wholesaler and retailer contracts, and as previously set forth in subparagraphs (a), (d), (e) and (f) of Paragraph Five above respondent's fair trade state resellers may not sell respondent's merchandise to any fair trade state retailer who has not entered into a retailer contract with respondent.

(c) If any such refusal-to-deal provision is either expressly or by implication granted immunity by Section 5(a) (2) of the Fed-

eral Trade Commission Act, such provision can be immune only in contracts with resellers located in non-signer states. The statutes, laws or public policies of the signer-only states not only permit non-signers to resell fair traded commodities at prices of their own choosing, they also prohibit or render unenforceable any agreements by which a reseller is bound to refuse to deal with any non-signer.

PAR. 11. To the extent that non-signer retailers in all fair trade states and particularly those in signer-only states are prevented by the refusal-to-deal provisions of respondent's wholesaler and retailer contracts from purchasing respondent's goods from resellers also located in signer-only states, said provisions are contrary to the statutes, laws or public policies of both the vendors' and their vendees' states.

PAR. 12. Respondent's contracts with all signer-only state resellers, insofar as said contracts require said resellers to refuse to deal with all fair trade state retailers and particularly with those in signer-only states who have not agreed with respondent to maintain fair trade prices, are now, and since their inception have been—

(a) Outside the exemption from being declared unlawful under the Antitrust Acts and the Federal Trade Commission Act afforded certain fair trade contracts and agreements by Section 5(a) (2) of the Federal Trade Commission Act;

(b) An unlawful burden and restraint upon, and interference with, interstate commerce between signer-only and non-signer states and among signer-only states within the meaning of Section 1 of the Sherman Act and Section 5(a) (4) of the Federal Trade Commission Act; and, therefore,

(c) Unlawful under, and in violation of, Section 5(a) (1) of the Federal Trade Commission Act.

COUNT IV

PAR. 13. (a) The allegations of Paragraphs One through Twelve above are incorporated herein by reference.

(b) By the terms of respondent's wholesaler and retailer contracts and price lists as described in subparagraph (e) of Paragraph Five above, respondent's minimum wholesaler and retailer fair trade prices may, and often do, become suggested resale prices for the reseller parties to said contracts.

(c) Whether respondent's scheduled prices are fair trade or

suggested prices depends upon the circumstances attending the particular resale. For example, under the terms of respondent's wholesaler contract a free trade state wholesaler is bound by the resale price provisions of his contract when he sells to any fair trade state retailer. However, if an identical sale is made to a retailer in the wholesaler's own state or in any other free trade state, respondent's wholesaler contract by its terms suggests that the resale be made at the fair trade price.

(d) Respondent's contracts and price lists do not clearly set forth the circumstances which make the fair trade provisions thereof inapplicable. Respondent's contracts do not set forth the circumstances under which or the states into which its wholesalers and retailers may resell without being bound by said contracts. Said contracts also contain provisions which, as previously alleged herein, make the fair trade provisions thereof applicable to transactions in which said fair trade provisions cannot lawfully be applied.

PAR. 14. By having so worded its contracts, by having unlawfully entered into all of its contracts with free trade state resellers, by having obtained most of its retailer contracts as set forth in subparagraph (f) of Paragraph Five above, and particularly those with signer-only state retailers, by having circulated lists of retailers to whom resales are not to be made as set forth in subparagraph (g) of Paragraph Five above, by having committed the violations alleged in Counts I, II, and III herein, and by having used its fair trade prices as suggested resale prices for resellers whose contracts were unlawfully entered into or obtained, respondent has implemented its fair trade programs in a manner which is designed to, and in fact tends to—

(a) Diminish the likelihood that its wholesalers and retailers will resell at prices of their own choosing in instances where it is, or in the absence of a signed retailer contract would have been, lawful for them to do so, and in instances in which their contracts with respondent do not or cannot apply; and which is also designed to, and in fact tends to, achieve resale price maintenance in states, with resellers, and as to transactions, with respect to which resale price maintenance is, or in the absence of a signed retailer agreement would have been, unlawful; and which—

(b) Make unavailable, or diminish the availability of, respondent's goods from respondent's wholesalers and retailers to other resellers or potential resellers who refuse to agree with respondent to fix resale prices set for said goods by respondent, regardless of

whether such agreement would be lawful if entered into or lawfully obtained.

PAR. 15. Respondent has, therefore, unlawfully contracted, combined and conspired, within the meaning of Section 1 of the Sherman Act and in violation of Section 5(a) (1) of the Federal Trade Commission Act—

(a) To fix prices; to eliminate, discourage, or lessen the likelihood of, competition in price in its goods; and

(b) To obtain executed fair trade contracts, and to boycott those who are unwilling to become signers of such contracts.

COUNT V

PAR. 16. (a) The allegations of Paragraphs One through Five above are incorporated herein by reference.

(b) As set forth in subparagraphs (a) and (c) of Paragraph Five above, the minimum resale prices of respondent's fair trade state wholesalers and the purchase prices of said wholesalers' fair trade state retailers are subject to the maximum discount established and maintained by respondent as shown in Appendix D.

(c) Respondent thereby allows its wholesalers to grant, and suggests that they do grant to said retailers, discounts which vary depending upon the quantity purchased by the retailer. Therefore, as to any particular item in any of respondent's lines, the minimum wholesale price thus allowed and suggested by respondent through its wholesaler contracts, is not necessarily uniform for all competing retailers whose purchase prices are thus contractually controlled by respondent.

(d) Whenever respondent's wholesalers resell at the maximum quantity discounts allowed by respondent's "Schedule B," said schedule becomes a means by which unlawful price discrimination between competing retailers may occur.

(e) Respondent's quantity discount schedule (Appendix D) is not now, and for some time last past has not been, based upon each of its wholesalers' individual differences in costs of sale and delivery. In fact, respondent continues to maintain said quantity discounts without actual knowledge of whether the price differentials thereby allowed and suggested are justifiable by each or any of its wholesalers.

(f) By virtue of respondent's retailer contracts, competing retail purchasers of respondent's lines are, in many instances, precluded from engaging in retail price competition with respect

thereto. Therefore, the result of such wholesale price discrimination which may, or which actually does, occur is solely the enrichment of the larger retailers who can afford to purchase respondent's merchandise in quantities carrying the higher discounts.

PAR. 17. (a) By distributing its goods through wholesalers and by having contractually controlled the wholesalers' maximum discounts as set forth in Paragraph Sixteen hereof, respondent has established and maintained minimum wholesaler resale prices which have resulted in price discrimination between competing retailers of said goods.

(b) Respondent has thereby violated Section 5(a)(1) of the Federal Trade Commission Act.

Mr. Ronald A. Bloch and Mr. Steven B. Gold for the Commission.

Mr. Charles C. Parlin, Jr., Mr. Thomas A. Dieterich and Mr. R. Bruce MacWhorter of *Shearman & Sterling*, New York, N.Y. for respondent.

Mr. William C. Ughetta, Corning Glass Works, Corning, N.Y. of counsel.

INITIAL DECISION BY RAYMOND J. LYNCH, ADMINISTRATIVE
LAW JUDGE

DECEMBER 27, 1972

PRELIMINARY STATEMENT

The Federal Trade Commission on January 13, 1972, issued the complaint herein which contains five counts. Each of these counts alleges that a practice engaged in by the respondent in connection with its Fair Trade program violates Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. Section 45(a)(1)). Respondent filed its answer on February 22, 1972. This answer denies any violation by respondent of Section 5 of the Federal Trade Commission Act and asserts as an affirmative defense to Counts I to IV inclusive that respondent's acts therein challenged are authorized by the McGuire Amendment to Section 5 of the Act.

On March 29, 1972, a prehearing conference was held, at which time there was discussion of the possibility of resolving this dispute by summary decision on stipulated facts. Counsel for the parties proceeded to explore this possibility and subsequently entered into two stipulations to facilitate that objective.

A stipulation filed August 3, 1972, stipulated certain facts with respect to Count V of the complaint and with respect to the pleading in Paragraph 8(e) of the complaint. A stipulation filed October 17, 1972, provided, in effect, that relief relating to the allegations of Counts I and IV of the complaint could be granted against respondent only if Count II of the complaint is sustained. This latter stipulation means that on the issue of liability the administrative law judge need determine only Counts II, III and V.

On September 29, 1972, complaint counsel filed a motion for summary decision in their favor on Counts II, III and V of the complaint. The motion was made pursuant to Section 3.24 of the Commission's Rules of Practice and Procedure. On October 16, 1972, respondent filed a cross-motion pursuant to Section 3.24 of the Commission's rules for summary decision in its favor on Counts II, III and V.

Each side filed in support of its motion an extensive memorandum of law and oral argument was had on these cross-motions for summary decision on October 25, 1972. At this oral argument counsel for both sides agreed that there were no factual disputes between the parties; that Counts II, III and V raised purely legal questions which could properly be decided on a motion for summary decision; and that in line with the stipulation between the parties filed October 17, 1972, a decision on these cross-motions for summary decision would be dispositive of the entire proceeding.

On November 16, 1972, this proceeding was assigned to the undersigned administrative law judge inasmuch as Judge Johnson was unavailable. The undersigned has had an opportunity to review all of the motions, memorandums of law and the transcript of the oral argument that was held on October 25, 1972, and upon the basis of all the evidence that has been presented, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Fair Trade Legislation

1. A brief description at this point of fair trade legislation in this country will be useful. In very broad outline, fair trade legislation permits a manufacturer of trademarked goods, under certain specified conditions, to prescribe the price at which his trademarked merchandise may be resold by others. The 50 states (plus Puerto Rico and the District of Columbia) fall into three general categories with respect to fair trade legislation:

(1) Those states which do not have any fair trade legislation in effect—the “free trade states.” There are 14 states plus Puerto Rico and the District of Columbia in this category.

(2) Those states which have fair trade legislation which is binding upon any reseller within the state whether or not he has signed a fair trade agreement—the so-called “non-signer fair trade states.” There are 17 states in this category.

(3) Those states which have fair trade legislation which is binding only upon those resellers who have signed fair trade agreements—the so-called “signer only fair trade states.” There are 19 states in this category.

2. The United States Supreme Court in *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U.S. 373 (1911) held that the Sherman Act invalidated resale price maintenance agreements in interstate commerce. On the other hand, some 46 state legislatures have acted at some time to validate resale price maintenance agreements in intrastate commerce. Recognizing the unique competence of the states to resolve conflicting considerations (which far transcend the legal), Congress has twice passed legislation to immunize resale price maintenance agreements from antitrust objection to the extent that they are validated by state fair trade laws in intrastate commerce, namely, the Miller-Tydings Act in 1937 (50 Stat. 693) and the McGuire Act in 1952 (66 Stat. 631). By this legislation Congress has permitted the states to apply their respective fair trade legislation to interstate transactions, without interjection of the federal antitrust laws as enunciating controlling legal rules.

The Undisputed Facts

3. A party moving for summary decision under Section 3.24 of the Commission's Rules of Practice is required to assert “that there is no genuine issue as to any material fact” and both parties have so asserted on these cross-motions for summary decision. The parties are also in agreement that the undisputed facts are as asserted in respondent's answer and in the stipulations filed August 3, 1972 and October 17, 1972 (pages 55–56 of the transcript of proceedings held October 25, 1972). In the following recitation of undisputed facts, therefore, the references will be to paragraph numbers in respondent's answer.

4. Respondent is a New York corporation with its principal office in the same state (answer, ¶ 2). It is engaged in the manufacture, sale and distribution in substantial volume of various

products for food preparation, serving and storage (Answer, ¶¶ 3, 4a, 4b). These commodities bear (or the label or container bears) respondent's trademarks Pyrex, Corning Ware or Corelle and are in free and open competition with commodities of the same general class produced or distributed by others (answer, ¶¶ 4a, 4b, 18, 19).

5. Respondent sells this trademarked merchandise only to wholesalers. These wholesalers are located in Puerto Rico, the District of Columbia and 45 different states (answer, ¶ 4c). These wholesalers purchase the trademarked merchandise from respondent for resale to retailers located in Puerto Rico, the District of Columbia and all 50 states (answer, ¶ 4d). These retailers resell the trademarked merchandise to their customers. Both types of resales (*i.e.*, resales by the wholesaler and resales by the retailer) are made across state lines (answer, ¶ 4e).

6. Respondent has contracts with all of its wholesalers in the forms attached to the complaint as Appendix B-1 and Appendix B-2 (answer, ¶ 5a). For present purposes the significant parts of these wholesaler contracts are those parts of paragraphs 6 and 7 which read as follows:

6. FAIR TRADE AGREEMENT—As to each state and as to such sales where it is lawful so to agree (but not elsewhere or otherwise).

(a) Distributor agrees that it will not (except as specifically permitted by statute) directly or indirectly advertise, offer for sale or sell any PYREX ware or CORNING WARE products at prices less than the fair trade prices now or hereafter designated and set forth in schedule A less discounts listed in schedule B applicable to the products sold * * *.

(b) Distributor agrees that it will not sell or transfer PYREX ware or CORNING WARE products to any reseller unless such reseller has agreed with Corning to maintain Corning's fair trade prices.

7. APPLICABLE LAW—This agreement, entered between Corning and Distributor at Corning, New York, is governed by the laws of the State of New York. The agreements contained in the Fair Trade Agreement set out in paragraph 6 hereof shall apply solely to sales, offers or advertisements only when and where agreements of the character of those therein contained shall be lawful as applied to intrastate transactions under any statute, law or public policy, now or hereafter in effect, in the state in which such resale is to be made or to which products are to be transported for such resale. In other states the prices referred to in paragraph 6 hereof are merely suggested as possible resale prices which may or may not be adopted for resale in those states in the sole discretion of the Distributor.

7. In order to obtain signed retailer contracts in fair trade states, to ensure that its wholesalers comply with paragraph 6(b) of the wholesaler contract, and to ensure that all fair trade state

retailers of its trademarked merchandise are bound to observe respondent's fair trade prices upon their retail resales, respondent in effect requires its wholesalers to obtain retailer fair trade agreements from fair trade state retailers to which the wholesalers sell merchandise bearing respondent's trademarks (answer, ¶ 5f). These retailer contracts are in the forms attached to the complaint as Appendix A-1 and Appendix A-2 (answer, ¶ 5a). For present purposes the significant parts of these retailer contracts are those parts of paragraphs 6 and 7 which read:

6. FAIR TRADE AGREEMENT—As to each state and as to such sales where it is lawful so to agree (but not elsewhere or otherwise): (1) Dealer agrees that it will not (except as specifically permitted by statute) directly or indirectly advertise, offer for sale or sell any PYREX ware or CORNING WARE products at prices less than the fair trade prices now or hereafter designated and set forth in Schedule A as such Schedule may be constituted from time to time (2) Dealer agrees that it will not sell or transfer PYREX ware or CORNING WARE products to any reseller unless such reseller has agreed with Corning to maintain Corning's fair trade prices. * * *

7. APPLICABLE LAW—This agreement, entered between Corning and Dealer at Corning, New York, is governed by the laws of the State of New York. The agreements contained in the Fair Trade Agreement set out in paragraph 6 hereof shall apply solely to sales, offers or advertisements only when and where agreements of the character of those therein contained shall be lawful as applied to intrastate transactions under any statute, in the State in which such resale is to be made or to which products are to be transported for such resale.

8. Through wholesaler fair trade agreements with all of its wholesalers, and through retailer fair trade agreements with certain retailer vendees of such wholesalers, respondent thus maintains a resale price maintenance program. This program, as set forth in the fair trade agreements, has three distinct elements:

(1) The program includes the establishment of maximum discounts from retail fair trade prices which respondent's wholesalers may grant when reselling respondent's trademarked merchandise to customers who will themselves resell such merchandise. The maximum discounts are specified by the wholesaler fair trade agreements and apply only where the wholesaler's disposition of the trademarked merchandise in question occurs in a state where resale price maintenance agreements are lawful under local law in intrastate commerce. In respect of wholesaler sales occurring in other states, the wholesaler is completely free to resell to a retailer (or to any other person) at any price.

(2) The program also includes the establishment of minimum retail fair trade prices which are set forth in price lists issued by

respondent from time to time. Said price lists, as well as the language of the retailer fair trade agreements hereinabove quoted, make it abundantly clear that minimum retail prices are established by respondent's program only where the retail sale in question occurs in a state where resale price maintenance agreements are lawful under local law in intrastate commerce. In respect of retail sales occurring in other states, respondent's fair trade prices are merely suggested prices.

(3) In order to effectuate its program at the retailer level, respondent has included provisions in its wholesaler fair trade agreements and its retailer fair trade agreements that no party thereto may sell or transfer any of respondent's trademarked goods to any dealer who, in turn, will resell such goods in a fair trade state unless such dealer has agreed with respondent to maintain respondent's fair trade prices upon its further resales of respondent's trademarked merchandise in fair trade states. In effect, parties to wholesaler fair trade agreements and retailer fair trade agreements may sell respondent's trademarked merchandise to fair trade state resellers only if the latter have signed a fair trade contract with respondent.

9. Respondent maintains and periodically circulates to its salesmen and wholesalers a list of fair trade state retailers who have refused to sign a retailer fair trade agreement or who, having signed such an agreement, have violated the resale price provisions thereof. Consistent with the terms of its wholesaler and retailer fair trade agreements, respondent insists that no party to such an agreement sell respondent's trademarked merchandise to any person whose name appears on this list—including non-signers in signer-only states (answer, ¶¶ 5g, 23).

10. The manner in which respondent in practice enforces its fair trade agreements is set forth in a booklet entitled "Fair Trade Procedures" which is Exhibit E to the complaint (answer, ¶ 23). The instructions given by respondent in this booklet include the following:

1. FULLY VALID FAIR TRADE STATES

The following states have Fair Trade Laws and maintain the constitutionality of the non-signer clause. We may sue any store which has had actual notice of our fair trade prices whether a contract has been signed or not.

Arizona	Maine	North Dakota
California	Massachusetts	Ohio
Connecticut	New Hampshire	Tennessee
Delaware	New Jersey	Virginia
Illinois	New York	Wisconsin
Maryland	North Carolina	

PROCEDURE:

When a report of price cutting is brought to your attention check the accuracy of the report and attempt to correct the situation with a personal call wherever possible. Report the violation to J. H. Miller, Corning, New York. A Fair Trade wire and registered letter will be sent to violator requesting that prices be restored or legal action will be taken.

If price cutting persists legal action is recommended. The actual shopping of the store for evidence will be handled by the Legal Department. (A shopping report or receipt for merchandise before notice to the store is of no value).

2. NON-SIGNER STATES

The following states have Fair Trade Laws but specify that the non-signers clause is unconstitutional. Unless a dealer actually signs a Fair Trade Agreement he is not bound to maintain Fair Trade prices.

Arkansas	Kentucky	Pennsylvania
Colorado	Louisiana	South Carolina
Florida	Michigan	South Dakota
Georgia	Minnesota	Washington
Idaho	New Mexico	West Virginia
Indiana	Oklahoma	
Iowa	Oregon	

PROCEDURE:

When a report of price cutting is brought to your attention, ask the violator to restore prices and sign a Fair Trade Agreement. If the dealer refuses to sign, report this to J. H. Miller, Corning, N. Y., and the dealer's name will be added to a special list that is mailed to our distributors. Distributors may not sell to dealers appearing on this list.

We may as part of the Wholesale Fair Trade Agreement ask the distributor to agree that he will not sell to any dealer who has refused to sign a Fair Trade Agreement.

If the distributor violates this agreement we may either (1) sue him for breach of his agreement or (2) cut him off.

If a dealer violates his contract we may terminate his contract and notify all distributors that we have done so. A distributor *must* refuse to sell him to avoid violation of the wholesale contract. It is valid to insist that our ware be distributed only through signing retailers.

3. STATES WITH NO FAIR TRADE

The following states have no Fair Trade Laws and our Fair Trade Schedule A prices are merely suggested prices for the guidance of our distributors and dealers.

Alabama	Montana	Rhode Island
Alaska	Mississippi	Texas
District of Columbia	Missouri	Utah
Hawaii	Nebraska	Vermont
Kansas	Nevada	Wyoming

1675

Initial Decision

PROCEDURE:

In states *not having Fair Trade Laws* the selection of dealers is at the sole discretion of the wholesaler. To make absolutely certain there will be no misunderstanding you are instructed *not* to report to your distributors any retailer not using our suggested retail prices when retailer is located in non-fair trade states.

PLEASE REFER ALL QUESTIONS AS TO THE APPLICABILITY OF FAIR TRADE LAWS TO HENRY H. SAYLES, LEGAL DEPARTMENT, CORNING, N. Y.

The State Fair Trade Legislation

11. Each of the 36 states that presently have fair trade legislation in effect of course has used somewhat different legislative language. An example of this state fair trade legislation is the Illinois Fair Trade Act reading as follows:

AN ACT to protect trade mark owners, distributors and the public against injurious and uneconomic practices in the distribution of articles of standard quality under a trade mark, brand or name.

Section 1. No contract relating to the sale or resale of a commodity which bears, or the label or content of which bears, the trade mark, brand or name of the producer or owner of such commodity and which is in fair and open competition with commodities of the same general class produced by others shall be deemed in violation of any law of the State of Illinois by reason of any of the following provisions which may be contained in such contract:

(1) That the buyer will not resell such commodity except at the price stipulated by the vendor.

(2) That the producer or vendee of a commodity require upon the sale of such commodity to another, that such purchaser agree that he will not, in turn, resell except at the price stipulated by such producer or vendee.

Such provisions in any contract shall be deemed to contain or imply conditions that such commodity may be resold without reference to such agreement in the following cases:

(1) In closing out the owner's stock for the purpose of discontinuing delivery of any such commodity: provided, however, that such stock is first offered to the manufacturer of such stock at the original invoice stock price, at least ten (10) days before such stock shall be offered for sale to the public.

(2) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof.

(3) By any officer acting under the orders of any court.

Sec. 2. Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of section 1 of this Act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby.

Sec. 3. This Act shall not apply to any contract or agreement between producers or between wholesalers or between retailers as to sale or resale prices.

The provision of this Act shall not apply to any contract or agreement

relating to any commodity which may be sold or offered for sale to the State of Illinois or to any of its administrative agencies or political subdivisions, or to any municipality, or to any free public library, endowed library, college, university or school library in this State.

Sec. 4. This Act may be known and cited as the "Fair Trade Act".

(Illinois Laws of 1935, Senate Bill 598, as amended in 1941)

The McGuire Act

12. Congress enacted the McGuire Act in 1952 (66 Stat. 631). The preamble of the McGuire Act reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the purpose of this Act to protect the rights of States under the United States Constitution to regulate their internal affairs and more particularly to enact statutes and laws, and to adopt policies, which authorize contracts and agreements prescribing minimum or stipulated prices for the resale of commodities and to extend the minimum or stipulated prices prescribed by such contracts and agreements to persons who are not parties thereto. It is the further purpose of this Act to permit such statutes, laws, and public policies to apply to commodities, contracts, agreements, and activities in or affecting interstate or foreign commerce.

The text of the McGuire Act amends Section 5 of the Federal Trade Commission Act by adding to Section 5 the following:

(2) Nothing contained in this Act or in any of the Antitrust Acts shall render unlawful any contracts or agreements prescribing minimum or stipulated prices, or requiring a vendee to enter into contracts or agreements prescribing minimum or stipulated prices, for the resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale.

(3) Nothing contained in this Act or in any of the Antitrust Acts shall render unlawful the exercise or the enforcement of any right or right of action created by any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia, which in substance provides that wilfully and knowingly advertising, offering for sale, or selling any commodity at less than the price or prices prescribed in such contracts or agreements whether the person so advertising, offering for sale, or selling is or is not a party to such a contract or agreement, is unfair competition and is actionable at the suit of any person damaged thereby.

(4) Neither the making of contracts or agreements as described in paragraph (2) of this subsection, nor the exercise or enforcement of any right

1675

Initial Decision

of action as described in paragraph (3) of this subsection shall constitute an unlawful burden or restraint upon, or interference with, commerce.

(5) Nothing contained in paragraph (2) of this subsection shall make lawful contracts or agreements providing for the establishment or maintenance of minimum or stipulated resale prices on any commodity referred to in paragraph (2) of this subsection, between manufacturers, or between producers, or between wholesalers, or between brokers, or between persons, firms, or corporations in competition with each other.

Count II of the Complaint

13. From the foregoing it can be seen that a typical state fair trade act as well as the McGuire Act of Congress contains provisions permitting resale price maintenance and also provisions permitting the restriction of dealers. This proceeding is directed at the dealer restriction provisions of Corning's fair trade program.

14. Count II of the complaint is addressed to the situation where Corning sells its trademarked merchandise to a wholesaler in a free trade state who will resell that merchandise to a retailer who will in turn resell the merchandise in a fair trade state. The complaint alleges that respondent has forced fair trade state retailers to sign fair trade agreements in order to obtain respondent's merchandise (§ 8(c)); that respondent has contractually required its free trade state wholesalers to deal only with signer retailers in fair trade states (§ 8(c)); that respondent thereby prevents free trade state wholesalers from selling respondent's merchandise to non-signing retailers in fair trade states (§ 8(d)); that such a restriction preventing free trade state resellers from selling to non-signing retailers in signer-only states is outside the exemption of Section 5(a)(2) of the Federal Trade Commission Act and is therefore a violation of Sections 5(a)(1) and 5(a)(4) of the Act.

15. The facts as to Corning's conduct are not in dispute. It may be helpful to take as an example a sale by Corning to a wholesaler in Missouri (a free trade state) who will resell to a retailer in either neighboring Illinois (a non-signer fair trade state) or neighboring Arkansas (a signer-only fair trade state). Respondent requires all of its wholesalers, wherever located, to sign its wholesalers fair trade agreement. Therefore, a Missouri wholesaler as a condition of his appointment is required to sign the fair trade agreement even though Missouri is a free trade state.

16. The fair trade obligations of the Missouri wholesaler are limited by the provisions of paragraphs 6 and 7 of his agreement

quoted above. Therefore, he can sell to any Missouri retailer he wants to and at any price he chooses. (Similarly, the Missouri retailer may resell respondent's trademarked merchandise in Missouri at any price he chooses.)

17. However, if the Missouri wholesaler resells the merchandise to a retailer who, in turn, will resell the merchandise in a fair trade state (in our example, either Illinois or Arkansas) Corning's wholesaler fair trade agreement requires that the Missouri wholesaler sell only to an Illinois or Arkansas reseller who has signed one of respondent's fair trade agreements. If the Missouri wholesaler sells to an Illinois or Arkansas reseller who has not signed a fair trade agreement, the wholesaler will have breached his fair trade agreement with Corning. Complaint counsel claim these undisputed facts demonstrate a violation of Section 5(a)(1) of the Federal Trade Commission Act. Respondent claims these admitted practices fall squarely within the exemption of the McGuire Act.

18. Neither side has called our attention to any cases determinative of the issue. Complaint counsel cite *Revere Camera Co. v. Masters Mail Order Co.*, 128 F. Supp. 457 (D. Md. 1955); *Bissell Carpet Sweeper Co. v. Masters Mail Order Co.*, 140 F. Supp. 165 (D. Md. 1956), *aff'd*, 240 F.2d 684 (4th Cir. 1957); and *General Electric Co. v. Masters Mail Order Co.*, 244 F.2d 681 (2d Cir. 1957). These cases involved sales from a free trade jurisdiction retailer to an ultimate customer located in a fair trade jurisdiction. No resales in a fair trade state were involved.

19. Respondent cites *Sunbeam Corp. v. MacMillan*, 110 F. Supp. 836 (D. Md. 1953); *Sunbeam Corp. v. Payless Drug Stores*, 113 F. Supp. 31 (D. Cal. 1953); and *Vornado, Inc. v. Corning Glass Works*, 255 F. Supp. 216 (D. N.J. 1966), *aff'd* 388 F.2d 117 (3d Cir. 1968). These cases demonstrate that fair trade agreements identical with those involved in this proceeding have been upheld under the laws of various fair trade states. But they are not dispositive of the central issue under Count II, that is which state law should be looked to in determining whether the McGuire Act exemption applies.

20. Complaint counsel argue that the law of the free trade jurisdiction—the state of the first resale—must govern. They claim support for their position in the debates in the House of Representatives leading up to the enactment of the McGuire Act—particularly the fact that an amendment was proposed by Mr. Cole of Kansas and defeated (98 Cong. Rec. 5029–5031). This

Cole Amendment would have protected fair trade state merchants against sales in or even deliveries into their state by sellers located in free trade states. However, the House also considered and rejected the Keogh Bill (H.R. 6925, 82d Cong., 2d Sess.) as an alternative to the McGuire Act. The Keogh Bill would have exempted from fair trade enforcement any interstate sales either out of or into a free trade state. The same cases which complaint counsel cite in support of their position in Count II have concluded that the House debates were contradictory and inconclusive and I agree, See, for example, *Bissell Carpet Sweeper Co. v. Masters*, 140 F. Supp. at pp. 175-178.

21. Our analysis must begin with the language of the McGuire Act itself. The preamble of the McGuire Act reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the purpose of this Act to protect the rights of States under the United States Constitution to regulate their internal affairs and more particularly to enact statutes and laws, and to adopt policies, which authorize contracts and agreements prescribing minimum or stipulated prices for the resale of commodities and to extend the minimum or stipulated prices prescribed by such contracts and agreements to persons who are not parties thereto. It is the further purpose of this Act to permit such statutes, laws and public policies to apply to commodities, contracts, agreements, and activities in or affecting interstate or foreign commerce. (66 Stat. 631-632)

22. The pertinent language of the McGuire Act for purposes of Count II is

(2) Nothing contained in this Act * * * shall render unlawful any contracts or agreements * * * requiring a vendee to enter into contracts or agreements prescribing minimum or stipulated prices, for the resale of a commodity * * * when contracts or agreements of that description are lawful as applied to intrastate transactions under any statute, law or public policy now or hereafter in effect in any State * * * in which such resale is to be made, or to which the commodity is to be transported for such resale.

There are two points which may be noted from this Congressional mandate:

(1) The McGuire Act specifically recognizes the dealer restriction provisions of the state fair trade laws and covers these dealer restriction provisions in its exemption from the applicability of the Federal Trade Commission Act; and

(2) The McGuire Act itself specifies the state whose law must be referred to in determining the lawfulness of the fair trade restrictions.

23. It will be noted that in the last two lines quoted from subsection (2) of the McGuire Act, the phrase "such resale" twice appears. This obviously refers to the resale "at minimum or stipulated prices" mentioned earlier in the subsection.

24. In the factual setting of Count II there is no resale at a minimum or stipulated price in Missouri because Missouri is a free trade state. The "such resale" therefore does not apply to the first resale in the distribution process—the Missouri resale by the wholesaler.

25. In the Count II situation, however, there is also a second resale—the resale by a retailer located in a fair trade state—either Illinois or Arkansas. This resale in a fair trade state is clearly the "such resale" referred to in subsection (2) of the McGuire Act—that is, it is the resale at a minimum or stipulated price.

26. It follows, therefore, that to determine the legality of the dealer restriction provision, we must look to the law of Illinois or Arkansas—the state (in the language of the McGuire Act)

to which the commodity is to be transported for such resale.

27. Every one of the 36 states which have fair trade laws has a provision making lawful the dealer restriction provisions of the kind here attacked. To continue with our example, Title 70 of the Arkansas Statutes Section 70-202 permits fair trade contract provisions:

(b) That the buyer will require of any dealer to whom he may resell such commodity an agreement that he will not, in turn, resell at less than the minimum price stipulated by the seller.

(c) That the seller will not sell such commodity:

(1) To any wholesaler, unless such wholesaler will agree not to resell the same to any retailer unless the retailer will in turn agree not to resell the same except to consumers for use and at not less than the stipulated minimum price, and such wholesaler will likewise agree not to resell the same to any other wholesaler unless such other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell; or

(2) To any retailer, unless the retailer will agree not to resell the same except to consumers for use and at not less than the stipulated minimum price.

28. Since the dealer restrictions are lawful in the state where the resale at a maintained price will take place, the McGuire Act says in so many words that they are not unlawful under the Federal Trade Commission Act.

29. This result is the logical result of the legislative scheme. The only purpose of the dealer restriction provision in Corning's wholesaler fair trade agreement is to assist in effectively maintaining the resale price in those states whose legislatures have opted for fair trade as a matter of state policy. It follows that the law of the fair trade state should be looked to in determining the legality of the dealer restriction provisions of Corning's contracts.

30. Since those provisions are legal under the laws of all 36 fair trade states the claim of complaint counsel under Count II of the complaint must be rejected and summary decision granted in favor of respondent on Count II.

Count III of the Complaint

31. Count III of the complaint alleges that under Corning's wholesaler and retailer fair trade agreements, Corning's fair trade state resellers may not sell Corning's trademarked merchandise to any fair trade state reseller who has not signed one of Corning's fair trade agreements. It is further alleged that

The statutes, laws or public policies of the signer-only states * * * prohibit or render unenforceable any agreements by which a reseller is bound to refuse to deal with any non-signer. (§ 10(c))

The conclusion pleaded in Count III of the complaint is that to the extent Corning's fair trade agreements require signer-only state resellers to refuse to sell to non-signing resellers in fair trade states, the agreements are outside the exemption of Section 5(a)(2) and in violation of Sections 5(a)(4) and 5(a)(1) of the Federal Trade Commission Act.

32. Again, there is no dispute as to the facts. The situation may be analyzed in terms of a Corning wholesaler in a signer-only fair trade state such as Indiana who might consider selling the trademarked merchandise to a non-signing retailing reseller also located in a signer-only fair trade state (for example, Indiana again or its neighboring state, Kentucky). To analyze this situation:

(1) Respondent requires each of its wholesalers, wherever located, to sign its wholesalers fair trade agreement as a condition of his appointment.

(2) Under paragraph 6 of the wholesaler's fair trade agreement he agrees not to sell the trademarked merchandise to any Indiana reseller unless that reseller has agreed to maintain respondent's fair trade prices.

33. There are 19 states which have (like Indiana) enacted Fair Trade Acts which can be enforced only as to persons who have signed fair trade agreements—that is, they are signer-only states. Each of the 19 Fair Trade Acts, however, specifically authorizes a dealer restriction provision such as is contained in respondent's contract. Title 24, Article 3, Chapter 1 of the Indiana Code provides in Section 2 that no contract relating to the resale of a trademarked commodity shall be deemed in violation of any law of the State of Indiana by virtue of a provision:

(b) That the buyer will require of any dealer to whom he may resell such commodity an agreement that he will not, in turn, resell at less than the minimum price stipulated by the seller.

(c) That the seller will not sell such commodity:

(1) To any wholesaler, unless such wholesaler will agree not to resell the same to any retailer unless the retailer will in turn agree not to resell the same except to consumers for use and at not less than the stipulated minimum price, and such wholesaler will likewise agree not to resell the same to any other wholesaler unless such other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell.

The other 18 signer-only states, all have similar statutes.

34. At the oral argument on October 25, 1972, complaint counsel conceded that they were asking for a determination that the quoted statute of Indiana, and the comparable statutes of the 18 other signer-only fair trade states, were "not in effect" within the meaning of the McGuire Act (transcript p. 89, line 17; p. 92, line 15). This argument is devoid of merit since in each case the statute has been duly enacted, it has never been repealed or superseded, and the dealer restriction portion of the statute has never been declared unconstitutional by any court.

35. Decisions in Florida and Michigan cited by complaint counsel in support of their position on this Count III of the complaint clearly do not support said position. Those decisions hold only that dealer restriction provisions cannot be used to enforce fair trade prices against persons not signing fair trade agreements in signer-only states, on a tortious interference with contract theory. *E.g.*, *Sunbeam Corp. v. Gilbert Simmons Associates, Inc.*, 91 So. 2d 335 (Fla. 1956), *Argus Cameras Inc. v. Hall of Distributors, Inc.*, 343 Mich. 54, 72 N.W. 2d 152 (1955). Irrespective of the correctness of those holdings, which are contrary to authority in other states, *Cat's Paw Rubber Co. v. Barlo Leather & Findings Co.*, 12 F.R.D. 119 (S.D.N.Y. 1951); *Sunbeam Corp. v. Payless Drug Stores*, 113 F. Supp. 31 (N.D.Cal. 1953); *Bissell Carpet Sweeper Co. v. Shane*

1675

Initial Decision

Co., 237 Ind. 188, 143 N.E. 2d 415, 421 (1957), said decisions do not deal with—and certainly do not resolve—the validity and enforceability of dealer restriction provisions as between the parties to fair trade contracts in signer-only states. Subsequent decisions in Florida and Michigan themselves make this clear. *Sunbeam Corporation v. Chase & Sherman, Inc.*, 1953 CCH Trade Cases ¶67,524, cert. denied, 72 So.2d 714 (Fla. 1955), *Miami Parts & Spring, Inc. v. Champion Spark Plug, Inc.*, 364 F.2d 957, 967 (5th Cir. 1966), *Sunbeam Corp. v. Schiros*, 151 F.Supp. 166 (S.D. Mich. 1957).

36. Indeed, complaint counsel cannot point to a single decision holding invalid the dealer restriction provision of a fair trade agreement, as between the parties thereto, which is expressly validated by every one of the 36 states having some form of fair trade legislation. If such provisions are to be found invalid on public policy grounds, that decision must be left to the states, in conformity with Congressional intent evidenced by Miller-Tydings and McGuire. I shall not presume the invalidity of state legislation, and accordingly, I dismiss Count III of the complaint.

Count V of the Complaint

37. Count V of the complaint deals with the quantity discount provisions of Corning's fair trade agreements. The allegation is that Corning has "required" its wholesalers to give quantity discounts which have resulted in price discrimination between competing retailers.

38. Once again, the facts are not in dispute. And the following facts which have been stipulated by the parties contradict the claim of complaint counsel:

(1) Respondent's wholesaler contracts (complaint, Appendix B) and discount schedules (complaint, Appendix D) do not by their terms require that the maximum discounts be given to any retailer. However, when applicable to any resale, said contracts and schedules do require that retailers purchasing in lesser quantities be sold at lesser discounts.

(2) In at least some instances, respondent's fair trade state wholesalers grant the maximum quantity discounts allowed by respondent's wholesaler discount schedules (complaint, Appendix D) to retail customers qualifying therefor. Retail customers of said wholesalers purchasing in lesser quantities are sold at the lesser discounts required by said schedules.

(3) To the extent that respondent's wholesaler resale prices are merely suggested prices, many of respondent's wholesalers adopt and follow said suggested prices.

39. Under these agreements it is the responsibility of the wholesaler to decide whether or not he wishes to give a quantity discount and whether any such quantity discount will comply with the Robinson-Patman Act.

40. Quantity discounts are widely used. And they are not *per se* illegal. See *Bruce's Juices, Inc., v. American Can Co.*, 330 U.S. 743 at 745-46 (1947).

41. Quantity discounts are not illegal if they are cost justified; or if they are given simply to meet competition; or if they have no adverse effect on competition. This means, of course, that each case must be examined on its own particular facts.

42. Count V must therefore be dismissed because:

(1) Respondent does not require its wholesalers to grant quantity discounts; and

(2) It is impossible to state categorically that any quantity discount that respondent's wholesalers might choose to grant would be illegal.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of and over respondent and the subject matter of this proceeding.

2. For the reasons set forth above, I have determined that Counts II, III and V of the complaint must be dismissed. This means that in accordance with the stipulation of the parties filed October 17, 1972, Counts I and IV of the complaint need not be litigated.

ORDER

It is ordered, That the complaint herein be, and the same hereby is dismissed in its entirety.

PYREX® WARE AND CORNING WARE® PRODUCTS AUTHORIZED DEALER APPOINTMENT AND FAIR TRADE AGREEMENT

As of the _____ day of _____, 19____ at Corning, New York, CORNING GLASS WORKS, a New York Corporation, hereinafter called "Corning", hereby appoints

Name _____

(Print Clearly)

TYPE OF STORE: HARDWARE APPLIANCE
 VARIETY DEPARTMENT
 OTHER (Please Specify) _____

1675

Initial Decision

ADDRESS ----- CITY ----- STATE -----
hereinafter called "Dealer", as an AUTHORIZED PYREX WARE AND CORNING WARE PRODUCT DEALER upon and subject to the terms of this agreement.

Corning and Dealer accordingly hereby agree as follows:

1. TERM—The term of this agreement shall be from the date of its signing by Corning until termination pursuant to paragraph 5 below.
2. PRODUCTS—The products to which this agreement relate are hereinafter referred to as PYREX ware and CORNING WARE products and are those products listed in Schedule A to this agreement as such schedule may be constituted or supplemented from time to time by Corning. PYREX ware and CORNING WARE products are produced by Corning, are identified by trademarks, brands or names owned by Corning and are in free, fair and open competition with commodities of the same general class produced or distributed by others.
3. AUTHORIZATION AND ACCEPTANCE, USE OF TRADEMARKS—So long as this agreement is in effect and so long as Dealer lives up to Dealer's obligations hereunder, Dealer is authorized to represent that Dealer is an AUTHORIZED PYREX WARE AND CORNING WARE PRODUCT DEALER and to use as selling aids the Corning trademarks, brands or names identifying PYREX ware and CORNING WARE products provided, however, that the Dealer shall not make any use of Corning trademarks, brands or names which will in any manner injure or destroy their value to Corning.
4. SALES HELPS—Corning agrees to provide Dealer from time to time with sales literature, display materials and other selling aids as well as to cooperate with Dealer in the interest of developing Dealer's maximum sales potential of PYREX ware and CORNING WARE products.
5. TERMINATION AND AGREEMENT TO REPURCHASE—Either party may terminate this agreement at any time by written or telegraphic notice to the other effective upon receipt of such written or telegraphic notice. Effective as of the date of notice of termination, Dealer hereby agrees to remove PYREX ware and CORNING WARE products from sale to others, and he hereby offers to sell his entire inventory of PYREX ware and CORNING WARE products listed on the Schedule A effective on the date of termination to Corning and Corning hereby agrees to purchase such inventory at Dealer's original invoice cost at the time of receipt of such notice.
6. FAIR TRADE AGREEMENT—As to each state and as to such sales where it is lawful so to agree (but not elsewhere or otherwise): (1) Dealer agrees that it will not (except as specifically permitted by statute) directly or indirectly advertise, offer for sale or sell any PYREX ware or CORNING WARE products at prices less than the fair trade prices now or hereafter designated and set forth in Schedule A as such Schedule may be constituted from time to time exclusive of all applicable sales and use taxes. Such Schedule may be amended or supplemented at any time by Corning upon ten (10) days' written notice to Dealer by changing prices or by adding or deleting items. (2) Dealer agrees that it will not sell or transfer PYREX ware or CORNING WARE products to any reseller unless such reseller has agreed with Corning to maintain Corning's fair trade prices. (3) Except as authorized by Schedule A or any amendment thereof or supplement thereto (a) the offering or giving of anything of value by Dealer or any reseller in connection with the sale of

any of the products in Schedule A or (b) the offering or making of any concession in connection with any such sale or (c) the sale or offering for sale of any of the products in combination with any other merchandise shall constitute a breach by Dealer of this agreement. Termination shall not affect the rights or obligations of either of the parties hereto under any applicable Fair Trade Act or by reason of any other contract made pursuant to such Act and this agreement shall remain in full force and effect with respect to all PYREX ware and CORNING WARE products in the hands of, on order by or in transit to the Dealer at the time of such termination.

7. APPLICABLE LAW—This agreement, entered between Corning and Dealer at Corning, New York, is governed by the laws of the State of New York. The agreements contained in the Fair Trade Agreement set out in paragraph 6 hereof shall apply solely to sales, offers or advertisements only when and where agreements of the character of those therein contained shall be lawful as applied to intrastate transactions under any statute, law or public policy, now or hereafter in effect, in the State in which such resale is to be made or to which products are to be transported for such resale.

8. ENTIRE AGREEMENT EFFECTIVE DATE—No change in the printed terms of this agreement shall be of any force or effect. This agreement shall become effective upon Corning's signing the same after Corning's receipt of two (2) copies executed by Dealer and any and all Fair Trade Agreements with reference to PYREX ware and CORNING WARE products between Corning and Dealer prior to the effective date of this agreement are hereby cancelled and superseded.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

STORE NAME ----- CORNING GLASS WORKS

BY ----- BY -----
(Signature of sole proprietor, corporate officer or partner)

TITLE ----- TITLE -----

HEADQUARTERS NAME -----
(If Applicable)

ADDRESS ----- CITY ----- STATE -----

This contract covers above store. Additional retail outlets of same company must be specified individually on back of this sheet or covered in separate contract.

SUBMITTED BY ----- SIGNED -----
(Wholesaler) (Signature of Sales Manager or Officer)

APPENDIX A-1

CORELLE® Livingware, PYREX® WARE
and CORNING WARE® Products

AUTHORIZED DEALER APPOINTMENT AND FAIR TRADE AGREEMENT

As of the ----- day of -----, 197--- at Corning, New York,
CORNING GLASS WORKS, a New York Corporation, hereinafter called
"Corning," hereby appoints

1675

Initial Decision

NAME -----

TYPE OF STORE: HARDWARE MASS MERCHANDISER
 VARIETY DEPARTMENT
 OTHER (Please Specify) -----

ADDRESS ----- CITY ----- STATE ----- ZIP -----

hereinafter called "Dealer" as an Authorized CORELLE® Livingware, Pyrex Ware and Corning Ware Products Dealer upon and subject to the terms of this agreement. Corning and Dealer accordingly hereby agree as follows:

1. TERM—The term of this agreement shall be from the date of its signing by Corning until termination pursuant to paragraph 5 below.
2. PRODUCTS—The products to which this agreement relate are hereinafter referred to as CORELLE Livingware, Pyrex Ware and Corning Ware products and are those products listed in Schedule A to this agreement as such schedule may be constituted or supplemented from time to time by Corning. CORELLE Livingware, Pyrex Ware and Corning Ware products are produced by Corning, are identified by trademarks, brands or names owned by Corning and are in free, fair and open competition with commodities of the same general class produced or distributed by others.
3. AUTHORIZATION AND ACCEPTANCE, USE OF TRADEMARKS—So long as this agreement is in effect and so long as Dealer lives up to Dealer's obligations hereunder, Dealer is authorized to represent that Dealer is an Authorized CORELLE Livingware, Pyrex Ware and Corning Ware Products Dealer and to use as selling aids the Corning trademarks, brands or names identifying CORELLE Livingware, Pyrex Ware and Corning Ware products provided, however, that the Dealer shall not make any use of Corning trademarks, brands or names which will in any manner injure or destroy their value to Corning.
4. SALES HELPS—Corning agrees to provide Dealer from time to time with sales literature, display materials and other selling aids as well as to cooperate with Dealer in the interest of developing Dealer's maximum sales potential of CORELLE Livingware, Pyrex Ware and Corning Ware products.
5. TERMINATION AND AGREEMENT TO REPURCHASE—Either party may terminate this agreement at any time by written or telegraphic notice to the other effective upon receipt of such written or telegraphic notice. Effective as of the date of notice of termination, Dealer hereby agrees to remove CORELLE Livingware, Pyrex Ware and Corning Ware products from sale to others, and he hereby offers to sell his entire inventory of CORELLE Livingware, Pyrex Ware and Corning Ware products to Corning and Corning hereby agrees to purchase such inventory at Dealer's original invoice cost at the time of receipt of such notice.
6. FAIR TRADE AGREEMENT—As to each state and as to such sales where it is lawful so to agree (but not elsewhere or otherwise): (1) Dealer agrees that it will not (except as specifically permitted by statute) directly or indirectly advertise, offer for sale or sell any CORELLE Livingware, Pyrex Ware and Corning Ware products at prices less than the fair trade prices now or hereafter designated and set forth in Schedule A as such Schedule may be constituted from time to time exclusive of all applicable sales and use taxes. Such Schedule may be amended or supplemented at any time by Corning upon ten (10) days' written notice to Dealer by changing prices or by adding or deleting items. (2) Dealer agrees that it will not sell or transfer CORELLE

Livingware, Pyrex Ware and Corning Ware products to any reseller unless such reseller has agreed with Corning to maintain Corning's fair trade prices.

(3) Except as authorized by Schedule A or any amendment thereof or supplement thereto (a) the offering or giving of anything of value by Dealer or any reseller in connection with the sale of any of the products in Schedule A or (b) the offering or making of any concession in connection with any such sale or (c) the sale or offering for sale of any of the products in combination with any other merchandise shall constitute a breach by Dealer of this agreement. Termination shall not affect the rights or obligations of either of the parties hereto under any applicable Fair Trade Act or by reason of any other contract made pursuant to such Act and this agreement shall remain in full force and effect with respect to all CORELLE Livingware, Pyrex and Corning Ware products in the hands of, or on order by or in transit to the Dealer at the time of such termination.

7. APPLICABLE LAW—This agreement, entered between Corning and Dealer at Corning, New York, is governed by the laws of the State of New York. The agreements contained in the Fair Trade Agreement set out in paragraph 6 hereof shall apply solely to sales, offers or advertisements only when and where agreements of the character of those therein contained shall be lawful as applied to intrastate transactions under any statute, law or public policy, now or hereafter in effect, in the State in which such resale is to be made or to which products are to be transported for such resale.

8. ENTIRE AGREEMENT EFFECTIVE DATE—No change in the printed terms of this agreement shall be of any force or effect. This agreement shall become effective upon Corning's signing the same after Corning's receipt of two (2) copies executed by Dealer and any and all Fair Trade Agreements with reference to CORELLE Livingware, Pyrex Ware and Corning Ware products between Corning and Dealer prior to the effective date of this agreement are hereby cancelled and superseded.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

STORE NAME -----

BY ----- BY -----

(Signature of sole proprietor, corporate officer or partner)

CORNING
GLASS
WORKS

TITLE ----- TITLE -----

HEADQUARTERS NAME -----

(If Applicable)

ADDRESS ----- CITY ----- STATE -----

This contract covers above store. Additional retail outlets of same company must be specified individually on back of this sheet or covered in separate contract.

SUBMITTED BY ----- SIGNED -----

(Distributor)

(Signature of Sales Manager or Officer)

1675

Initial Decision

PYREX® WARE AND CORNING WARE® PRODUCTS

Authorized Distributor Appointment and Wholesale Fair Trade Agreement

As of the _____ day of _____, 197____ at Corning, New York,
CORNING GLASS WORKS, a New York Corporation, hereafter called
"Corning," hereby appoints.

NAME _____
(Print Clearly)

ADDRESS _____ CITY (Principal Office) _____

STATE _____ ZIP _____ hereafter called "Distributor,"
as an AUTHORIZED PYREX WARE AND CORNING WARE PRODUCTS
DISTRIBUTOR upon and subject to the terms of this agreement.

Corning and Distributor accordingly hereby agree as follows:

1. TERM—The term of this agreement (subject to earlier termination as hereinafter provided) shall be for one year commencing on the date above stated.
2. PRODUCTS—The products to which this agreement relates are hereinafter referred to as "PYREX ware and CORNING WARE products" and are specifically listed in Schedule A as such schedule may be constituted from time to time. PYREX ware and CORNING WARE products are produced by Corning, are identified by trademarks, brands or names owned by Corning and are in fair, free and open competition with commodities of the same general class produced or distributed by others.
3. AUTHORIZATION AND ACCEPTANCE, USE OF TRADEMARKS—So long as this agreement is in effect and so long as Distributor lives up to Distributor's obligations hereunder, Distributor is authorized to represent that Distributor is an AUTHORIZED PYREX WARE AND CORNING WARE PRODUCTS DISTRIBUTOR and to use as selling aids the Corning trademarks, brands or names identifying said products. In consideration of such authorization Distributor agrees to act as such an authorized distributor for the purpose of advertising, offering for sale and selling PYREX ware and CORNING WARE products to retail dealers, subject to all of the terms and conditions of this agreement and not otherwise and agrees not to make any use of Corning trademarks, brands or names which will in any manner injure or destroy their value to Corning.
4. DISTRIBUTOR'S OBLIGATION—Distributor agrees (1) to carry an adequate stock of PYREX ware and CORNING WARE products consistent with the rate of sale to retail dealers, (2) to cooperate with Corning in developing Distributor's maximum sales potential of PYREX ware and CORNING WARE products.
5. TERMINATION AND AGREEMENT TO REPURCHASE—Either party may terminate this agreement at any time by written or telegraphic notice to the other effective upon receipt of such written or telegraphic notice. Effective as of the date of notice of termination, Distributor hereby agrees to accept no further orders for sale of the above products and he hereby offers to sell his entire inventory of PYREX ware and CORNING WARE products listed on the Schedule A effective on the date of termination to Corning and Corning

hereby agrees to purchase such inventory at Distributor's original invoice cost at the time of receipt of such notice.

6. FAIR TRADE AGREEMENT—As to each state and as to such sales where it is lawful so to agree (but not elsewhere or otherwise).

(a) Distributor agrees that it will not (except as specifically permitted by statute) directly or indirectly advertise, offer for sale or sell any PYREX ware or CORNING WARE products at prices less than the fair trade prices now or hereafter designated and set forth in Schedule A less discounts listed in Schedule B applicable to the products sold as such schedule may be constituted from time to time exclusive of all applicable sales and use taxes. Such schedule may be amended at any time by Corning upon 10 days written notice to Distributor by changing prices, by adding or deleting items or by changing applicable discounts.

(b) Distributor agrees that it will not sell or transfer PYREX ware or CORNING WARE products to any reseller unless such reseller has agreed with Corning to maintain Corning's fair trade prices.

7. APPLICABLE LAW—This agreement, entered between Corning and Distributor at Corning, New York, is governed by the laws of the State of New York. The agreements contained in the Fair Trade Agreement set out in paragraph 6 hereof shall apply solely to sales, offers or advertisements only when and where agreements of the character of those therein contained shall be lawful, as applied to intrastate transactions under any statute, law or public policy, now or hereafter in effect, in the state in which such resale is to be made or to which products are to be transported for such resale. In other states the prices referred to in paragraph 6 hereof are merely suggested as possible resale prices which may or may not be adopted for resale in those states in the sole discretion of the Distributor.

8. ENTIRE AGREEMENT EFFECTIVE DATE—No change in the printed terms of this agreement shall be of any force or effect. This agreement will be effective immediately upon Distributor's signing the same and thereafter shall be binding upon the parties and their successors. After Corning's receipt of two (2) copies executed by Distributor, Corning will mail a copy signed by Corning to Distributor.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

DISTRIBUTOR _____ CORNING GLASS WORKS
(Name under which Distributor does business)

By _____ By _____
(Signature of sole proprietor, corporate officer or partner)

Title _____ Title _____
(State whether sole proprietor, corporate officer or partner)

1675

Initial Decision

CORELLE® Livingware, PYREX® WARE
and CORNING WARE® Products

AUTHORIZED DISTRIBUTOR APPOINTMENT AND WHOLESALE
FAIR TRADE AGREEMENT

As of the _____ day of _____, 197____ at Corning, New York,
CORNING GLASS WORKS, a New York Corporation, hereinafter called
"Corning," hereby appoints

NAME _____ ADDRESS _____
(Print Clearly)

CITY (Principal Office) _____ STATE _____ ZIP _____
hereafter called "Distributor," as an Authorized CORELLE® Livingware,
Pyrex Ware and Corning Ware Products Distributor upon and subject to the
terms of this agreement.

Corning and Distributor accordingly hereby agree as follows:

1. TERM—The term of this agreement (subject to earlier termination as hereinafter provided) shall be for one year commencing on the date above stated.
2. PRODUCTS—The products to which this agreement relates are hereinafter referred to as CORELLE Livingware, Pyrex Ware and Corning Ware products and are specifically listed in Schedule A as such schedule may be constituted or supplemented from time to time by Corning. CORELLE Livingware, Pyrex Ware and Corning Ware products are produced by Corning, are identified by trademarks, brands or names owned by Corning and are in free, fair and open competition with commodities of the same general class produced or distributed by others.
3. AUTHORIZATION AND ACCEPTANCE, USE OF TRADEMARKS—So long as this agreement is in effect and so long as Distributor lives up to Distributor's obligations hereunder, Distributor is authorized to represent that Distributor is an Authorized CORELLE Livingware, Pyrex Ware and Corning Ware Products Distributor and to use as selling aids the Corning trademarks, brands or names identifying said products. In consideration of such authorization Distributor agrees to act as such an authorized distributor for the purpose of advertising, offering for sale and selling CORELLE Livingware, Pyrex Ware and Corning Ware products to retail dealers, subject to all of the terms and conditions of this agreement and not otherwise and agrees not to make any use of Corning trademarks, brands or names which will in any manner injure or destroy their value to Corning.
4. DISTRIBUTOR'S OBLIGATION—Distributor agrees (1) to carry an adequate stock of CORELLE Livingware, Pyrex Ware and Corning Ware products consistent with the rate of sale to retail dealers, (2) to cooperate with Corning in developing Distributor's maximum sales potential of CORELLE Livingware, Pyrex Ware and Corning Ware products.
5. TERMINATION AND AGREEMENT TO REPURCHASE—Either party may terminate this agreement at any time by written or telegraphic notice to the other effective upon receipt of such written or telegraphic notice. Effective as of the date of notice of termination, Distributor hereby agrees to accept no further orders for sale of the above products and he hereby offers to sell

his entire inventory of CORELLE Livingware, Pyrex Ware and Corning Ware products listed on Schedule A effective on the date of termination to Corning and Corning hereby agrees to purchase such inventory at Distributor's original invoice cost at the time of receipt of such notice.

6. FAIR TRADE AGREEMENT—As to each state and as to such sales where it is lawful so to agree (but not elsewhere or otherwise). (a) Distributor agrees that it will not (except as specifically permitted by statute) directly or indirectly advertise, offer for sale or sell any CORELLE Livingware, Pyrex Ware and Corning Ware products at prices less than fair trade prices now or hereafter designated and set forth in Schedule A less discounts listed in Schedule B applicable to the products sold, as such schedule may be constituted from time to time, exclusive of all applicable sales and use taxes. Such schedule may be amended at any time by Corning upon ten (10) days written notice to Distributor by changing prices, by adding or deleting items or by changing applicable discounts.

(b) Distributor agrees that it will not sell or transfer CORELLE Livingware, Pyrex Ware and Corning Ware products to any reseller unless such reseller has agreed with Corning to maintain Corning's fair trade prices.

7. APPLICABLE LAW—This agreement, entered between Corning and Distributor at Corning, New York, is governed by the laws of the State of New York. The agreements contained in the Fair Trade Agreement set out in paragraph 6 hereof shall apply solely to sales, offers or advertisements only when and where agreements of the character of those therein contained shall be lawful as applied to intrastate transactions under any statute, law or public policy, now or hereafter in effect, in the state in which such resale is to be made or to which products are to be transported for such resale. In other states the prices referred to in paragraph 6 hereof are merely suggested as possible resale prices which may or may not be adopted for resale in those states in the sole discretion of the Distributor.

8. ENTIRE AGREEMENT EFFECTIVE DATE—No change in the printed terms of this agreement shall be of any force or effect. This agreement will be effective immediately upon Distributor's signing the same and thereafter shall be binding upon the parties and their successors. After Corning's receipt of two (2) copies executed by Distributor, Corning will mail a copy signed by Corning to Distributor.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

DISTRIBUTOR _____
(Name under which Distributor does business)

By _____ By _____
(Signature of sole proprietor, corporate officer or partner)

CORNING
GLASS
WORKS

Title _____ Title _____
(State whether sole proprietor, corporate officer or partner)

CORNING GLASS WORKS

1711

1675

Initial Decision
















FAIR TRADE
MINIMUM RETAIL
PRICE LIST
EFFECTIVE FEBRUARY 1, 1971

SCHEDULE A









THESE PRICES ARE FAIR TRADED IN ALL STATES HAVING FAIR TRADE LAWS
IN ALL OTHER AREAS THEY ARE MERELY SUGGESTED AS POSSIBLE RESALE PRICES.


PYREX WARE
OVENWARE

Catalog Number	Description	Price Each	Pieces Per Case	Weight Per Case/lbs.	Price Per Case	
89	 2 1/2 Qt. Golden Storage Mates (set)	\$3.49/set	4 sets	10 lbs.	\$13.96	
95	 3 Pc. Mixing Bowl Set	\$2.95/set	6 sets	33 lbs.	\$17.70	
100	 Oil and Vinegar Cruet Set	\$1.95/set	4 sets	3 lbs.	\$7.80	
101	 Large Salt & Pepper Shaker Set	\$1.29/set	6 sets	3 lbs.	\$7.74	
103	 Salt and Pepper Shaker Set	\$.98/set	6 sets	2 lbs.	\$5.88	
7206-16	 Counter-top Salt and Pepper Shaker Set—Avocado	\$1.98/set	6 sets	4 lbs.	\$11.88	
7206-43	 Counter-top Salt and Pepper Shaker Set—Woodgrain	\$2.19/set	6 sets	4 lbs.	\$13.14	
↑ 208		8" Pie Plate	\$.59/each	12 pcs.	14 lbs.	\$7.08
↑ 209		9" Pie Plate (9" x 1 1/4")	\$.69/each	12 pcs.	18 lbs.	\$8.28
↑ 210		10" Pie Plate (10" x 1 1/2")	\$.89/each	12 pcs.	23 lbs.	\$10.68
213		1 1/2 Qt. Loaf Dish (8 1/2" x 4 1/2" x 2 1/2")	\$.98/each	6 pcs.	11 lbs.	\$5.88
↑ 215		2 Qt. Loaf Dish (9" x 5" x 3")	\$1.29/each	6 pcs.	14 lbs.	\$7.74
221		1 1/2 Qt. Round Cake Dish (8 1/4" x 1 1/2")	\$.98/each	6 pcs.	12 lbs.	\$5.88
↑ 222		2 Qt. Square Cake Dish (8" x 8" x 2")	\$1.29/each	6 pcs.	18 lbs.	\$7.74
229		9 1/2" Flavor Saver Pie Plate (9 1/2" x 1 1/2")	\$.98/each	12 pcs.	22 lbs.	\$11.76
↑ 231		1 1/2 Qt. Oblong Baking Dish (10" x 6" x 1 3/4")	\$1.39/each	6 pcs.	16 lbs.	\$8.34
↑ 232		2 Qt. Oblong Baking Dish (11 3/4" x 7 1/2" x 1 3/4")	\$1.59/each	6 pcs.	20 lbs.	\$9.54
↑ 233		3 Qt. Oblong Baking Dish (13 1/2" x 8 3/4" x 1 3/4")	\$1.89/each	6 pcs.	27 lbs.	\$11.34
343		1 1/2 Qt. Mixer Bowl	\$.98/each	6 pcs.	12 lbs.	\$5.88
344		3 Qt. Mixer Bowl	\$1.49/each	6 pcs.	18 lbs.	\$8.94
↑ 463		6 Oz. Custard Cup	2 for \$.49	36 pcs.	10 lbs.	\$8.82
↑ 463-D		6 Oz. Custard Cup, 6 pack	6 pk. \$1.39	6—6 pks	10 lbs.	\$8.34

↑ Indicates Price Increase





Catalog Number		Description	Price Each	Pieces Per Case	Weight Per Case/lbs.	Price Per Case
↑ 464		10 Oz. Deep Pie Dish	2 for \$.69	36 pcs.	13 lbs.	\$12.42
↑ 464-D		10 Oz. Deep Pie Dish	4 pk. \$1.29	9—4 pks.	15 lbs.	\$11.61
↑ 508		1 Cup Liquid Measure	\$.59/each	12 pcs.	8 lbs.	\$7.08
↑ 516		1 Pt. Liquid Measure	\$.79/each	12 pcs.	15 lbs.	\$9.48
↑ 532		1 Qt. Liquid Measure	\$1.19/each	6 pcs.	12 lbs.	\$7.14
↑ 622		1 Qt. Knob Covered Casserole	\$1.39/each	12 pcs.	27 lbs.	\$16.68
↑ 623		1½ Qt. Knob Covered Casserole	\$1.59/each	6 pcs.	17 lbs.	\$9.54
↑ 624		2 Qt. Knob Covered Casserole	\$1.79/each	6 pcs.	21 lbs.	\$10.74
↑ 626		3 Qt. Knob Covered Casserole	\$2.49/each	6 pcs.	30 lbs.	\$14.94
680		10 Oz. Utility Casserole & Leftover Dish	\$.69/each	12 pcs.	11 lbs.	\$8.28
681		20 Oz. Utility Casserole & Leftover Dish	\$.79/each	12 pcs.	17 lbs.	\$9.48
↑ 682		1 Qt. Utility Covered Casserole	\$1.39/each	12 pcs.	28 lbs.	\$16.68
↑ 683		1½ Qt. Utility Covered Casserole	\$1.59/each	6 pcs.	19 lbs.	\$9.54
↑ 684		2 Qt. Utility Covered Casserole	\$1.79/each	6 pcs.	24 lbs.	\$10.74
↑ 687		3 Qt. Covered Roaster	\$2.99/each	6 pcs.	39 lbs.	\$17.88

99c SPECIAL PROMOTION






232-S		2 Qt. Oblong Baking Dish	\$.99/each	6 pcs.	20 lbs.	\$5.94
215-S		2 Qt. Loaf Dish	\$.99/each	6 pcs.	14 lbs.	\$5.94
222-S		8" Square Cake Dish	\$.99/each	6 pcs.	18 lbs.	\$5.94
464-D-S		10 Oz. Deep Pie Dish (4 pk.)	\$.99/pack	9 pks.	15 lbs.	\$8.91
582-S		1 Qt. Covered Casserole	\$.99/each	6 pcs.	15 lbs.	\$5.94

(Special Price Feb. 1 - March 27, 1971) Note: On March 28, 1971, these special prices revert to regular prices.


RANGE-TOP WARE

6283		1½ Qt. Covered Double Boiler	\$8.95/each	4 pcs.	20 lbs.	\$35.80
*7186		6 Cup Filter Drip Coffeemaker	\$4.95/each	4 pcs.	12 lbs.	\$19.80
*7186-FP		6-Cup Filter Drip Coffeemaker Filter Paper, pack of 100	\$2.95/pack	6 pks.	5 lbs.	\$17.70
7754		4 Cup Percolator	\$4.50/each	4 pcs.	12 lbs.	\$18.00
7756		6 Cup Percolator	\$4.95/each	4 pcs.	14 lbs.	\$19.80
7759		9 Cup Percolator	\$5.95/each	4 pcs.	16 lbs.	\$23.80
8446		6 Cup Teapot	\$4.50/each	4 pcs.	10 lbs.	\$18.00

HOT AND COLD BEVERAGE SERVERS

48		4—8 Oz. Drinkups w/Avocado Base	\$2.49/set	4 sets	5 lbs.	\$9.96
*48-45		4—8 Oz. Drinkups w/Poppy Red Base	\$2.49/set	4 sets	5 lbs.	\$9.96
*48-46		4—8 Oz. Drinkups w/Empire Blue Base	\$2.49/set	4 sets	5 lbs.	\$9.96
48-B		8 Oz. Drinkup Glass	\$.39/each	12 pcs.	3 lbs.	\$4.68
415-16		4—15 Oz. Party Mugs w/Avocado Base	\$3.95/set	4 sets	8 lbs.	\$15.80
*415-45		4—15 Oz. Party Mugs w/Poppy Red Base	\$3.95/set	4 sets	8 lbs.	\$15.80
*415-46		4—15 Oz. Party Mugs w/Empire Blue Base	\$3.95/set	4 sets	8 lbs.	\$15.80
415-B		15 Oz. Party Mug Glass	\$.59/each	12 pcs.	5 lbs.	\$7.08
2932-39		1 Qt. Juice Server Bottle—Daisy	\$.98/each	6 pcs.	6 lbs.	\$5.88
*2932-39-S		1 Qt. Juice Server Bottle—Daisy	\$.77/each	6 pcs.	6 lbs.	\$4.62
2932-42		1 Qt. Juice Server Bottle—Green Floral	\$.98/each	6 pcs.	7 lbs.	\$5.88
*2932-42-S		1 Qt. Juice Server Bottle—Green Floral	\$.77/each	6 pcs.	7 lbs.	\$4.62
2948-39		1½ Qt. Juice Server Bottle—Daisy	\$1.19/each	6 pcs.	8 lbs.	\$7.14
*2948-39-S		1½ Qt. Juice Server Bottle—Daisy	\$.99/each	6 pcs.	8 lbs.	\$5.94
2948-42		1½ Qt. Juice Server Bottle—Green Floral	\$1.19/each	6 pcs.	8 lbs.	\$7.14
*2948-42-S		1½ Qt. Juice Server Bottle—Green Floral	\$.99/each	6 pcs.	8 lbs.	\$5.94

(Special Price May 15 - July 31, 1971) Note: On August 1, 1971, these special prices revert to regular prices.

6434-16		1 Qt. Serving Pitcher w/Plastic Cover—Verde	\$2.29/each	6 pcs.	7 lbs.	\$13.74
6434-39		1 Qt. Serving Pitcher w/Plastic Cover—Daisy	\$2.29/each	6 pcs.	7 lbs.	\$13.74
6437-16		1½ Qt. Serving Pitcher w/Plastic Cover—Verde	\$2.49/each	6 pcs.	8 lbs.	\$14.94
6437-39		1½ Qt. Serving Pitcher w/Plastic Cover—Daisy	\$2.49/each	6 pcs.	8 lbs.	\$14.94

↑ Indicates New Item
* Indicates Price Increase











CORNING GLASS WORKS

1713


1675

Initial Decision





HOT AND COLD BEVERAGE SERVERS (Con't)

Catalog Number	Description	Price Each	Pieces Per Case	Weight Per Case/lbs.	Price Per Case
6464	 2 Qt. Serving Pitcher, Clear	\$2.95/each	6 pcs.	8 lbs.	\$17.70
7006-16	 ¾ Cup Container—Avocado Cover	\$.89/each	12 pcs.	3 lbs.	\$10.68
7006-43	¾ Cup Container—Woodgrain	\$.98/each	12 pcs.	3 lbs.	\$11.76
7016-16	 1 Pt. Container—Avocado Cover	\$1.29/each	4 pcs.	3 lbs.	\$5.16
7016-43	1 Pt. Container—Woodgrain	\$1.49/each	4 pcs.	3 lbs.	\$5.96
7032-16	 1 Qt. Container—Avocado Cover	\$1.59/each	4 pcs.	4 lbs.	\$6.36
7032-43	1 Qt. Container—Woodgrain	\$1.79/each	4 pcs.	4 lbs.	\$7.16
7048-16	 1½ Qt. Container—Avocado Cover	\$1.79/each	4 pcs.	4 lbs.	\$7.16
7048-43	1½ Qt. Container—Woodgrain	\$1.98/each	4 pcs.	4 lbs.	\$7.92
7080-16	 2½ Qt. Container—Avocado Cover	\$1.98/each	4 pcs.	5 lbs.	\$7.92
7080-43	2½ Qt. Container—Woodgrain	\$2.29/each	4 pcs.	5 lbs.	\$9.16
7116-16	 1 Pt. Liquid Container—Avocado Cover	\$.98/each	6 pcs.	3 lbs.	\$5.88
7132-16	 1 Qt. Shake 'n Pour—Avocado Cover	\$1.69/each	4 pcs.	4 lbs.	\$6.76
7802	 2 Cup Beverage Server	\$1.79/each	4 pcs.	3 lbs.	\$7.16
7804	4 Cup Beverage Server	\$1.95/each	4 pcs.	4 lbs.	\$7.80
8008	 8 Cup Beverage Server	\$3.95/each	4 pcs.	7 lbs.	\$15.80
8008-CW	8 Cup Beverage Server w/Candle Warmer	\$4.95/each	4 pcs.	9 lbs.	\$19.80
8012	12 Cup Beverage Server	\$4.95/each	4 pcs.	9 lbs.	\$19.80
8012-CW	12 Cup Beverage Server w/Candle Warmer	\$5.95/each	2 pcs.	6 lbs.	\$11.90

PYREX™ BRAND VACUUM COFFEE MAKER










7748	 8 Cup Vacuum-Manhattan Coffee Maker	\$6.95/each	4 pcs.	11 lbs.	\$27.80
------	---	-------------	--------	---------	---------

BAKINGWARE IN COLOR

*300-7		3 Pc. Mixing Bowl Set—Early American	\$3.95/set	4 sets	21 lbs.	\$15.80
*300-16		3 Pc. Mixing Bowl Set—Verde	\$3.95/set	4 sets	21 lbs.	\$15.80
*300-39		3 Pc. Mixing Bowl Set—Daisy	\$3.95/set	4 sets	21 lbs.	\$15.80
*300-41		3 Pc. Mixing Bowl Set—Horizon Blue	\$3.95/set	4 sets	21 lbs.	\$15.80
*300-45		3 Pc. Mixing Bowl Set—Friendship	\$3.95/set	4 sets	21 lbs.	\$15.80
300-PC		Plastic Storage Covers—Set of 3 fits 1½ pt., 1½ qt., 2½ qt. Bowls	\$1.19/set	6 sets	3 lbs.	\$7.14
330-B		3 Pc. Bakeware Set—Earth Tones	\$5.95/set	2 sets	19 lbs.	\$11.90
330-16		3 Pc. Bakeware Set—Verde	\$5.95/set	2 sets	19 lbs.	\$11.90
330-39		3 Pc. Bakeware Set—Daisy	\$5.95/set	2 sets	19 lbs.	\$11.90
330-41		3 Pc. Bakeware Set—Horizon Blue	\$5.95/set	2 sets	19 lbs.	\$11.90
*400		4 Pc. Multicolor Bowl Set	\$5.50/set	4 sets	34 lbs.	\$22.00
*400-16		4 Pc. Bowl Set—Verde	\$5.50/set	4 sets	35 lbs.	\$22.00
*400-39		4 Pc. Bowl Set—Daisy	\$5.50/set	4 sets	35 lbs.	\$22.00
*400-45		4 Pc. Bowl Set—Friendship	\$5.50/set	4 sets	35 lbs.	\$22.00

*Indicates New Item
 †Indicates Price Increase

BAKINGWARE IN COL (Con't)

Catalog Number		Description	Price Each	Pieces Per Case	Weight Per Case/lbs.	Price Per Case
†440-7		4 Pc. Bowl Set—Early American	\$6.50/set	4 sets	37 lbs.	\$26.00
†440-16		4 Pc. Bowl Set—Verde	\$6.50/set	4 sets	37 lbs.	\$26.00
†440-39		4 Pc. Bowl Set—Daisy	\$6.50/set	4 sets	37 lbs.	\$26.00
†440-41		4 Pc. Bowl Set—Horizon Blue	\$6.50/set	4 sets	37 lbs.	\$26.00
*440-45		4 Pc. Bowl Set—Friendship	\$6.50/set	4 sets	37 lbs.	\$26.00
470-7		3 Pc. Bake, Serve & Store Set—Early American	\$4.95/set	4 sets	23 lbs.	\$19.80
470-16		3 Pc. Bake, Serve & Store Set—Verde	\$4.95/set	4 sets	23 lbs.	\$19.80
470-39		3 Pc. Bake, Serve & Store Set—Daisy	\$5.95/set	4 sets	23 lbs.	\$23.80
470-41		3 Pc. Bake, Serve & Store Set—Horizon Blue	\$4.95/set	4 sets	23 lbs.	\$19.80
*470-45		3 Pc. Bake, Serve & Store Set—Friendship	\$5.95/set	4 sets	23 lbs.	\$23.80
4480-7		3 Pc. Casserole Set—Early American	\$6.95/set	2 sets	18 lbs.	\$13.90
4480-16		3 Pc. Casserole Set—Verde	\$6.95/set	2 sets	18 lbs.	\$13.90
4480-39		3 Pc. Casserole Set—Daisy	\$7.95/set	2 sets	18 lbs.	\$15.90
4480-41		3 Pc. Casserole Set—Horizon Blue	\$6.95/set	2 sets	18 lbs.	\$13.90
*4480-45		3 Pc. Casserole Set—Friendship	\$7.95/set	2 sets	18 lbs.	\$15.90
4500-7		4 Pc. Oven, Refrig. & Freezer Set—Early Amer.	\$6.50/set	4 sets	28 lbs.	\$26.00
4500-7-S		4 Pc. Oven, Refrig. & Freezer Set—Early Amer.	\$4.99/set	4 sets	28 lbs.	\$19.96
4500-16		4 Pc. Oven, Refrig. & Freezer Set—Verde	\$6.50/set	4 sets	28 lbs.	\$26.00
4500-16-S		4 Pc. Oven, Refrig. & Freezer Set—Verde	\$4.99/set	4 sets	28 lbs.	\$19.96
4500-39		4 Pc. Oven, Refrig. & Freezer Set—Daisy	\$6.50/set	4 sets	28 lbs.	\$26.00
4500-39-S		4 Pc. Oven, Refrig. & Freezer Set—Daisy	\$4.99/set	4 sets	28 lbs.	\$19.96
4500-41		4 Pc. Oven, Refrig. & Freezer Set—Horizon Blue	\$6.50/set	4 sets	28 lbs.	\$26.00
4500-41-S		4 Pc. Oven, Refrig. & Freezer Set—Horizon Blue	\$4.99/set	4 sets	28 lbs.	\$19.96
4500-45		4 Pc. Oven, Refrig. & Freezer Set—Friendship	\$6.50/set	4 sets	28 lbs.	\$26.00
4500-45-S		4 Pc. Oven, Refrig. & Freezer Set—Friendship	\$4.99/set	4 sets	28 lbs.	\$19.96
†(Special Price March 29 - May 29, 1971) Note: On May 30, 1971, these prices revert to regular prices.						
700-16		10 Oz. Casserole—Verde	\$.99/each	12 pcs.	8 lbs.	\$11.88
700-39		10 Oz. Casserole—Daisy	\$.99/each	12 pcs.	8 lbs.	\$11.88
700-41		10 Oz. Casserole—Horizon Blue	\$.99/each	12 pcs.	8 lbs.	\$11.88
†943-7		1 1/2 Qt. Oval Casserole—Early American	\$3.95/each	4 pcs.	14 lbs.	\$15.80
943-16		1 1/2 Qt. Oval Casserole—Verde	\$3.95/each	4 pcs.	14 lbs.	\$15.80
943-39		1 1/2 Qt. Oval Casserole—Daisy	\$3.95/each	4 pcs.	14 lbs.	\$15.80
943-41		1 1/2 Qt. Oval Casserole—Horizon Blue	\$3.95/each	4 pcs.	14 lbs.	\$15.80
*943-45		1 1/2 Qt. Oval Casserole—Friendship	\$3.95/each	4 pcs.	14 lbs.	\$15.80
†945-7		2 1/2 Qt. Oval Casserole—Early American	\$4.95/each	4 pcs.	23 lbs.	\$19.80
945-16		2 1/2 Qt. Oval Casserole—Verde	\$4.95/each	4 pcs.	23 lbs.	\$19.80
945-39		2 1/2 Qt. Oval Casserole—Daisy	\$4.95/each	4 pcs.	23 lbs.	\$19.80
945-41		2 1/2 Qt. Oval Casserole—Horizon Blue	\$4.95/each	4 pcs.	23 lbs.	\$19.80
*945-45		2 1/2 Qt. Oval Casserole—Friendship	\$4.95/each	4 pcs.	23 lbs.	\$19.80
†963-7		1 1/2 Qt. Oval Divided Serving Dish—Early Amer.	\$3.95/each	4 pcs.	20 lbs.	\$15.80
963-16		1 1/2 Qt. Oval Divided Serving Dish—Verde	\$3.95/each	4 pcs.	20 lbs.	\$15.80
963-39		1 1/2 Qt. Oval Divided Serving Dish—Daisy	\$3.95/each	4 pcs.	20 lbs.	\$15.80
963-41		1 1/2 Qt. Oval Divided Serv. Dish—Horizon Blue	\$3.95/each	4 pcs.	20 lbs.	\$15.80
*963-45		1 1/2 Qt. Oval Divided Serving Dish—Friendship	\$3.95/each	4 pcs.	20 lbs.	\$15.80
*9343		1 1/2 Qt. Decorated Straight-sided Mixer Bowl	\$1.69/each	6 pcs.	12 lbs.	\$10.14
*9344		3 Qt. Decorated Straight-sided Mixer Bowl	\$1.98/each	6 pcs.	18 lbs.	\$11.88
*9300		1 1/2 and 3 Qt. Decorated Straight-sided Mixer Bowl Set	\$3.49/set	4 sets	22 lbs.	\$13.96

†Indicates New Item
*Indicates Price Increase

Item No.	Description	Part No. Bowl	Retail Price Each	Part No. Cover	Retail Price Each	Part No. Metal Band	Retail Price Each	Part No. Handle	Retail Price Each
7802	2 Cup Server	7802 B	\$1.00	7802 C	\$1.55	7802 MB	\$.65	7802 H	\$.55
7804	4 Cup Server	7804 B	1.25						
8008	8 Cup Server	8008 B	1.75	8008 C	.85	8008 MB	.85	8008 H	.85
8012	12 Cup Server	8012 B	2.75	8012 C	.85	8012 MB	.85	8008 H	.85
80 CW	Candlewarmer Fits 8 and 12 Cup Server Candle	80 CW	1.75						
		P B	3/.30						

ADDITIONAL ITEMS

Item No.	Description	Retail Price Each
188	4 Hrs. Replacement Candle	\$.05
0129	8 Hrs. Replacement Candle (Short)	10
4002	8 Hrs. Replacement Candle (Tall)	10

DECORATED PYREX-WARE

Item No.	Description	Part No.	Retail Price Each
300	1 1/2 Pt. Bowl	401	\$.97
	1 1/2 Qt. Bowl	402	1.37
	2 1/2 Qt. Bowl	403	1.77
400	1 1/2 Pt. Bowl	401	\$.97
	1 1/2 Qt. Bowl	402	1.37
	2 1/2 Qt. Bowl	403	1.77
	4 Qt. Bowl	404	1.97
440	1 1/2 Pt. Bowl	441	\$.97
	1 1/2 Qt. Bowl	442	1.67
	2 1/2 Qt. Bowl	443	1.97
	4 Qt. Bowl	444	2.37

COLOR CHART

Items available in decorations listed. To specify color, add number shown in decoration desired to part number.
(Example: For the 1 1/2 pt. bowl in Early American Print add -7 to part number 441. This becomes 441-7.)

Part No.	Early American Print	Multi Color	Verde	Daisy	Horizon Blue	Dot	Finisp
043	-7	-16	-39	-41	-45		
045	-7	-16	-39	-41	-45		
063	-7	-16	-39	-41	-45		
401	-7	-23	-16	-39	-41	-20	-45
402	-7	-24	-16	-39	-41	-22	-45
403	-7	-39B	-16	-39	-41	-30	-45
404	-7	-16D	-16	-39	-41	-45	
441	-7	-16	-39	-41	-45		
442	-7	-16	-39	-41	-45		

All parts listed on this page are individually packaged and are available on an individual basis.








Item No.	Description	Part	Part No.	Retail Price Each
470	1 Pt. Bowl	Bowl	471 B	\$.95
		Cover	470 C	.75
		Daisy	470 C 39	1.10
		Bowl	472 B	1.10
470	1 1/2 Pt. Bowl	Cover	470 C	.75
		Daisy	470 C 39	1.10
		Bowl	473 B	1.30
		Cover	470 C	.75
480	1 Qt. Bowl	Bowl	473 B	1.30
		Cover	470 C	.75
		Daisy	470 C 39	1.10
		Bowl	474 B	1.45
480	1 1/2 Qt. Bowl	Cover	474 B	1.45
		Daisy	474 C	.95
		Bowl	474 C 39	1.30
		Bowl	475 B	1.90
480	2 1/2 Qt. Bowl	Cover	475 C	1.15
		Daisy	475 C 39	1.50
		Bowl	501 B	1.15
		Cover	501 C	.90
500	1 1/2 Pt. Dish	Bowl	502 B	1.20
		Cover	502 C	1.00
		Bowl	503 B	1.70
		Cover	503 C	1.10
943	1 1/2 Qt.	Bowl	043	3.00
		Cover	943 C	1.00
		Verde	43 C 16	1.50
		Daisy	43 C 39	1.50
943	1 1/2 Qt.	Blue	43 C 41	1.50
		Bowl	045	3.65
		Cover	945 C	1.35
		Verde	45 C 16	1.75
945	2 1/2 Qt.	Daisy	45 C 39	1.75
		Blue	45 C 41	1.75
		Bowl	063	2.65
		Cover	945 C	1.35
963	1 1/2 Qt.	Verde	45 C 16	1.75
		Daisy	45 C 39	1.75
		Blue	45 C 41	1.75
		Bowl	063	2.65

FOR ALL ITEMS ON THIS PAGE SEE COLOR CHART BELOW

COLOR CHART








Part No.	Early American Print	Verde	Daisy	Horizon Blue	Finisp
443	-7	-16	-39	-41	-45
444	-7	-16	-39	-41	-45
471 B	-7	-16	-39	-41	-45
472 B	-7	-16	-39	-41	-45
473 B	-7	-16	-39	-41	-45
474 B	-7	-16	-39	-41	-45
475 B	-7	-16	-39	-41	-45
501 B	-7	-16	-39	-41	-45
502 B	-7	-16	-39	-41	-45
503 B	-7	-16	-39	-41	-45

REPLACEMENT PARTS (Con't.)
STORE 'N SEE

Item No.	Description	Component Part No.	Retail Price Each
 7006-16 7006-43	3/4 Cup Container—Avocado Cover	7006-B—Glass Bowl 7006-C-16—Avocado Cover and Gasket 7006-G—Gasket only	\$.59 .49 .29
	3/4 Cup Container—Wood Grain Cover	7006-B—Glass Bowl 7006-C-43—Wood Grain Cover and Gasket 7006-G—Gasket only	.59 .59 .29
 7016-16 7016-43	1 Pt. Container—Avocado Cover	7016-B—Glass Bowl 7016-C-16—Avocado Cover and Gasket 7016-G—Gasket only	.79 .98 .29
	1 Pt. Container—Wood Grain Cover	7016-B—Glass Bowl 7016-C-43—Wood Grain Cover and Gasket 7016-G—Gasket only	.79 1.19 .29
 7032-16 7032-43	1 Qt. Container—Avocado Cover	7032-B—Glass Bowl 7032-C-16—Avocado Cover and Gasket 7032-G—Gasket only	.89 .98 .49
	1 Qt. Container—Wood Grain Cover	7032-B—Glass Bowl 7032-C-43—Wood Grain Cover and Gasket 7032-G—Gasket only	.89 1.19 .49
 7048-16 7048-43	1 1/2 Qt. Container—Avocado Cover	7048-B—Glass Bowl 7048-C-16—Avocado Cover and Gasket 7048-G—Gasket only	.98 .98 .39
	1 1/2 Qt. Container—Wood Grain Cover	7048-B—Glass Bowl 7048-C-43—Wood Grain Cover and Gasket 7048-G—Gasket Only	.98 1.19 .39
 7080-16 7080-43	2 1/2 Qt. Container—Avocado Cover	7080-B—Glass Bowl 7080-C-16—Avocado Cover and Gasket 7080-G—Gasket only	1.20 .98 .49
	2 1/2 Qt. Container—Wood Grain Cover	7080-B—Glass Bowl 7080-C-43—Wood Grain Cover and Gasket 7080-G—Gasket only	1.20 1.19 .49
 7116-16	1 Pt. Liquid Container—Avocado Cover	7116-B—Glass Bowl 7116-C-16—Avocado Cover and Gasket 7116-G—Gasket only	.69 .49 .29
 7132-16	1 Qt. Shake 'n Pour—Avocado Cover	7132-16-B—Glass Bowl 7132-16-C—Avocado Cover and Gasket 7132-G—Gasket only	.89 .98 .49








Additional Pyrex® Ware parts listed on page 8.

VACUUM COFFEE MAKER

 8 Cup Vacuum Manhattan	Description	Part No.	Retail Price Each
	 Upper Bowl	UW-8	↑ \$2.50
 Rubber Plug	WPR	.55	
 Filter Cloth 4 Bpx	SR-4	↑ .79 Box	
 Filter—metal 12 Box	SR-12 Z-492	↑ 1.69 Box 1.29 Box	
 Band Handle Assembly	HB-48	↑ 1.70	
 Lower Bowl	7748-B	↑ 2.00	

REPLACEMENT PARTS (Con't.)

OTHER ITEMS

	Item No.	Description	Part No.	Retail Price Each
	48	4-8 Oz. Drinkup Glasses Plastic Holder—Avocado Plastic Holder—Poppy Red Plastic Holder—Empire Blue Drinkup Glass Only	48-H 48-H-45 48-H-46 48-B	\$.39 .39 .39 .39
	415-16	4-15 Oz. Party Mugs Plastic Holder—Avocado Plastic Holder—Poppy Red Plastic Holder—Empire Blue Mug Glass Only	415-H-16 415-H-45 415-H-46 415-B	.59 .59 .59 .59
	89	Cracker Barrel Bowl Cookie Jar Bowl Cover, Fits Cookie Jar or Cracker Barrel	81-B 89-B 81-PC	1.59 1.59 ↑ .89
	100	Oil Cruet w/cover Vinegar Cruet w/cover Cover Only	100-O 100-V 100-C	1.10 1.10 ↑ .75
	101	Large Range-Size Bowl and Top	101-B	.90
	103	Table-Size Bowl and Top	103-B	.75
	101-103	Top, Fits Both Sizes	103-C	↑ .50
	6434-16 6434-39	1 Qt. Pitcher w/Plastic Cap 1 Qt. Pitcher w/Plastic Cap 1 Qt. Plastic Cap for Verdé and Daisy (Yellow Cap)	Verdé } Daisy } 6434-B-16 6434-B-39 6434-YC	1.79 1.79 ↑ .75
	6437-16 6437-39	1 1/2 Qt. Pitcher w/Plastic Cap 1 1/2 Qt. Pitcher w/Plastic Cap 1 1/2 Qt. Plastic Cap for Verdé and Daisy (Yellow Cap)	Verdé } Daisy } 6437-B-16 6437-B-39 6437-YC	1.99 1.99 ↑ .75
	7206-16 7206-43	Counter-Top Salt & Pepper Shaker Glass Bowl Avocado Cover Wood Grain Cover Gasket only	7006-B 7206-C-16 7206-C-43 7006-G	.59 .59 .69 .29

All parts listed on this page are individually packaged and are available on an individual basis.

CORNING WARE[®] PRODUCTS
FLORAL BOUQUET PATTERN

Catalog Number	Description	Price Each	Pieces Per Pack	Packs Per Shipper	Weight Per Shipper/lbs.	Price Per Shipper
P-1-4	1 Qt. Covered Saucepan	\$5.95 each	1 pc.	3 packs	9 lbs.	\$17.85
P-1 1/2-4	1 1/2 Qt. Covered Saucepan	\$6.95 each	1 pc.	3 packs	9 lbs.	\$20.85
P-1 3/4-4	1 3/4 Qt. Covered Saucepan	\$7.95 each	1 pc.	3 packs	10 lbs.	\$23.85
P-2 1/2-4	2 1/2 Qt. Covered Saucepan	\$8.95 each	1 pc.	3 packs	14 lbs.	\$26.85
P-10-4	10" Covered Skillet	\$10.95 each	1 pc.	3 packs	16 lbs.	\$32.85
*P-34-4	4 Qt. Dutch Oven with cover and rack	\$12.95 each	1 pc.	3 packs	20 lbs.	\$38.85
*P-45-4	16" Serving Tray and Cradle	\$11.95 each	1 pc.	3 packs	17 lbs.	\$35.85
P-104-4	6-Cup Teapot	\$7.95 each	1 pc.	3 packs	5 lbs.	\$23.85
P-146-4	6-Cup Percolator	\$11.95 each	1 pc.	3 packs	10 lbs.	\$35.85
P-149-4	9-Cup Percolator	\$12.95 each	1 pc.	3 packs	12 lbs.	\$38.85
*P-315-4	9" x 5" x 3" 2 Qt. Loaf Dish	\$4.95 each	1 pc.	3 packs	9 lbs.	\$14.85
P-6-EP-4	6-Cup Electromatic Percolator	\$27.95 each	1 pc.	1 pack	4 lbs.	\$27.95
P-80-EP-4	10-Cup Electromatic Percolator	\$29.95 each	1 pc.	1 pack	5 lbs.	\$29.95
P-22-ES-4	10" Electromatic Skillet	\$29.95 each	1 pc.	1 pack	11 lbs.	\$29.95
P-400-4	3 Pc. Saucepan Set consists of 1, 1 1/2, 1 3/4 Qt. covered saucepans with white handle and cradle	\$24.95 set	1 set	1 pack	10 lbs.	\$24.95

HARVEST COLOR

































P-1-6	1 Qt. Covered Saucepan	\$5.95	1 pc.	3 packs	9 lbs.	\$17.85
P-1 1/2-6	1 1/2 Qt. Covered Saucepan	\$6.95	1 pc.	3 packs	10 lbs.	\$20.85
P-1 3/4-6	1 3/4 Qt. Covered Saucepan	\$7.95	1 pc.	3 packs	10 lbs.	\$23.85
P-33-6	Saucepan Set complete with 1, 1 1/2, 1 3/4 Qt. Covered Saucepans	\$14.88	1 set	1 pack	9 lbs.	\$14.88

BASIC ITEMS

‡P-1	1 Qt. Covered Saucepan	\$5.25 each	1 pc.	3 packs	9 lbs.	\$15.75
‡P-1 1/2	1 1/2 Qt. Covered Saucepan	\$6.75 each	1 pc.	3 packs	10 lbs.	\$20.25
‡P-1 3/4	1 3/4 Qt. Covered Saucepan	\$7.50 each	1 pc.	3 packs	10 lbs.	\$22.50
‡P-2 1/2	2 1/2 Qt. Covered Saucepan	\$8.50 each	1 pc.	3 packs	14 lbs.	\$25.50

‡ New Item
‡ Indicates Price Increase

ASIC ITEMS (Con't)

























Catalog Number	Description	Price Each	Pieces Per Pack	Packs Per Shipper	Weight Per Shipper/lbs.	Price Per Shipper
AP-4	 7" x 8½" x 3" 1½ Qt. Covered Baking Dish	\$5.50 each	1 pc.	3 packs	11 lbs.	\$16.50
P-7	 7" Covered Skillet, Cornflower Emblem	\$4.95 each	1 pc.	3 packs	8 lbs.	\$14.85
AP-9	 9" Covered Skillet, Cornflower Emblem	\$7.50 each	1 pc.	3 packs	12 lbs.	\$22.50
P-10	 10" Covered Skillet, Cornflower Emblem	\$9.95 each	1 pc.	3 packs	16 lbs.	\$29.85
P-10-4	 10" Covered Skillet, Floral Bouquet	\$10.95 each	1 pc.	3 packs	16 lbs.	\$32.85
AP-10-HG	 Black Detachable Handle — (fits all skillets, saucepans and saucemakers)	\$2.95 each	4 pcs.	(12) 3 packs	7 lbs.	\$35.40
P-16	 10" Covered Deluxe Fryer — with cradle	\$12.95 each	1 pc.	3 packs	24 lbs.	\$38.85
P-19	 16" Serving Platter — with spatter shield	\$7.95 each	1 pc.	3 packs	11 lbs.	\$23.85
P-20	 1¾ Qt. Party Buffet Saucepan with cover and candle warmer	\$9.95 each	1 pc.	3 packs	13 lbs.	\$29.85
P-21	 13" Roaster — with rack	\$8.95 each	1 pc.	3 packs	12 lbs.	\$26.85
P-34	 4 Qt. Dutch Oven with cover and rack	\$11.95 each	1 pc.	3 packs	20 lbs.	\$35.85
AP-40	 2¼ Qt. Royal Buffet Saucepan with cover and candle warmer	\$12.75 each	1 pc.	3 packs	19 lbs.	\$38.25
AP-41	 1¾-Cup Petite Pan Set (Set of 4)	\$6.95 set	1 set of 4	3 packs	9 lbs.	\$20.85
AP-41-HG	 Black Petite Pan Handle (fits P 41, P 42, P 43, P 46)	\$2.50 each	4 pcs.	(12) 3 packs	3 lbs.	\$30.00
AP-42	 1¾-Cup Petite Pan Set with 4 Petite Pans, 4 plastic covers	\$7.95 each	1 set	3 packs	11 lbs.	\$23.85
P-43	 2¾-Cup Petite Pan Set (set of 2 pans and 2 plastic covers)	\$4.95 set	1 set	3 packs	7 lbs.	\$14.85
P-45	 16" Serving Tray and Cradle	\$10.95 each	1 pc.	3 packs	17 lbs.	\$32.85
AP-46	 1¾-Cup Petite Pan	\$1.79 each	6 pcs.	(18) 3 packs	13 lbs.	\$32.22
P-64	 1 Qt. Covered Saucepan	\$4.95 each	1 pc.	3 packs	9 lbs.	\$14.85
P-76	 15½" Open Roaster with 2 section wire rack	\$11.95 each	1 pc.	3 packs	17 lbs.	\$35.85
AP-84	 4 Qt. Covered Saucepan	\$11.95 each	1 pc.	3 packs	25 lbs.	\$35.85
AP-99	 Duet Set — complete with 2½ qt. covered saucepan and 10" covered skillet	\$9.99 set	1 set	1 pack	9 lbs.	\$9.99
AP-100	 Menu-ette Set — complete with 1 pt. covered saucepan, 1½ pt. covered saucepan and 6½" covered skillet	\$9.88 set	1 set	1 pack	6 lbs.	\$9.88
P-103	 3-Cup Hot Server	\$4.95 each	1 pc.	3 packs	4 lbs.	\$14.85
AP-104	 6-Cup Cornflower Emblem Teapot	\$7.50 each	1 pc.	3 packs	5 lbs.	\$22.50
P-104-4	 6-Cup Floral Bouquet Teapot	\$7.95 each	1 pc.	3 packs	5 lbs.	\$23.85
P-105	 2 Qt. Teakettle	\$10.95 each	1 pc.	3 packs	10 lbs.	\$32.85
P-114	 4-Cup Drip Coffeemaker	\$9.95 each	1 pc.	3 packs	9 lbs.	\$29.85
P-114-U	 Drip Adapter — upper bowl, basket and valve — fits P-104	\$4.95 each	1 pc.	3 packs	4 lbs.	\$14.85
P-146	 6-Cup Cornflower Emblem Percolator	\$10.95 each	1 pc.	3 packs	10 lbs.	\$32.85
P-146-3	 6-Cup Avocado Medallion Percolator	\$11.95 each	1 pc.	3 packs	10 lbs.	\$35.85
P-146-4	 6-Cup Floral Bouquet Percolator	\$11.95 each	1 pc.	3 packs	10 lbs.	\$35.85

⊕ New Item




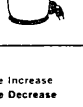
↑ Indicates Price Increase

∇ Indicates Price Decrease

BASIC ITEMS (Con't)

Catalog Number	Description	Price Each	qs. of pack	Packs Per Shipper	Weight Per Shipper/lbs.	Price Per Shipper
P-118	 8-Cup Drip Coffeemaker	\$14.95 each	1 pc.	3 packs	15 lbs.	\$44.85
P-118-U	 Drip Adapter—upper bowl, basket and valve fits P-105	\$5.95 each	1 pc.	3 packs	6 lbs.	\$17.85
P-149	 9-Cup Cornflower Emblem Percolator	\$11.95 each	1 pc.	3 packs	12 lbs.	\$35.85
P-149-3	 9-Cup Avocado Medallion Percolator	\$12.95 each	1 pc.	3 packs	12 lbs.	\$38.85
P-149-4	 9-Cup Floral Bouquet Percolator	\$12.95 each	1 pc.	3 packs	12 lbs.	\$38.85
P-124	 4-Cup Cornflower Emblem Percolator	\$9.95 each	1 pc.	3 packs	10 lbs.	\$29.85
P-186N	 6 Cup Filter Drip Coffeemaker	\$9.95 each	1 pc.	3 packs	10 lbs.	\$29.85
7186-FP	 Filter Paper for P-186N	\$.80 pack	40 pcs.	12 packs	5 lbs.	\$9.60
*P-200	 Bakeware Set—complete with 9" pie plate, 2 qt. utility dish and 2 qt. loaf dish	\$9.88 set	1 set	1 pack	9 lbs.	\$9.88
*P-201-HG	 White Detachable Handle—fits all skillets and saucepans	\$3.95 each	4 pcs.	3 packs	7 lbs.	\$47.40
*P-300-N	 Starter Set—complete with 9" covered skillet, 1½ qt. covered saucepan and 4 - 1½ cup Petite Pans	\$14.88 set	1 set	1 pack	10 lbs.	\$14.88
P-309	 9" Pie Plate	\$1.95 each	1 pc.	4 packs	8 lbs.	\$7.80
*P-315	 9" x 5" x 3" 2 Qt. Loaf Dish	\$4.50 each	1 pc.	3 packs	9 lbs.	\$13.50
P-322	 8" x 8" x 2" Square Baking Dish	\$4.95 each	1 pc.	3 packs	12 lbs.	\$14.85
P-332	 12" x 7½" x 2" 2 Qt. Oblong Baking Dish	\$5.95 each	1 pc.	3 packs	14 lbs.	\$17.85
*P-400	 Saucepan Set—complete with 1 qt. covered saucepan, 1½ qt. covered saucepan, 1¾ qt. covered saucepan, 1 handle and 1 cradle	\$17.88 set	1 set	1 pack	10 lbs.	\$17.88
*P-500-N	 Young Moderns Set—complete with 9" covered skillet, 1½ qt. covered saucepan, 1¾ qt. covered saucepan, 2 - 2¾-Cup petite pans w/covers and 2 plastic saucepan storage covers	\$19.88 set	1 set	1 pack	12 lbs.	\$19.88
*P-504	 4 Cup Brew n' Serve	\$4.95 each	1 each	3 packs	9 lbs.	\$14.85
*P-508	 8 Cup Brew n' Serve	\$7.95 each	1 each	3 packs	10 lbs.	\$23.85
*P-600-N	 Royal Family Set—complete with 1 qt. covered saucepan, 1½ qt. covered saucepan, 1¾ qt. covered saucepan, cradle, 10" covered skillet and 3 plastic saucepan storage covers	\$24.88 set	1 set	1 pack	15 lbs.	\$24.88
P-910	 10" Gourmet Skillet—Cornflower Emblem	\$9.95 each	1 pc.	3 packs	11 lbs.	\$29.85
*P-910-16	 10" Gourmet Skillet—Avocado	\$10.95 each	1 pc.	3 packs	11 lbs.	\$32.85
*P-910-41	 10" Gourmet Skillet—Chelsea Blue	\$10.95 each	1 pc.	3 packs	11 lbs.	\$32.85
P-910-C	 10" Gourmet Skillet Cover, clear glass	\$2.95 each	1 pc.	4 packs	8 lbs.	\$11.80




CORNING * WARE® ELECTROMATICS
PRODUCTS

Catalog Number	Description	Price Each	Pieces Per Pack	Packs Per Shipper	Weight Per Shipper/lbs.	Price Per Shipper
P-6-EP	 Cornflower Emblem 6-Cup Electromatic Percolator	\$27.95 each	1 pc.	1 pack	4 lbs.	\$27.95
P-6-EP-3	 Avocado Medallion 6-Cup Electromatic Percolator	\$27.95 each	1 pc.	1 pack	4 lbs.	\$27.95
P-6-EP-4	 Floral Bouquet 6-Cup Electromatic Percolator	\$27.95 each	1 pc.	1 pack	4 lbs.	\$27.95
P-206-EP	 White 6-Cup Electromatic Percolator	\$27.95 each	1 pc.	1 pack	4 lbs.	\$27.95



*New Item

↑ Indicates Price Increase
↓ Indicates Price Decrease

CORNING  WAP[®] ELECTROMATICS
PRODL

Catalog Number	Description	Price Each	Pieces Per Pack	Packs Per Shipper	Weight Per Shipper/lbs.	Price Per Shipper
P-22-ES P-22-ES-4 	Cornflower Emblem 10-Inch Electromatic Skillet Floral Bouquet 10-Inch Electromatic Skillet	\$29.95 each \$29.95 each	1 pc. 1 pc.	1 pack 1 pack	11 lbs. 11 lbs.	\$29.95 \$29.95
P-80-EP P-80-EP-3 	Cornflower Emblem 10-Cup Electromatic Percolator Avocado Medallion 10-Cup Electromatic Percolator	\$29.95 each \$29.95 each	1 pc. 1 pc.	1 pack 1 pack	5 lbs. 5 lbs.	\$29.95 \$29.95
P-80-EP-4 P-280-EP	Floral Bouquet 10-Cup Electromatic Percolator White 10-Cup Electromatic Percolator	\$29.95 each \$29.95 each	1 pc. 1 pc.	1 pack 1 pack	5 lbs. 5 lbs.	\$29.95 \$29.95
*P-49 	Electromatic Serving Tray with Dual Heat Feature	\$24.95	1 pc.	1 pack	5 lbs.	\$24.95

DECORATIONS

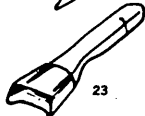
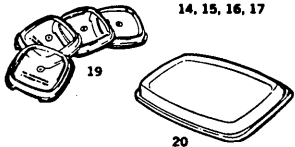
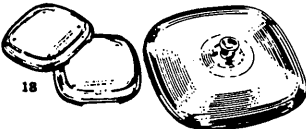
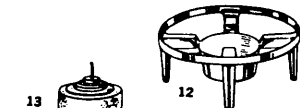
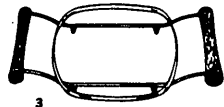
-  Avocado Medallion —3 suffix
-  Floral Bouquet —4 suffix

ADDITIONAL ITEMS

Catalog Number	Description	Price Each
P-33	Trio Set	\$ 9.99
P-48	Cook Ahead Set	\$12.88
P-54	Cornflower Emblem 16-inch Electromatic Platter	\$19.95
*P-20-70	1 3/4 Qt. Party Buffet with Cover and Candlewarmer Saucepan — Renaissance	\$19.95
*P-40-70	2 1/2 Qt. Royal Buffet with Cover and Candlewarmer Saucepan — Renaissance	\$12.95
*P-45-70	16" Serving Tray with Cradle — Renaissance	\$ 2.95
P-81	1 Pt. Menu-ette Saucepan with Cover	\$ 3.95
P-82	1 1/2 Pt. Menu-ette Saucepan with Cover	\$ 3.95
P-83	6 1/2" Menu-ette Skillet with Cover	\$ 3.95
*P-84-70	4 Qt. Covered Saucepan with Cover and Cradle — Renaissance	\$ 8.88
P-88	Bake 'n Fry Set	\$10.95
P-116	6-Cup Cornflower Emblem Percolator	\$11.95
P-116-3	6-Cup Avocado Medallion Percolator	\$11.95
P-119	9-Cup Cornflower Emblem Percolator	\$12.95
P-119-3	9-Cup Avocado Medallion Percolator	\$13.95
*P-149-70	9 Cup Percolator — Renaissance	\$9.95
P-186	6-Cup Filter Drip Coffeemaker	\$.80 pkg.
P-186-FP	Filter Papers for P-186	\$14.88
YF-300	Starter Set	\$19.88
YF-500	Young Moderns Set	\$24.88
YF-600	Royal Family Set	\$29.88
YF-700	Hostess Set	

New Item
↓ indicates Price Decrease

CORNING WARE® REPLACEMENT
PRODUCTS
PARTS & ACCESSORIES



1 SERVING CRADLE, (Fits P-35, P-49, P-54, P-76) No. P-35-M
 \$3.50 each, 1 pc./pack, 4 packs/shipper, 6 lbs./shipper, \$14.00 shipper.

2 SERVING CRADLE, (Fits P-19, P-21) No. P-21-M
 \$3.50 each, 1 pc./pack, 4 packs/shipper, 6 lbs./shipper, \$14.00 shipper.

3 SERVING CRADLE, (Fits P-34, P-84) No. P-34-M
 \$3.50 each, 1 pc./pack, 4 packs/shipper, 5 lbs./shipper, \$14.00 shipper.

4 CANDLE WARMER, (Fits P-13½) No. P-13½-W
 \$4.50 each, 1 pc./pack, 4 packs/shipper, 5 lbs./shipper, \$18.00 shipper.

5 SAUCEPAN AND SKILLET SERVING CRADLES No. P-2½-W
 \$4.50 each, 1 pc./pack, 4 packs/shipper, 6 lbs./shipper, \$18.00 shipper.

6 SAUCEPAN AND SKILLET SERVING CRADLES No. P-11-M-1*
 \$2.50 each, 1 pc./pack, 4 packs/shipper, 4 lbs./shipper, \$10.00 shipper.

7 SAUCEPAN AND SKILLET SERVING CRADLES No. P-2½-M-1**
 \$2.75 each, 1 pc./pack, 4 packs/shipper, 4 lbs./shipper, \$11.00 shipper.

8 SAUCEPAN AND SKILLET SERVING CRADLES No. P-7-M-1
 \$2.50 each, 1 pc./pack, 4 packs/shipper, 4 lbs./shipper, \$10.00 shipper.

9 SAUCEPAN AND SKILLET SERVING CRADLES No. P-9-M-1**
 \$2.75 each, 1 pc./pack, 4 packs/shipper, 5 lbs./shipper, \$11.00 shipper.

10 SAUCEPAN AND SKILLET SERVING CRADLES No. P-10-M-1
 \$3.00 each, 1 pc./pack, 4 packs/shipper, 6 lbs./shipper, \$12.00 shipper.

11 SAUCEPAN AND SKILLET SERVING CRADLES No. P-16-M-1
 \$3.50 each, 1 pc./pack, 4 packs/shipper, 7 lbs./shipper, \$14.00 shipper.

12 BEVERAGE MAKER WARMER (Fits P-103, P-104, P-105, P-116, P-119, P-124, P-146, P-504) No. P-119-W
 \$2.00 each, 1 pc./pack, 4 packs/shipper, 4 lbs./shipper, \$8.00 shipper.

13 8-HOUR CANDLE (Fits all CORNING WARE® WARMERS) No. P-8
 \$1.20 (Box of 3) each, 1 (box of 3)/pack, 4 packs/shipper, 1 lb. shipper, \$1.20 shipper.

14 GLASS COVER, (Fits P-1, P-1½, P-1¾, P-7) No. P-7-C-1
 \$1.50 each, 1 pc./pack, 4 packs/shipper, 5 lbs./shipper, \$6.00 shipper.

15 GLASS COVER, (Fits P-2½, P-9) No. P-9-C-1
 \$1.75 each, 1 pc./pack, 4 packs/shipper, 7 lbs./shipper, \$7.00 shipper.

16 GLASS COVER, (Fits P-10) No. P-10-C-1
 \$2.95 each, 1 pc./pack, 4 packs/shipper, 11 lbs./shipper, \$11.80 shipper.

17 GLASS COVER, (Fits P-16, P-34, P-84) No. P-12-C
 \$3.25 each, 1 pc./pack, 4 packs/shipper, 12 lbs./shipper, \$13.00 shipper.

17A GLASS COVER, (Fits P-910) No. P-910-C
 \$2.95 each, 1 pc./pack, 4 packs/shipper, 8 lbs./shipper, \$11.80 shipper.

18 PLASTIC STORAGE COVER, (Fits P-1, P-1½, P-1¾, P-7) No. P-1-PC
 2/\$.98, 2 pcs./box, 4 boxes/pack, 3 packs/shipper, 5 lbs./shipper, \$11.76 shipper.

19 PETITE PAN PLASTIC STORAGE COVER, (Fits P-41, P-43, P-46) No. P-41-C
 \$1.19 set of 4, 4 pcs./box, 4 boxes/pack, 3 packs/shipper, 5 lbs./shipper, \$14.28 shipper.

20 PLASTIC STORAGE COVER, (Fits P-315) No. P-315-PC
 \$.69 each, 1 pc./box, 4 boxes/pack, 3 packs/shipper, 4 lbs./shipper, \$8.28 shipper.

21 BLACK DETACHABLE HANDLE, (Fits all skillets, saucemakers, and saucemakers) No. P-10-HG
 \$2.95 each, 4 pcs./pack, 3 packs/shipper, 7 lbs./shipper, \$35.40 shipper.

22 BLACK PETITE PAN HANDLE, (Fits P-41, P-42, P-43, P-46) No. P-41-HG
 \$2.50 each, 4 pcs./pack, 3 packs/shipper, 3 lbs./shipper, \$23.40 shipper.

23 WHITE DETACHABLE HANDLE, (Fits all skillets and saucemakers) No. 201-HG
 \$3.95 each, 4 pcs./pack, 3 packs/shipper, 7 lbs./shipper, \$47.40 shipper.

Initial Decision

BEVERAGE MAKERS

How to use this section. Select the item that requires the replacement part. Check the diagram above the picture and find the key number of the part. Refer to that number in the table of parts below to get the stock number, description and price of the part. Screws included where needed.

TABLE OF PARTS

Key	Description	Part No.	Retail Price Each	Key	Description	Part No.	Retail Price Each
1	3-Cup Bowl	P-103-B	\$ 3.75	35	Pump Basket Assembly	P-116-PBA	\$ 2.75
2	Metal Band	P-103-MB	.50	36	9-Cup Bowl, Band, and Handle (Cornflower)	P-119-B	7.50
3	Plastic Handle	P-103-H	.40	36	9-Cup Bowl, Band, and Handle (Avocado Medallion)	P-119-B-3	7.50
4	Plastic Cover	P-103-C	.90	36	9-Cup Bowl, Band, and Handle (White)	P-219-B	7.50
5	6-Cup Bowl (Cornflower)	P-104-B	4.75	37	9-Cup Pump	P-119-P	1.75
5	6-Cup Bowl (Floral Bouquet)	P-104-B	5.75	38	Coffee Basket	P-119-CBM	1.75
5	6-Cup Bowl (White)	P-204-B	4.75	39	Pump Basket Assembly	P-119-PBA	3.25
6	Metal Band	P-104-MB	.75	40	6-Cup Bowl (Cornflower)	P-186-B	4.95
7	Plastic Handle	P-104-H	.65	41	Plastic Handle	P-186-H	.50
8	Plastic Cover	P-104-C	1.35	42	Plastic Filter Cone	P-186-NFC	3.95
9	9-Cup Bowl	P-105-B	8.50	43	Coffee Basket	P-146-CBM	1.50
10	Metal Band	P-105-MB	.75	44	Glass Cover Gasket	P-146-CG	.25
11	Plastic Handle	P-105-H	.65	45	Plastic Cover	P-146-C	1.25
12	Metal Cover	P-105-C	1.50	46	Coffee Basket	P-149-CBM	1.75
13	2-Qt. Bowl, Band, and Handle	P-57-B	13.50	47	6-Cup Pump	P-146-P	1.25
14	Cover	P-57-C	3.00	48	Pump Springs	P-146-PS	.50
15	Coffee Basket	P-114-CB	1.75	49	Pump Basket Assembly	P-146-PBA	3.00
16	4-Cup Upper Bowl	P-114-B	2.45	50	6-Cup Bowl, Band, and Handle (Cornflower)	P-146-B	6.95
17	Valve	P-114-V	.40	50	6-Cup Bowl, Band, and Handle (Avocado Medallion)	P-146-B-3	7.95
18	Coffee Basket	P-118-CB	2.00	50	6-Cup Bowl, Band, and Handle (Floral Bouquet)	P-146-B-4	7.95
19	6-Cup Upper Bowl	P-118-B	3.95	51	9-Cup Pump	P-149-P	1.50
20	Valve	P-118-V	.50	52	Pump Basket Assembly	P-149-PBA	3.50
21	4-Cup Bowl (Cornflower)	P-124-B	4.95	53	9-Cup Bowl, Band, and Handle (Cornflower)	P-149-B	7.50
22	Plastic Handle	P-124-H	.60	53	9-Cup Bowl, Band, and Handle (Avocado Medallion)	P-149-B-3	8.50
23	Metal Band	P-124-MB	1.00	53	9-Cup Bowl, Band, and Handle (Floral Bouquet)	P-149-B-4	8.50
24	4-Cup Pump	P-124-P	1.10	54	4-Cup Bowl (Cornflower)	P-504-B	3.95
25	Coffee Basket	P-124-CBM	1.35	55	Metal Band	P-504-MB	.75
26	Spreader Plate	P-124-SP	.60	56	Plastic Handle	P-504-H	.60
27	Plastic Cover	P-124-C	1.00	57	6-Cup Bowl (Cornflower)	P-508-B	5.95
28	Glass Cover	P-116-CG	.35	58	Plastic Cover	P-508-C	1.00
29	Pump Basket Assembly	P-124-PBA	2.45	59	Plastic Handle	P-508-H	.95
30	6-Cup Bowl, Band, and Handle (Avocado Medallion)	P-116-B	6.95				
30	6-Cup Bowl, Band, and Handle (White)	P-116-B-3	6.95				
31	Percolator Pump	P-216-P	6.95				
32	Coffee Basket	P-116-CBM	1.50				
33	Spreader Plate	P-116-SP	.60				
34	Plastic Cover	P-116-C	1.25				

3-Cup Hot Server P-103 Cornflower Emblem	6-Cup Teapot P-104 Cornflower Emblem P-104-4 Floral Bouquet P-204 White	2-Qt. Teakettle P-105 Cornflower Emblem	7-Cup Teakettle—Deluxe P-57 Cornflower Emblem	6-Cup Filter Drip Coffeemaker P-186N Cornflower Emblem	4-Cup Brew 'n Serve P-504 Cornflower Emblem	8-Cup Brew 'n Serve P-508 Cornflower Emblem
4-Cup Drip Coffeemaker P-114 Cornflower Emblem	8-Cup Drip Coffeemaker P-118 Cornflower Emblem	4-Cup Percolator P-124 Cornflower Emblem P-224 White	8-Cup Percolator P-116 Cornflower Emblem P-216 White P-116-3 Avocado Medallion	9-Cup Percolator P-119 Cornflower Emblem P-219 White P-119-3 Avocado Medallion	6-Cup Percolator P-146 Cornflower Emblem P-146-3 Avocado Medallion P-146-4 Floral Bouquet	9-Cup Percolator P-149 Cornflower Emblem P-149-3 Avocado Medallion P-149-4 Floral Bouquet

Designs no longer available. Parts for P-116 and P-216 fit P-126 and P-136. Parts for P-119 and P-219 fit P-129 and P-139. All parts listed on this page are individually packaged and are available on an individual basis.

Key	Item No.	Description	Bowl	Retail Price Each	Cover	Retail Price Each	Companion Parts	Retail Price Each
FLORAL BOUQUET PATTERN								
	7	P-1-4 1 Qt. Covered Saucepan	P-1-B-4	\$4.75			Glass	
	7	P-1 1/2-4 1 1/2 Qt. Covered Saucepan	P-1 1/2-B-4	5.75		P-7-C-1	\$1.50	
	7	P-1 3/4-4 1 3/4 Qt. Covered Saucepan	P-1 3/4-B-4	6.75				
	7	P-2 1/2-4 2 1/2 Qt. Covered Saucepan	P-2 1/2-B-4	7.50		P-9-C-1	1.75	
	7A	P-10-4 10" Covered Skillet	P-10-B-4	8.75		P-10-C-1	2.95	
HARVEST GOLD								
	8	P-1-6 1 Qt. Covered Saucepan	P-1-B-6	4.75				
	8	P-1 1/2-6 1 1/2 Qt. Covered Saucepan	P-1 1/2-B-6	5.75		P-7-C-1	1.50	
	8	P-1 3/4-6 1 3/4 Qt. Covered Saucepan	P-1 3/4-B-6	6.75				
SAUCEPANS — WITH CORNFLOWER EMBLEM								
	10	P-1 1 Qt. Covered Saucepan	P-1-B	3.75				
	10	P-1 1/2 1 1/2 Qt. Covered Saucepan	P-1 1/2-B	4.52		P-7-C-1	1.50	Cradle P-11-M-1 2.50
	10	P-1 3/4 1 3/4 Qt. Covered Saucepan	P-1 3/4-B	4.60				Plastic Cover P-1-PC 2/ 98
	10	P-2 1/2 2 1/2 Qt. Covered Saucepan	P-2 1/2-B	4.65		P-9-C-1	1.75	Cradle P-2 1/2-M-1 2.75
	12	P-84 4 Qt. Covered Saucepot	P-84-B	48.75		P-12-C	3.25	
SKILLETS — WITH CORNFLOWER EMBLEM								
	13	P-7 7" Covered Skillet	P-7-B	3.75		Glass P-7-C-1	1.50	Cradle P-7-M-1 2.50
	13	P-9 9" Covered Skillet	P-9-B	45.75		P-9-C-1	1.75	Plastic Cover P-1-PC 2/ 98
	13	P-10 10" Covered Skillet	P-10-B	7.75		P-10-C-1	2.95	Cradle P-9-M-1 2.75
	14	P-16 10" Covered Deluxe Fryer w/cradle	P-16-B	7.75		P-12-C	3.25	Cradle P-10-M-1 3.00 Cradle P-16-M-1 3.50
MENU-ETTE SET — WITH CORNFLOWER EMBLEM								
	15	Set 1 Pt. Covered Saucepan	P-81-B	\$2.00				
		P-100 1 1/2 Pt. Covered Saucepan	P-82-B	\$3.00		P-81-C	1.00	
		6 1/2" Covered Skillet	P-83-B	\$3.00		P-83-C	1.25	
PETITE PANS — WITH CORNFLOWER EMBLEM								
	16	P-41 1 1/2-Cup Petite Pans (set of 4)				Plastic		
	16	P-42 1 1/2-Cup Petite Pan Set w/4 Petite Pans, 4 plastic covers	P-46	41.79		P-41 C	4/1 19	Detachable Handle P-41-HG 1.95
	16	P-43 2 1/2-Cup Petite Pan Set (set of 2 pans and 2 plastic covers)	P-43-B	2.25				
	16	P-46 1 1/2-Cup Petite Pan	P-46	41.79				
SAUCEMAKERS — WITH CORNFLOWER EMBLEM								
	17	P-64 1 Qt. Covered SauceMaker	P-55	3.95		Glass P-64-C	1.25	
BAKING ITEMS — WITH CORNFLOWER EMBLEM								
	18	P-4 1 1/2 Qt. Covered Baking Dish	P-4-B	4.25		Glass P-4-C	1.25	
	19	P-315 9" x 5" x 3" 2 Qt. Loaf Dish	P-315	44.50		Plastic P-315-PC	.69	
BUFFETS/DUTCH OVEN — WITH CORNFLOWER EMBLEM								
	20	P-20 1 1/2 Qt. Party Buffet Saucepan w/cover and candle warmer	P-1 1/2-B	46.00		Glass P-7-C-1	1.50	Candle Warmer P-1 1/2-W 4.50 Candle P-8 3/ 30
	20	P-40 2 1/2 Qt. Royal Buffet Saucepan w/cover and candle warmer	P-2 1/2-B	46.75		Glass P-9-C-1	1.75	Candle Warmer P-2 1/2-W 4.50 Candle P-8 3/ 30
	21	P-34 4 Qt. Dutch Oven w/cover and rack	P-34-B	7.50		Glass P-12-C	3.25	Rack P-34-R 1.50
ROASTERS/PLATTERS — WITH CORNFLOWER EMBLEM								
	22	P-19 16" Serving Platter with spatter shield	Spatter Shield Platter P-19-B	\$ 2.25 5.95		P-21-R		
	23	P-21 13" Open Roaster with rack	Rack P-21-WR Roaster P-21-B	2.25 6.95				Cradle P-21-M 3.50
	24	P-45 14 1/2" Serving Tray and Cradle	Tray P-35	7.95				Cradle P-35-M 3.50
	25	P-76 15 1/2" Open Roaster w/2 section wire rack	Rack P-76-R Roaster P-76-B	2.00 9.95		Ea. Section		

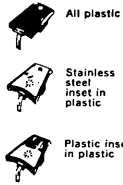
▲ Indicates Price Increase

All parts listed on this page are individually packaged and are available on an individual basis.

Initial Decision

ELECTROMATIC PERCOLATORS

Model differences in 10-Cup Electromatic Percolators are clearly seen in the Immersion Heaters



6-Cup Electromatic Percolator
 P-6-EP Cornflower Emblem
 P-6-EP-4 Floral Bouquet
 P-206-EP White
 P-6-EP-3 Avocado Medallion

10-Cup Electromatic Percolator
 P-80-EP Cornflower Emblem
 P-80-EP-4 Floral Bouquet
 P-280-EP White
 P-80-EP-3 Avocado Medallion

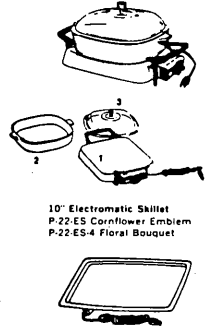
10-Cup Electromatic Percolator
 P-23-EP Cornflower Emblem
 P-223-EP White
 P-13-EP Trefoil
 (Trefoil decoration no longer available)
 Parts are interchangeable on these models



6-Cup Percolator: P-6-EP, P-6-EP-3, P-6-EP-4, P-206-EP
 10-Cup Percolator: P-80-EP, P-80-EP-3, P-280-EP, P-23-EP, P-223-EP, P-13-EP

Key	Description	6-Cup Percolator		10-Cup Percolator	
		Part No.	Retail Price Each	Part No.	Retail Price Each
1	Bowl, Band & Handle, Cornflower Emblem	P-6-B	\$ 8.95	P-80-B	\$10.95
1	Bowl, Band & Handle, White	P-206-B	8.95	P-280-B	10.95
1	Bowl, Band & Handle, Avocado Medallion	P-6-B-3	8.95	P-80-B-3	10.95
1	Bowl, Band & Handle, Floral Bouquet	P-6-B-4	8.95	P-80-B-4	10.95
2	Plastic Cover	P-6-C	1.00	P-80-C	1.50
3	Glass Knob Cover	P-6-KC	.50	P-13-KC	.50
4	Immersion Heater	P-6-IH	12.95	P-80-IH	14.95
5	Pump Basket Assembly	P-6-P	2.50	P-80-P	2.95
6	Spreader Plate	P-6-SP	.50	P-80-SP	.65
7	Cord	P-6-HC	1.25	P-6-HC	1.25
8	Trivet	P-6-T	.60	P-80-T	.75

Listed by Underwriters' Laboratories Inc. AC only



ELECTROMATIC SKILLET

P-22-ES, P-22-ES-4

Key	Description	P-22-ES, P-22-ES-4	
		Part No.	Retail Price Each
1	Heater Base	P-12-HB	\$22.95
2	Skillet Bowl, Cornflower Emblem	P-22-B	9.95
2	Skillet Bowl, Floral Bouquet	P-22-B-4	10.95
3	Cover	P-12-C	3.25

Listed by Underwriters' Laboratories Inc. AC only

Part No.	Description	Retail Price Each
P-54-HC	Electromatic Serving Tray Cord (Fits P-54, P-254)	\$1.00
P-49-HC	Electromatic Serving Tray with Dual Heat Feature Cord (Fits P-49)	1.50

16" Electromatic Serving Tray
 P-54 Cornflower Emblem
 P-254 White
 (P-54-HC Cord)
 P-49 Electromatic Serving Tray
 with Dual Heat Feature
 (P-49-HC Cord)

All parts listed on this page are individually packaged and are available on an individual basis.

CASH DISCOUNT — TRADING STAMP ICY

It shall not be a violation of Corning's Fair Trade agreement for a Dealer (1) to give trading stamps or trading points or (2) cash discount with the sale of PYREX ware or CORNING WARE products provided the posted or advertised price shall be the Fair Trade price and the aggregate value of such trading stamps, points and cash discounts do not exceed 3% of the Fair Trade price and provided the trading stamps, points or cash discounts are given generally as a store wide policy and if as a general store wide policy the store has so-called "double stamp" days and such days apply to all other merchandise and do not exceed more than one given day in a week, it shall not be a violation for that day if the value of such trading stamps, points and cash discounts on such day do not exceed 5% of the Fair Trade price.

**CORNING
PROMISE****CORNING WARE[®] Products**

Corning promises to replace any glass-ceramic part of any CORNING WARE[®] product that ever breaks from temperature extremes. Corning promises to replace the clear glass part of any CORNING WARE[®] product that breaks from heat within two years from date of purchase when used according to directions. Any imperfect part will be replaced free within one year from date of purchase. Return the pieces to a CORNING WARE[®] products dealer.

Corning Glass Works

Corning, N. Y.

**CORNING
PROMISE****PYREX[®] WARE**

Corning promises to replace the glass part of any PYREX[®] Ware item that breaks from heat within two years from date of purchase, when used according to directions. Return the pieces to a PYREX[®] Ware dealer.

Corning Glass Works

Corning, N. Y.

If for any reason it is not possible for you to provide your customer with satisfactory service regarding product performance or replacement parts, suggest that your customer write:

Corning Glass Works
Consumer Products Division
Consumer Service Dept.
Corning, New York 14830

[®]"PYREX" and [®]"CORNING WARE" are registered trademarks and indicate manufacture by

CORNING
CORNING GLASS WORKS

CORNING GLASS WORKS

1727

1675

Initial Decision

APPENDIX C-2

CORELLO
LIVINGWARE
by CORNINGFAIR TRADE MINIMUM RETAIL PRICE LIST
SCHEDULE A SUPPLEMENT NO. 2

EFFECTIVE OCTOBER 1, 1970

These prices are Fair Traded in all states having Fair Trade laws. In all other areas they are merely suggested as possible resale prices.

Cat. No.	Description	Pieces		Retail	Sets or	Retail	Weight per Shipper
		Retail Price* Each	per Set or Pack	Price* Set or Pack	Packs per Shipper	Price* per Shipper	
20	20-pc. Set.....		20	19.95	1	19.95	10 lbs.
106	Small Plate.....	.90	4	3.60	3	10.80	5 lbs.
108	Medium Plate.....	1.00	4	4.00	3	12.00	7 lbs.
110	Large Plate.....	1.20	4	4.80	3	14.40	10 lbs.
318	Coffee Cup.....	1.20	4	4.80	3	14.40	6 lbs.
410	Small Bowl (white)**.....	.90	4	3.60	3	10.80	3 lbs.
418	Large Bowl (white)**.....	1.00	4	4.00	3	12.00	5 lbs.
506	Saucer.....	.90	4	3.60	3	10.80	4 lbs.

Winter Frost White

—1 Spring Blossom Green

—2 Snowflake Blue

—4 Butterfly Gold

*All patterns same price

**Bowls Available in White only.

CORNING GLASS WORKS
CONSUMER PRODUCTS DIVISION
CORNING, NEW YORK 14830

CORNING GLASS WORKS
CORNING, N. Y.

Fair Trade Minimum Wholesale Prices
for Products of Consumer Products Division

Effective February 19, 1940

Revised April 27, 1970

PYREX® WARE

"PYREX" Brand Ware shall be sold to retail dealers at not less than the retail list prices shown on Schedule A, as such schedule shall from time to time be constituted, less a discount not in excess of:

- 30% discount from list for broken cases,
- 33½% and 5% discount from list for one to nine original cases,
- 33½% and 10% discount from list for ten to forty-nine original cases,
- 40% and 5% discount from list for fifty or more original cases.

NOTE: This extra 5% is automatically allowed for advertising purposes and will appear on all wholesale distributor invoices as an "allowance for advertising purposes".

An additional cash discount not in excess of 2% may be allowed, provided it is allowed generally on all lines or products sold to all retail dealers.

Discounts apply to:

- A. Single order and billing, for single shipment to one address.
- B. Cases as originally packed at Corning. (Except where more than one case is packed in a shipper).
- C. Orders for one or several items; for example an order for 2 cases No. 209 Pie Plates, 3 cases No. 440 Bowl Sets, 1 case No. 7756 Percolators, 2 cases No. 508 Measures, 2 cases No. 232 Utility Dishes take a discount of 33½% and 10% from list prices.
- D. Replacement parts as follows:
 - 1. Replacement parts in original cases—each full case ordered counts as one case for discount purposes (example: 7756-P replacement pump; 77CBM filter plate; etc.)
 - 2. To be billed as a broken case order, except when shipped with an order qualifying for a higher discount, the higher discount will apply to the Replacement Parts as well.

Discounts do not apply to the sale of ware to a corporation for subsequent resale to its employees for their domestic use. Such sales are scheduled at retail Net prices.

Discounts are established by contracts in all states having Fair Trade laws as provided by these laws and by the Federal enabling acts. The allowance of additional rebates, cumulative or annual discounts, dividends, or the group purchasing by one retailer for a store not under his identical management is not permitted thereunder.

See Reverse Side for CORNING WARE® Products and
CORNING WARE® ELECTROMATICS Discounts.

APPENDIX D-2

SCHEDULE B

CORNING GLASS WORKS

CORNING, N. Y.

Fair Trade Minimum Wholesale Prices
for Products of Consumer Products Division

Effective September 10, 1960

Revised April 27, 1970

CORNING * WARE PRODUCTS AND CORNING * WARE®
ELECTROMATICS

CORNING WARE PRODUCTS and CORNING WARE ELECTROMATICS shall be sold to authorized retail dealers at not less than the retail prices shown on Schedule A, as such schedule shall from time to time be constituted, less a discount not in excess of discounts shown below.

An additional cash discount, not in excess of 2% may be allowed provided it is allowed generally on all lines or products sold to all retail dealers.

Discounts apply to single order and billing, for single shipment to one address. Discounts are established by contracts in all States having Fair Trade Laws as provided by these laws and by the Federal enabling acts. The allowance of additional rebates, cumulative or annual discounts, dividends, anticipation discounts, advertising allowances, or the group purchasing by one retailer for a store not under his identical management are not permitted beyond the discount schedule as outlined below.

CORNING * WARE® PRODUCTS — DISCOUNTS

COMPLETE CORNING WARE ITEMS

35% discount from list for 1 through 17 pieces

40% discount from list for 18 pieces or more

NOTE:

The number of complete pieces in CORNING WARE sets count as pieces toward discount.

For Example—P-400 Saucepan Set counts as 3 pieces toward the discount.

P-600 Royal Family Set counts as 4 pieces toward the discount.

P-500 Young Modern Set counts as 5 pieces toward the discount.

CORNING WARE ACCESSORIES & REPLACEMENT PARTS

- A. Covers and cradles in full original shippers count as one piece for discount purposes. For example: one shipper (containing 4 covers) equals one piece for discount purposes; one shipper (containing 4 cradles) equals one piece for discount purposes.
- B. One pack of detachable handles (containing 4 handles) counts as one piece for discount purposes.
- C. Orders for less than full pack or full case quantities, when shipped with an order qualifying for a higher discount, qualify for the higher discount.

CORNING * WARE® ELECTROMATICS — DISCOUNTS

30% discount from list for 1 through 3 packs.

35% discount from list for 4 packs or more.

CORNING WARE Electromatics Accessories & Replacement Parts carry the discount of the Electromatics order with which they are shipped.

See Reverse Side for PYREX® WARE Discounts.

CORELLE®
LIVINGWARE
by CORNING

FAIR TRADE MINIMUM WHOLESALE PRICE LIST

SCHEDULE B

EFFECTIVE SEPTEMBER 1, 1970

Corelle® Livingware shall be sold to retail dealers at not less than the retail list prices shown on Schedule A, as such schedule shall from time to time be constituted, less a discount not in excess of:

35% discount from list for one to nine original shippers and for broken shippers.

40% discount from list for ten to twenty-four original shippers.

40% and 5% discount from list for twenty-five or more original shippers.

A cash discount not in excess of 2% may be allowed, provided it is allowed generally on all lines or products sold to all retail dealers.

Discounts apply to:

- A. Single order and billing, for single shipment to one address.
- B. Shippers as originally packed at Corning (except where more than one shipper is packed in a master shipper).
- C. Orders for one or several items; for example, an order for 2 shippers No. 106-1 Small Plates, 3 shippers No. 110-2 Large Plates, 1 shipper No. 318-4 Coffee Cups, 2 shippers No. 108-1 Medium Plates, and 2 sets No. 20-2, 20 piece set take a discount of 40% from list prices.

Discounts do not apply to the sale of ware to a corporation for subsequent resale to its employees for their domestic use. Such sales are scheduled at retail list prices.

Discounts are established by contracts in all states having Fair Trade laws as provided by these laws and by the Federal enabling acts. The allowance of additional rebates, cumulative or annual discounts, or the group purchasing by one retailer for a store not under his identical management is not permitted thereunder.

CORNING GLASS WORKS
CONSUMER PRODUCTS DIVISION
CORNING, NEW YORK 14830

1675

Initial Decision

APPENDIX E

FAIR TRADE PROCEDURES

CORNING
CORNING GLASS WORKS
CONSUMER PRODUCTS DIVISION

FAIR TRADE PROCEDURES

There are three types of jurisdictions in the United States where we distribute our fair traded products. These are

1. Jurisdictions in which fair trade is *fully valid*
2. Jurisdictions in which fair trade is not binding on *non-signers*.
3. Jurisdiction in which there is *no fair trade*

1. Fully Valid Fair Trade States

The following states have Fair Trade Laws and maintain the constitutionality of the non-signer clause. We may sue any store which has had actual notice of our fair trade prices whether a contract has been signed or not.

Arizona	Maine	North Dakota
California	Massachusetts	Ohio
Connecticut	New Hampshire	Tennessee
Delaware	New Jersey	Virginia
Illinois	New York	Wisconsin
Maryland	North Carolina	

PROCEDURE:

When a report of price cutting is brought to your attention check the accuracy of the report and attempt to correct the situation with a personal call wherever possible. Report the violation to J. H. Miller, Corning New York. A Fair Trade wire and registered letter will be sent to violator requesting that prices be restored or legal action will be taken.

If price cutting persists legal action is recommended. The actual shopping of the store for evidence will be handled by the Legal Department. (A shopping report or receipt for merchandise before notice to the store is of no value).

2. Non-Signer States

The following states have Fair Trade Laws but specify that the non-signers clause is unconstitutional. Unless a dealer actually signs a Fair Trade Agreement he is not bound to maintain Fair Trade prices.

Arkansas	Kentucky	Pennsylvania
Colorado	Louisiana	South Carolina
Florida	Michigan	South Dakota
Georgia	Minnesota	Washington
Idaho	New Mexico	West Virginia
Indiana	Oklahoma	
Iowa	Oregon	

PROCEDURE:

When a report of price cutting is brought to your attention, ask the violator to restore prices and sign a Fair Trade Agreement. If the dealer refuses to sign, report this to J. H. Miller, Corning, N. Y., and the dealer's name will be added to a special list that is mailed to our distributors. Distributors may not sell to dealers appearing on this list.

We may as part of the Wholesale Fair Trade Agreement ask the distributor to agree that he will not sell to any dealer who has refused to sign a Fair Trade Agreement.

If the distributor violates this agreement we may either (1) sue him for breach of his agreement or (2) cut him off.

If a dealer violates his contract we may terminate his contract and notify all distributors that we have done so. A distributor *must* refuse to sell him to avoid violation of the wholesale contract. It is valid to insist that our ware be distributed only through signing retailers.

3. States With No Fair Trade

The following states have no Fair Trade Laws and our Fair Trade Schedule A prices are merely suggested prices for the guidance of our distributors and dealers.

Alabama	Montana	Rhode Island
Alaska	Mississippi	Texas
District of Columbia	Missouri	Utah
Hawaii	Nebraska	Vermont
Kansas	Nevada	Wyoming

PROCEDURE:

In states *not having Fair Trade Laws* the selection of dealers is at the sole discretion of the wholesaler. To make absolutely certain there will be no misunderstanding you are instructed *not* to report to your distributors any retailers not using our suggested retail prices when retailer is located in non fair trade states.

PLEASE REFER ALL QUESTIONS AS TO THE APPLICABILITY OF FAIR TRADE LAWS TO HENRY H. SAYLES, LEGAL DEPARTMENT, CORNING, N. Y. 14830.

1675

Initial Decision

PYREX® WARE-CORNING WARE® DISTRIBUTORS

Effective January 1, 1971

Our distributors are strategically located and well stocked to handle your standard item and replacement part requirements. The classification of each distributor, designated by the number* to the left of the names, shows the major area of business in each case.

Consumer Products Division CORNING GLASS WORKS Corning, N. Y.

"C"—Indicates that distributor handles CORNING WARE PRODUCTS only.

"P"—Indicates that distributor handles PYREX WARE only.

"C" & "P"—Indicates that distributor handles BOTH lines.

*01—Hardware Distributor	05—Variety, Gift, China & Glass
02—Cooperative	06—Jewelry
03—Specialty Housewares	07—Parts & Repair
04—Service Distributor	

ALABAMA

Birmingham

1940 C&P 01	Moore-Handley Hardware Co., 27 S. 20th St. 35233
1961 P 04	Harvey Ragland Co., 3500 3rd Ave. S. 35205
1970 C&P 03	The Feldstein Co., Inc., 2304-14 1st Ave. N. 35203

Huntsville

1964 P 04	Ragland Bros. Co., Dughill Road 35804
-----------	---------------------------------------

Montgomery

1959 C&P 01	Teague Hardware Co., 174 Commerce St. 36104
-------------	---

ARIZONA

Phoenix

C&P 01-04	Arizona Hdwe. Co., 2841 North 31st Ave. 85001
C&P 03	Banner Distributing Co., 4011 West Clarendon Ave. 85019

ARKANSAS

Fort Smith

C&P 01	Speer Hardware, 209 Rogers Ave. 72901
--------	---------------------------------------

Harrison

P 04	Sav-A-Stop, Inc., Box 276, 72601
------	----------------------------------

Hot Springs Nat'l. Park

C&P 01	F. C. Stearns Hdwe. Inc., New Little Rock Hwy. 71901
--------	--

Little Rock

C&P 01	Fones Brothers Hardware Co., 324 E. 2nd St. 72201
P 04	Little Rock Wholesale Co., 3100 E. Elm St. 72204

Texarkana

C&P 01	Buhrman Pharr Hardware Co., 212-222 Laurel St. 75500
--------	--

CALIFORNIA

Emeryville

P 04	Eiselman Distributing Co.
P 04	Handy Spot Co., 6450 Hollis St. 94608

CALIFORNIA (Continued)

Long Beach

C&P 01 American Wholesale Hardware Co., 1500 W. Anaheim,
P.O. Box 380, 90813

Los Angeles (City of Commerce)

P 04 May-Serv-Mart, 2600 S. Garfield Ave. 90022

Los Angeles

CP 01 California Hardware Co., 500 E. 1st St. 90012

C&P 03 Certified Appliance, 2944 East 44th St.

P 04 Certified Grocers of Calif., Ltd., Terminal Annex, P.O.
Box 3396, 90054

C&P 05 City Products Corp. (Ben Franklin Div.),
3030 S. Atlantic Blvd. 90022

C 06 A. Cohen & Sons Corp., 134 W. 30th St. 90007

C&P 01-04 Hoffman Hardware, 6625 E. Washington Blvd. 90022

C&P 03-04 U. S. Consumer Products, 2522 S. Soto St. 90023

C&P 03-04 Wesco Merchandise Co., 4444 Ayers Ave. 90064

Menlo Park

C&P 03 Lacar Enterprises, Inc., 160 Jefferson Dr. 94025

Oakland

P 04 Rawson Drug & Sundry Co., Inc., 1313-53rd St. 94608

C&P 05 Skaggs Stone, Inc., 727 Kennedy St. 94606

Riverside

P 04 A. M. Lewis, 3021 Franklin Ave. 92507

Sacramento

C&P 01 The Thompson-Diggs Co., 1801 2nd St. 95814

San Diego

C&P 01-04 Western Metal Supply Co., 215-7th St. 92101

San Francisco

C&P 01 Baker & Hamilton, 700-7th St. 94118

C&P 03 J. B. Sherr Co., 685-7th St. 94118

San Jose

C&P 03 F. E. Baker & Sons, Inc., 1432 Bayshore & Gish Road,
P.O. Box 1240, 95108

P 04 Moore & Clark, 1095 N. 7th St. 95112

Santa Fe Springs

C&P 02 Cotter & Co., 13827 S. Carmenita 90670

Union City

C&P 01-03 Clarke-Wheeler Co., 33333 Lewis Ave. 94587

COLORADO

Denver

C&P 03-04 Banner Distributing Co., 4101 E. 48th Ave. 80216

C&P 01 Townley Metal & Hardware Co. (Intermountain Div.),
4747 Ivy 80216

P 04 Western Merchants Wholesale Co., 6265 E. Evans Ave.
80222

CONNECTICUT

Bridgeport

C&P 03 Park City Distributors, Inc., 80 Pulaski St. 06608

CORNING GLASS WORKS

1735

1675

Initial Decision

CONNECTICUT (Continued)

East Hartford

C&P 03 Central Distributors, Inc., 215 Park Ave. 06108

Hamden

P 04 Super Market Distributors, 46 Skiff St. 06514

Hartford

C&P 03 Plastic Distributors Inc., 850 Windsor Ave. 06120

DELAWARE

Wilmington

C&P 03 Artcraft Electric Supply Co., 208 W. 4th St. 19808

DISTRICT OF COLUMBIA

Washington

1970 P 04 Cole Distributing Co. (Div. of Giant Food),
P.O. Box 1412, 20013

1946 C&P 03 DHE Associates, Inc., 1135 Okie St., N. E. 20002

1970 C&P 03 Fairfax Distributing Co., 1328 N. Y. Ave., N.W. 20005

FLORIDA

Hialeah

C&P 03 General Wholesale Supply Co., 7395 W. 18 Lane 33014

C&P 03-04 Wm. L. Blumberg Co., 7390 W. 18 Lane 33014

Jacksonville

C&P 01 Florida Hardware Co., 436 Casset Ave. 32205

C&P 01 S. B. Hubbard Co., 3031 Westside Blvd. 32209

P 04 Sav-A-Stop Inc., 7660 Gainesville Ave. 32208

Miami

C&P 03-04 Florida Housewares Inc., 7330 N.W. 36th Ave. 33136

C&P 03 Housewares Distributing, Inc., 6300 N.W. 35th Ave.
33147

Orlando

C&P 01 Clarke Siviter Co., 2101 S. Division St. 32805

St. Petersburg

C&P 01 Clarke Siviter Co., Inc., 4650 Ulmerton Rd., N. 33702

Tampa

C&P 01 Knight & Wall Co., 8504 Adamo Dr. 33619

C&P 01 I. W. Phillips Co., P.O. Box 400, 33601

GEORGIA

Americus

C&P 01 Sheffield Hardware Co. 31709

Atlanta

C&P 01 Beck & Gregg Hdwe Co., 217 Luckie St. N.W., Box 984
30301

C 06 A. Cohen & Sons Corp., 85 5th St. N.W. 30308

C&P 01 Sharp Horsey Hdwe. Co., P. O. Box 43364, Ind. Station
30336

Conyers

C&P 02 Ace Hdwe Corp., 1570 Georgia Hwy., Rte. 138 30207

Macon

C&P 01 Peeler Hardware Co., Popular St. at 6th, 31201

Morrow

P 04 May & Co., 1159 Morrow Industrial Park 30260

HAWAII

Hilo
 1960 P 04 T. H. Davies Co., Ltd., Hdwe. Dept. 96720
 Honolulu
 1960 P 04 T. H. Davies & Co., Ltd., 810 Bishop St., Hdwe. Dept.
 96802
 1960 C&P 01-04 Hawaiian Housewares Ltd., 307 Kamani 96810

IDAHO

Boise
 P 04 Mountain States Wholesale, 0 Southeagle Road 83707
 Idaho Falls
 Slusser Wholesale, 920 Lincoln Road 83401
 Lewiston
 C&P 01 Erb Hardware, 411 D St., P.O. Box 616, 83501

ILLINOIS

Chicago
 C&P 02 Ace Hardware Corp., 6501 W. 65th St. 60630
 C&P 03 M. Block & Sons, Inc., 2355 S. Blue Island Ave. 60608
 P 05 City Products Corp. (Ben Franklin Div.), Box 5938,
 60680
 C&P 02 Cotter & Company, 2740 N. Clybourn Ave. 60614
 P 04 Lake End Sales, 1400 East 97th St. 60628
 C&P 03 Midwest Housewares, Inc., 729 N. Milwaukee Ave.,
 60622
 P 04 Mars Housewares, 3047 N. California 60618
 P 04 Shack Housewares, Inc., 3300 W. Cermak 60623
 Danville
 C&P 01 Conron Inc., 301-311 E. VanBuren St. 61832
 Decatur
 C&P 01 Morehouse & Wells Co., 805-825 N. Morgan St. 62525
 Des Plaines
 P 05 City Products Corp. (Ben Franklin Div.), Wall &
 Oakton Streets 60018
 Elk Grove Village
 P 04 Herst-Allen Company, 1600 Busse Road 60007
 Peoria
 C&P 03 Midwest Peoria Co., 1312 S. W. Jefferson 61602
 Rock Island
 P 04 Jaydon Distributors Co., 7300 Ridgewood 61201
 Springfield
 C&P 03 Midstates Appliance and Supply Co., 1022 E. Adams
 62703

INDIANA

Decatur
 C&P 01 The Schafer Co., Inc., 101-17 North First St. 46733
 Evansville
 C&P 03 Boetticher & Kellogg Co., Inc., 1-15 Fulton Ave. 47708
 P 04 The Dale Sales Co., 2504 Lynch Road 47711

1675

Initial Decision

INDIANA (Continued)

Evansville (Continued)

C&P 01 Ohio Valley Hardware Co., Inc., 1300 Pennsylvania
Expressway West 47708

Fort Wayne

C&P 02-04 Hardware Wholesales Inc., P.O. Box 868, 46803

C&P 01 Wayne Hardware Co., Inc., 614 S. Harrison St. 46802

Indianapolis

P 04 Rack Service (Div. of Consolidated Sales, Inc.), 3333 N.
Franklin 46222

C&P 01 Van Camp Hdwe. & Iron Co., 5001 W. 86th St. 46268

Richmond

C&P 01 Miller Brothers Hdwe. Co., 192 Ft. Wayne Ave. 47374

IOWA

Burlington

C&P 01 Drake Hardware Co., 106 Washington St. 52601

Cedar Rapids

C&P 01-04 Harper & McIntire Co., 411 6th Ave. S.E. 52406

Des Moines

C&P 01 L. H. Kurtz Co., Box 816, 100 Court Ave. 50304

P 04 Rack Service, Inc., 406 S. W. 9th St., 50319

Sioux City

C&P 01 Knapp & Spencer Co., 3rd & Nebraska Sts. 51102

KANSAS

Atchison

1940 C&P 01 Blish, Mize & Silliman Inc., 223 S. 5th St. 66002

Hutchinson

1940 C&P 01 Frank Calladay Hardware Co., 420-428 E. 2nd St. 67501

Kansas City

1966 P 04 Housewares Division of Blackman Merchandising Corp.,
1401 Fairfax Traffic Way 66115

Salina

1940 C&P 01 The Lee Hardware Co., 248 N. Santa Fe 67401

Topeka

1967 P 04 Drug Distributors, Inc., 307 E. 17th St. 66607

KENTUCKY

Lexington

C&P 01 Van Deren Hardware Co., Inc., 570 W. Main St. 40507

Louisville

C&P 01 Belknap, Inc., 111 E. Main St. 40202

C&P 04-03 Peytons Inc., 1500 Sanita Ave. 40213

C&P 01 Stratton & Terstegge Co., Inc., 1531 W. Main St. 40203

LOUISIANA

Alexandria

C&P 01-04 Brown Roberts Hdwe. & Supply, 1810 3rd St. 71301

Baton Rouge

C&P 01 Doherty Hardware, 5835 Adams Ave. 70806

Monroe

C&P 01 Monroe Hardware Co., Inc., 204 N. 3rd St. 71201

LOUISIANA (Continued)

Monroe (Continued)

P 04 Rack Service Inc., 2601 Newcomb St. 71201
 New Orleans
 C&P 03 Corenswet, Inc., 323 N. Telemachus St. 70119
 P 04 Kitchenaides, Inc., 727 Cortez St. 70119
 C&P 01 Stratton Baldwin Co., Inc., 700 Tchoupitoulas St. 70103
 Shreveport
 C&P 01 The Lee Hdwe. Co., Ltd., 3210 Hollywood Ave. 71108
 C&P 01-04 Ogilvie Hardware, 214 Jones St. 71102
 P 04 Southern States Distributing Co., 5000 N. Lake Shore Drive 71109
 P 04 Wholesale Drug Service, 1632 W. Kirby Place 71100

MAINE

Portland

C&P 01 Emery-Waterhouse, 145 Middle St. 04112

MARYLAND

Baltimore

C&P 05 City Products Corp. (Ben Franklin Div.), 1100 Wicom-
 ico St. 21230
 C&P 01 Wm. H. Cole & Sons, 1110 Batavia Farms Rd. 21206
 C&P 03 Felmor Corp., 1300 N. Fulton 21217
 C 06 Paramount Dist. Inc., 320 N. Eutaw St. 21201
 C&P 03 Jos. M. Zamoski Co., Inc., 1101 DeSoto Rd. 21223
 Frederick
 C&P 01 Frederick Trading Co., 225 East 8th St. 21701
 Hagerstown
 C&P 01 Schindel & Rohrer Co., Inc., 28-30 S. Potomac St. 21740
 Landover
 C&P 03 Fetterman-Sobel Co., Inc., 7651 Preston Drive 20785
 Linthicum Heights
 P 04 Super Value Distributors Inc., 700 Evelyn Ave. 21090
 Salisbury
 C&P 03 R. T. Kilman & Co., Snowhill Road 21801
 Silver Springs
 P 07 Don Reedy Appliance Service, 8039 13th St. 20910

MASSACHUSETTS

Boston

C&P 03-04 Milhender Distributors Inc., 297 Dorchester Ave. 02127
 (South Boston)
 P 04 Super Market Distributors, 39 Old Colony Ave. 02127
 Holyoke
 C&P 01 Halmar Distributors Inc., 49 Garfield St. 01040
 Needham Heights
 C&P 03 Decatur, Hopkins Bigelow-Dowse Co., 2nd Ave. 02194
 Newton Highland
 C 06 I. Alberts Sons, Inc., 23 Needham St. 02161
 Springfield
 C&P 03 Milhender Distributors Inc., 517 St. James Ave. 01109

CORNING GLASS WORKS

1739

1675

Initial Decision

MASSACHUSETTS (Continued)

Waltham

C&P 03

G.W.S. Corp., D/B/A General Wholesale Supply Co. and
Arvedon Corp., 144 Moody St. 02154

Worcester

P 04

Millbrook Distributors, 1511 Main St. 01603

MICHIGAN

Bay City

C&P 01

The Jennison Hardware Co., 901 W. Water St. 48706

Detroit

C&P 03

Electrical Specialities Co., 16940 Hamilton Ave. 48203

P 04

Valu-Line Distributors, 4300 W. Jefferson Ave. 48209

C&P 01-04

George C. Wetherbee & Co., 2566 E. Grand Blvd. 48211

Grand Rapids

C&P 05

C. B. Meyers Co., 1410 28th St., S.E. 49508

P 04

United Wholesale Grocery Co., 1111—44th St., S.E.
49508

Lansing

C&P 01

The Geo. Worthington Co., 1611 N. Grand River Ave.
48906

Oak Park

C&P 03

New Way Housewares Co., 12701 N. End Ave. 48237

Saginaw

C&P 01

Morley Brothers, 115 N. Washington St. 48607

MINNESOTA

Minneapolis

P 05

City Products Corp. (Ben Franklin Div.), 1st Ave. N. &
6th St. 55403

C&P 02

Coast-to-Coast Stores, 7500 Excelsior 55426

P 04

Groves Kelco Co., Inc., 7900 Chicago Ave. 55420

C&P 02

Our Own Hardware Co., 618 N. 3rd St. 55401

St. Paul

C&P 01-04

Farwell-Ozmun-Kirk & Co., East Kellogg Blvd. & Jack-
son 55101

C&P 05

Merrill Chapman Co., 401 Sibley 55101

MISSISSIPPI

Meridan

1967 C&P 01

Barrett-Nunnery Hdwe. Co., 2631 A St. 39301

MISSOURI

Desloge

1966 P 04

Wetteraw Foods Inc., Hickory St. 63601

Kansas City

1957 P 05

City Products Corps. (Ben Franklin Div.), P.O. Box
835, 64141

1963 C&P 02

Coast to Coast Stores, 5414 E. Front St. 64120

1958 C&P 03

Select Brands Distributing Co., 228 Wyandotte 64105

1940 C&P 01

Townley Metal & Hdwe. Co., 3rd & Walnut St. 64141

MISSOURI (Continued)

St. Joseph
 1940 C&P 01 The Wyeth Co., 301 N. 2nd St. 64501
 St. Louis
 1969 C&P 03 Abbey Sales Co., 7701 Forsyth 63105
 1957 C 06 Eisenstadt Mfg Co., 1409 Washington St. 63103
 1952 C&P 03-05 Northwestern Bottle Co., 2222 N. 2nd St. 63102
 1969 C 03 St. Louis Wholesale Drug, 1230 Macklind Ave. 63110
 1969 C&P 05-03 Tab Merchandise Corp., 1100 North Sixth St. 63101
 1940 C&P 01 Witte Hardware Co., 704 N. 2nd St. 63102
 Springfield
 1940 C&P 01 Rogers & Baldwin Hardware Co., 309 E. Water St. 65806

MONTANA

Billings
 1940 C&P 01-04 Farwell, Ozmun, Kirk & Co. (Billings Hardware Div.),
 1300 6th Ave., N. 59103
 Butte
 1940 C&P 01 Montana Hardware Co., 823 S. Montana St. 59701
 Great Falls
 1940 C&P 01 Montana Hardware Co., 820 2nd St. South 59401
 Missoula
 1940 C&P 01 Montana Mercantile Co., 1600 Harker St. 59801

NEBRASKA

Hastings
 1940 C&P 01 Dutton-Lainson Co., 2nd St. & St. Joseph Ave. 68901
 Lincoln
 1940 C&P 01 Hankle & Joyce Hardware Co., 800 Que St. 68501
 Omaha
 1963 P 01-04 Pamida Dist. Inc., 8800 F. St. 68124
 1940 C&P 01 Wright & Wilhelmy, 10th & Jackson Sts. 68102

NEW JERSEY

Elizabeth
 C&P 03 Eagle Sales Co., Inc., 900 Magnolia Ave. 07201
 Linden
 P 04 Akorn Housewares (Div. of Supermarket Service), 1601
 W. Edgar Road 07036
 Newark
 C&P 02-03 I. Lehrhoff and Co., 560 Belmont Ave. 07108
 C&P 03 H. Schultz & Sons, 777 Lehigh Ave. 07083
 South Hackensack
 C&P 03 Irval Sales Co., 17 Empire Blvd. 07606
 Totowa
 C&P 01-04 S. Federbush Co., P.O. Box 185, 07512

NEW MEXICO

Albuquerque
 P 04 Phillips Mercantile Co., 4801 Lincoln Road, N.E. 87109
 P 04 Sandia Mercantile Co., 1239 Bellamah Ave. 87103
 C&P 01 Zork Hdwe. of New Mexico, 1414 12th St. N.W. 07103

CORNING GLASS WORKS

1741

1675

Initial Decision

NEW YORK

Albany

C&P 03 Roskin Brothers Inc., 1827 Broadway 12204

Binghamton

C&P 03 Morris Distributing Co., Inc., 195 Water St. 13901

Brooklyn

C&P 01-03 Wm. L. Blumberg Co. Inc., 1133 Manhattan Ave. 11122

C&P 03 Horn Brothers, 99 Kent Ave. 11211

Buffalo

P 04 Garrison Supply House, Inc., 2745 Seneca St. 14224

C&P 03 Rogerson Housewares (Div. of Uhlen Carriage Co.),
40 Gardenville Park W. 14203

Central Islip

P 04 Market Housewares Corp., Bridge Rd. & Oval Dr. 11722

Elmira

C&P 01 Rose, Kimball & Baxter, Inc., 511 Baldwin St. 14901

Floral Park, L. I.

C&P 03 H. Berlind, Inc., 50 Carnation Ave. 11001

Hempstead, L. I.

C&P 03 Liberty Distributors, Inc., 110 W. Graham Ave. 11550

Hicksville, L. I.

P 04 S. Fishman Co., Inc., 550 W. John St. 11801

Jamaica

P 04 F.B.A., 134-01 Atlantic Ave. 11418

Kingston

C&P 01 Herzog Supply Co., Inc., Kingston Plaza 12401

Latham

P 04 Standard-Rosenbaum, Corner Rt. 9 & Old London Rd.
12110

Lawrence, L. I.

C&P 01 Sickels-Loder, Inc., 235 Mill St. 11559

Newburgh

C&P 01 Newburgh Distributing Co., Inc., 354-360 Liberty St.
12550

New York

C 06 A. Cohen & Sons Corp., 27 W. 23rd St. 10010

P 04 Mars Electric Corp., 711 East 180th St. 10457

C&P 01 Masback Inc., 330 Hudson St. 10013

Plainview

C&P 01 Sickels-Loder, Inc., 235 Express St. 11803

Rochester

C&P 03 Allison Corporation, 948 Exchange St. 14608

P 04 Clinton Cosmetics, 80 Commerce Drive 14601

C&P 03 Morris Distributing of Rochester, 75-81 Stillson Street
14605

C&P 03 Morris Rosenbloom Co., Inc., 228 South St. 14604

P 04 National Sales Co., 56 Rutter St. 14606

Schenectady

P 04 Sandy Sales, 1714 Erie Blvd. 12301

NEW YORK (Continued)

Syracuse
 P 04 Interstate Wholesale Corp., 405 E. Hiawatha Blvd. 13208
 C&P 03 Morris Distributing Co., Inc., 1153 W. Fayette St. 13204
 Utica
 C&P 01 Roberts Hardware Co., Inc., 807 Broad St. 13501

NORTH CAROLINA

Charlotte
 C&P 01 Allison-Erwin Co., 2920 N. Tryon St. 28206
 C&P 03-01 American Hdwe. & Equip. Co., 225 W. First St. 28201
 Greensboro
 C&P 01 Odell Hardware Co., 1010 Scott St. 27403
 Harrisburg
 C&P 04 C & B Drug Co., Highway #49 W. 28705
 Hickory
 C&P 04 Merchants Distrs. Inc., 535 12th St. Dr. N.W. 28601
 Monroe
 C&P 01 Monroe Hardware Co., 100 Sutherland Ave. 28110
 Raleigh
 C&P 01 Job P. Wyatt & Sons Co., 2220 North Blvd., Box 631,
 27602

OHIO

Canton
 P 04 J. A. Conley Co., 4814 Hills & Dales Road 44708
 Cincinnati
 C&P 03 Elmex Corp., 9901 Princeton Road 45246
 C&P 01 The Kruse Hardware Co., 6th & Baymiller Sts. 45203
 Cleveland
 C&P 02 Cotter & Company, 1278 W. 9th St. 44113
 P 04 National Rack Merchandise Service, Inc., 340 E. 131st
 St. 44108
 C&P 03 Myron Nickman, Inc., 1450 Granger Road 44131
 C&P 01 The George Worthington Co., 803 St. Clair Ave., N.W.
 44113
 Columbus
 P 04 Columbus Merchandise, Inc., 1166 Steelwood Rd. 43212
 C&P 01 Smith Brothers Hardware, 580 N. 4th St. 43215
 Dayton
 C&P 03 W. H. Kiefaker Co., 140 N. Keowee St. 45409
 Hubbard
 C&P 03 Federal Wholesale Co., 734 Myron St. 44425
 Mansfield
 C&P 01 Wagner Hdwe. Co., Inc., P.O. Box 370, 44901
 North Canton
 C&P 03 Davis Wholesale Co., 7774 Whipple Ave. N.W. 44720
 Stow
 P 05 City Products Corp. (Ben Franklin Div.), 1365 Com-
 merce Drive 44224

CORNING GLASS WORKS

1743

1675

Initial Decision

OHIO (Continued)

Toledo

C&P 01 Bostwick Braun Co., Summit & Monroe Sts. 43601
 P 04 The Buckeye Specialties Co., 1102 Summit St. 43603
 C&P 03 Toledo Appliances, Inc., 5000 Angola Road 43615

OKLAHOMA

Lawton

P 04 Oklahoma Drug Sales Co., Box 238, 310 E. "D" St. 73501

Muskogee

P 04 Anderson Wholesale Company, P.O. Box 1517, 74401

Oklahoma City

C&P 03 Fox-Vliet Drug Co., P.O. Box 1279, 73101
 C&P 03 Miller Jackson Co., 111-121 East California Ave. 73104
 C&P 01 Oklahoma Hardware Co., 25-31 E. California St. 73104
 P 04 The Stephens Products Co., 1 N.E. 7th St. 73104
 P 04 Yeager Wholesale Co., 2500 N. Broadway 73103

Tulsa

C&P 01 Gates Hdwe. & Supply Co., Brady & Elgin Sts. 74120
 C&P 07 H. L. Moss, 1712 E. 15th St. 74104
 P 04 Yeager Wholesale Co., P.O. Box 247 74101

OREGON

Milwaukie

P 04 Best Buys Inc., 7101 S.E. Lake Road 97222
 P 04 Patty Day Inc., 326 North River Road 97202

Portland

C&P 02 Coast to Coast Stores, Inc., 1420 N.W. Lovejoy Street
 97209
 P 04 Souval Bros., Inc., 9300 N.E. Multnomah 97220
 C&P 03 The Vinton Co., 2181 N.W. Nicholai St. 97210

PENNSYLVANIA

Allentown

C&P 03 C. F. Wolfertz & Co., Meadow & Washington Sts. 18103

Butler

C&P 02 American Hardware Supply Co., P.O. Box 1549, 16001

Dunmore

C&P 04 Super Market Service, P.O. Box 180, 18512

Harrisburg

C&P 03 D & H Distributing Co., 2525 N. 7th St. 17110
 C&P 03 Domestic Distributors Inc., 3303 N. 6th St. 17110

Johnstown

C&P 03 Morris Electric Supply Co., 6th at Broad St. 15906

Lancaster

C&P 01 Herr & Company Inc., Prince & Chestnut Sts. 17603

Lititz

C&P 03 F. R. Schreiber Co., Route 501, North, P.O. Box 268
 17543

Parkesburg

C&P 02 American Hardware Supply Co., W. Limestone Rd. 19365

PENNSYLVANIA (Continued)

Philadelphia

C&P 03 Bills General Merchandise, 1401-09 Germantown Ave.
19122
C&P 01 Cotter & Company, 1501 Unity St. 19124
C&P 03-04 Herman Bellet & Sons, Inc., 11 N. 2nd St. 19106
C&P 03 Everybody's Supply Co., 810 Arch St. 19107
C&P 01 Warren M. Koans, Inc., 511-527 West Cumberland St.
19133
C&P 03 Philadelphia Notion & Novelty Co., 62-66 N. 2nd St.
19106

Pittsburgh

C&P 04 Anco Corp., 14th & Smallman Sts. 15222
C&P 03 Morris Electric Supply Co., 21st at Allegheny River
15222
C&P 03 Tauberg Company, 5800 Baum Blvd. 15206
C&P 01 J. A. Williams Co., 401 Amberson Ave. 15232

Reading

C&P 05 Bechtel Lutz & Jost, Inc., 940 Penn St. 19602
P 04 Brok Housewares Inc., 1701 Fairview St. 19606

Wilkes Barre

C&P 03 Shelborne Corporation, 169 N. Penna. Ave. 18701

RHODE ISLAND

Providence

1940 C&P 03 Ballou, Johnson & Nichols, 128 Dorrance St. 02903
1952 C&P 03 Milhender Distributing Co., Cranston 999 Pontiac Ave.
02920

SOUTH CAROLINA

East Greenville

C&P 01 Sullivan Hdwe. Co., Pleasantburg Industrial Park 29607

Greenville

C&P 04 Ever-Need Merchandise Service Inc., 800 Congaree Rd.
29606

TENNESSEE

Bristol

C&P 01 C. M. McClung Co., Inc., 611 Haynes St. 37620

Chattanooga

C&P 01 C. M. McClung & Co., Inc., 1401 Williams St. 37408
P 04 Johnson Company, 2210 E. 21st St. 37404

Knoxville

C&P 01 House-Hasson Hardware Co., 759 Western Ave. 37901
C&P 01 C. M. McClung & Co., Inc., 501 W. Jackson Ave. 37902

Memphis

P 05 City Products Corp (Ben Franklin Div.), P.O. Box 267
38101
C&P 04 General Merchandise Service (G-M-S Inc.), 1325 Farm-
ville Road 38122
P 04 Housewares Inc., 1700 Dunn Ave. 38106
C&P 01 Orgill Brothers Co., 2100 Latham St. 38106

CORNING GLASS WORKS

1745

1675

Initial Decision

TENNESSEE (Continued)

Memphis (Continued)

C&P 01 Stratton Warren Hardware Co., 36 E. Carolina Ave.
38103

Nashville

C&P 01 Keith-Simmons Co., Inc., 1010 S. 7th St. 37202

TEXAS

Amarillo

1940 C&P 01 Amarillo Hardware Co., 620 Grant St., P.O. Box 1891
79105

Austin

1967 C 03 Behrens Drug Co., Inc., 5775 Airport Blvd. 78767

Beaumont

1940 C&P 01 Tyrrell Hardware Co., 1490 7th St., P.O. Box 2512 77704

Corpus Christi

1940 C&P 01 Corpus Christi Hardware Co., Highway 44 and Baldwin,
P.O. Box 9153, 78408

Dallas

1970 P 02 Affiliated Food Store, 9001 Ambassador 75222

1940 P 05 City Products Corp. (Ben Franklin Div.), 3030 Glenfield
Ave. 75233

1957 C&P 02 Cotter & Co., 8401 Ambassador Row 75247

1966 P 04 Dallas Housewares, 4756 S. Buckner Blvd. 75227

1940 C&P 01 Higginbotham-Pearlstone Hdwe. Co., Market & Ross
75202

1940 C&P 01 Huey-Philp Co., 1900 Griffin St. 75202

1968 C&P 07 Pearsall Appliance, 3127 Main St. 75226

1958 P 04 Rawson Drug & Sundry Co. of Texas, 8505 Chancellor
Row 75247

El Paso

1940 C&P 01 Momsen Donnegan Ryan Co., 800 E. Overland St. 79998

1940 C&P 01 Zork Hardware, 1000 Robert E. Lee Road 79925

Fort Worth

1967 P/W Big States Mercantile Co.

1969 C&P 03 Herman's Wholesale, 101 West Capps St. 76101

1967 P 04 Kimbell Grocery Co., P.O. Box 1540 76101

1940 C&P 01-04 Nash Hardware Co., 1909 W. Vickery 76102

Grand Prairie

1968 P 04 Western Wholesale Co., 2401 W. Marshall Dr. 75050

Houston

1964 P 04 Best Housewares Sales Co., 6511 Ardmore St. 77021

1940 C&P 01 Heitman-Bering Cortes Co., 1417 Kress St., Box 119,
77001

1966 P 04 M-K Housewares Co., 1275 Shatwell St. 77001

1946 C&P 01 Peden Industries, Inc., 700 N. San Jacinto 77001

1958 P 04 Silverman Brothers, Inc., 3715 Blodgett St. 77004

1960 C&P 03 Thermal Supply Co., 11 N. Jackson St. 77002

Long View

1967 C&P 04 Curox Drug Co., Inc., 2306 Dunbar 75601

TEXAS (Continued)

Lubbock

1966 C 03 Behrens Drug Co., Inc., P.O. Box 70, 79408
 1966 P 04 Big State Mercantile Co., 101 Ave. 6, 79403
 1966 P 04 Western Wholesale Co., 2222 Avenue A, P.O. Box 1200
 79408

San Angelo

1968 P 04 Del-Tex, 515 Caddo 76901

San Antonio

1940 C&P 01-04 McDougal-Carnahan Co., 621 S. Flores St. 78204
 1966 P 04 Big State Mercantile, 1503 S. Cherry 78206

Tyler

1967 C 05 Behrens Drug Co., Inc., 219 McKellar Rd. 75701

Victoria

1969 P 04 Groce-Wearden Co., Box 1638, 77901

Waco

1967 C 03 Behrens Drug Co., Inc., 221 So. 4th St. 76703

UTAH

Salt Lake City

C&P 01 Salt Lake Hardware Co., 105 N. Third West 84110
 1958 P 04 Souvall Brothers, 1550 S. Redwood Rd. 84104
 1940 C&P 01-04 Strevell-Paterson Hardware, 1401 S. 6th St., W. 84102

VERMONT

Burlington

1940 C&P 01 Vermont Hardware Co., Inc., 180 Flynn Ave. 05401

VIRGINIA

Danville

C&P 01 Pittsylvania Hdwe. Co., Inc., P.O. Box 150, 24541

Norfolk

C&P 03 Universal Products Co., Hampton Blvd. at 24th St.,
 23517

C&P 01 Watters & Martin, Inc., 3800 Village Ave. 23502

Richmond

P 07 National Electric Appliance Service Co., 2820 West Cary
 St. 23221

P 02 Richmond Food Stores, Inc., Box 26967, 23211

C&P 01 Virginia-Carolina & Richmond Hardware Co., Inc., 1500
 Roseneath Road 23230

C&P 01 Watkins-Cottrell Co., 109-125 S. 14th St. 23219

Roanoke

C&P 01 Graves-Humphreys Hdwe. Co., 1948 Franklin Rd., S.W.
 24014

C&P 01 Nelson-Roanoke Corp., P.O. Box 2827, 24001

P 04 Sav-A-Stop Inc., P.O. Box 631, 24001

Springfield

WASHINGTON

Bellingham

C&P 01 Morse Hardware Co., 1021-55 State St. 98225

Seattle

P 04 Burke Sales Co., 1260 16th Ave. West 98119

CORNING GLASS WORKS

1747

1675

Opinion

WASHINGTON (Continued)

Seattle (Continued)

C&P 03 Fetterman Distributing Co., 3309 Fremont Ave. N.
98105

C&P 01 Pacific Marine Schwabacher, Inc., 401 First Ave., So.
98104

C&P 01 Seattle Hardware Co., 501 First Ave. So. 98114

Spokane

C&P 01 Jensen-Byrd Co., W. 314 Riverside 99201

P 04 Roundup Co., East 1212 Front Ave. 99220

Tacoma

C&P 01 Hunt & Mottet Co., 2112 Pacific Ave. 98401

P 04 West Coast Service Mdse., 1525 East D St. 98401

Yakima

C&P 01 Yakima Hardware Co., 230 S. First St. 98901

WEST VIRGINIA

Bluefield

C&P 01 Superior-Sterling Co., P.O. Box 1599, 24701

Huntington

C&P 03 West Virginia Electric Supply, 550 Third St. 25721

WISCONSIN

Ashland

C&P 01 E. Garnich & Sons Hardware Co., 400 7th Ave., W. 54806

Madison

C&P 02 Wisco Hardware Co., 15 S. Brearly St. 53703

Milwaukee

C&P 01-04 Century Hdwe. Corp., 4711 W. Woolworth Ave. 53218

C&P 01 Frankfurth Hardware Co., 521 N. Plankinton Ave. 53203

C&P 03 Standard Electric Supply Co., 1045 N. 5th St. 53202

Waukesha

P 05 E. Gibes Distributing Co., 1426 Arcadian Ave. 53186

WYOMING

Casper

1953 C&P 01 Wyoming Hardware, 628 W. Yellowstone, Box 1171,
82601

OPINION OF THE COMMISSION

BY DENNISON, *Commissioner*:

This is an appeal by counsel supporting the complaint from a decision of the administrative law judge dismissing the complaint which charged Corning Glass Works with entering into certain unlawful resale price maintenance agreements with distributors and dealers.

I. THE FACTS.

The controlling facts are not in dispute as they were admitted in the pleadings and stated in subsequent stipulations.

Respondent Corning Glass Works ("Corning") is a New York corporation with its principal office in that State. It manufactures and sells various consumer products for food preparation and serving under the trademarks Pyrex and Corning Ware and tableware under the name Corelle.

It is important to keep in mind in this case that Corning sells these products only through wholesalers, it does not sell directly to retailers. The wholesalers it sells to are located in 45 states and the District of Columbia and Puerto Rico. However, these wholesalers resell Corning products to retailers in all 50 states and the District of Columbia and Puerto Rico.

Corning sells its trademarked products pursuant to a fair trade program. Its consolidated net sales for 1970 were in excess of \$590,000,000, a substantial portion of which sales were fair traded lines. However, before discussing its fair trade program it may be helpful to set forth the definitions of certain key terms that will be used throughout this opinion.

A. "Non-signer States," "Signer-only States," and "Free Trade States."

As of the time of this decision there are 16 states that have legislation that permit enforcement of fair trade prices against resellers within those states who have notice of a manufacturer's fair trade prices even though they might not have signed a fair trade contract. These are referred to as "non-signer" states—meaning that adherence to such prices can be enforced against non-signing resellers.¹

There are some 20 states that are referred to as "signer-only" states. In these states, state courts have declared unconstitutional (under state constitutions) non-signer provisions of the state fair trade laws. These states still have provisions, however, legitimizing fair trade contracts with resellers who voluntarily enter into such contracts.²

¹ The non-signer states consist of:

Arizona	Illinois	New Jersey	Ohio
California	Maryland	New York	Tennessee
Connecticut	Maine	North Carolina	Virginia
Delaware	New Hampshire	North Dakota	Wisconsin

² Signer-only states consist of:

Arkansas	Indiana	Michigan	Pennsylvania
Colorado	Iowa	Minnesota	South Carolina
Florida	Kentucky	New Mexico	South Dakota
Georgia	Louisiana	Oklahoma	Washington
Idaho	Massachusetts	Oregon	West Virginia

At the time the complaint was issued, there were 17 non-signer states and 19 signer-only states. However, one of the non-signer states, Massachusetts, must now be classified as a

Finally, there are 16 states and jurisdictions which are "free trade" states—meaning that they do not have laws sanctioning any type of resale price maintenance agreements.³

B. Corning's Fair Trade Program.

Corning sells to wholesalers in each type of jurisdiction. Each wholesaler it deals with is required to sign an "Authorized Distributor Appointment and Wholesale Fair Trade Agreement" (hereinafter "Wholesale Fair Trade Contract"). This contract has two provisions which are pertinent in this proceeding:

(1) A price provision, whereby the distributor agrees that it will not sell Corning trademarked products at prices less than the wholesale prices scheduled by Corning.⁴

(2) A customer restriction, or "boycott" clause, whereby the wholesale distributor agrees that it will not sell or transfer trademarked Corning products "to any reseller unless such retailer has agreed with Corning to maintain Corning's fair trade prices."

It is further provided in the contract that the above provisions apply only when agreements of that type are lawful "as applied to intrastate transactions under any statute, law or public policy, now or hereafter in effect, in the state in which such resale is to be made or to which products are to be transported for such resale,"⁵ and that in other states the prices referred to in the contract are merely suggested resale prices.

Respondent requires its wholesale distributors to obtain the signature of their retail customers on a Corning "Authorized Dealer Appointment and Fair Trade Agreement" (hereinafter "Retail

signer-only state in view of the recent decision by the Supreme Judicial Court of Massachusetts in *Corning Glass Works v. Ann & Hope, Inc., of Danvers*, 1973 Trade Cases ¶ 74,432 (April 2, 1973) which struck down as unconstitutional that state's non-signer enforcement provision.

³ The "free trade" states and jurisdictions consist of:

Alabama	Kansas	Nebraska	Texas
Alaska	Montana	Nevada	Utah
District of Columbia	Mississippi	Puerto Rico	Vermont
Hawaii	Missouri	Rhode Island	Wyoming

⁴ Corning circulates to its wholesale customers two schedules, A and B. Schedule A lists minimum retail prices for retailers in fair trade states. Schedule B sets forth discounts from the retail list prices. Wholesalers that are subject to the price provision agree that they will not sell at prices less than those set forth in Schedule A less discounts listed in Schedule B.

⁵ This language taken from Corning's contracts tracks the language of the McGuire Act. As will become clear later in this opinion, the parties differ on the circumstances under which the McGuire Act permits the dealer boycott clause. For instance, respondent takes the position that a boycott clause as in (2) above is lawful between Corning and wholesalers for resale within free trade states if the merchandise is subsequently to be transported to a fair trade state for resale by a retailer in that state. Complaint counsel, on the other hand, read the McGuire Act as not sanctioning under Federal law such a customer restriction on free-trade state wholesalers since it is not sanctioned by the laws of their states.

Fair Trade Contract"). These retail fair trade contracts are signed by an official of Corning as one party to the contract and the retailer as the other party. (In practice it appears that Corning supplies its wholesalers with pre-signed or blank retailer contracts which are to be filled in by the retail customers and then forwarded to Corning by the wholesaler.) As in the case of the wholesale fair trade contracts, there is included (1) a resale price provision whereby the retailer agrees not to sell below minimum retail prices scheduled by Corning, and (2) a customer restriction provision whereby the dealer agrees that it will not sell or transfer Corning's trademarked products to any reseller "unless such reseller has agreed with Corning to maintain Corning's fair trade prices."

To ensure that all fair trade state retailers who come into possession of its merchandise are bound to observe respondent's fair trade prices, respondent requires *all* of its wholesalers (whether located in fair trade states or not) to obtain signatures on Corning retail fair trade contracts from retailers before selling to them and to refuse to sell to any retailer in a fair trade state who does not enter into such agreement or maintain Corning's fair trade prices.⁶

As part of this endeavor, respondent maintains and circulates to its distributors a list of fair trade state retailers who have refused to sign a Corning retail fair trade contract or who, having signed such an agreement, have violated its resale provisions. Respondent insists that no party subject to any of its agreements sell or transfer its trademarked products to any retailer who appears on this list.

II. PROCEEDINGS BELOW.

The complaint in this matter was issued by the Commission on January 13, 1972, charging Corning with various unfair trade practices with regard to its fair trade program. The charges in the complaint can be grouped into three separate and independent categories for purposes of this appeal.

1. Count II—By stipulation, the parties agreed not to litigate

⁶ Respondent also obtains signatures from retailers (in free trade states as well as fair trade states) on retail fair trade contracts and requires them, pursuant to the customer restriction clause, to refuse to sell (transship to other retailers, for instance) Corning Ware to non-signing resellers in fair trade states and retailers who are on its list of price cutters. For the sake of simplicity, we will concentrate on the customer restriction agreement between Corning and wholesalers. However, the same legal issues arise in the customer restriction provisions in both contracts.

the veracity of the allegations in Counts I and IV, but that if the allegation of violation contained in Count II is sustained, the relief related to Counts I and IV contained in the Commission's proposed order to cease and desist "shall be entered against Respondent Corning Glass Works * * *." Although we will thus be dealing only with the merits of Count II, it is appropriate to describe Counts I and IV, as well as Count II.

Count I of the complaint alleges that respondent has by its fair trade contracts fixed free trade state wholesalers' minimum resale prices whenever they sell to a reseller in any fair trade state. It further alleges that contracts or agreements fixing such resale prices are outside the scope of the exemption from Federal anti-trust laws provided by the McGuire Act, 15 U.S.C. Section 45(a)(2)-(5), and that being in interstate commerce are therefore unlawful under Section 1 of the Sherman Act and Section 5(a)(1) of the Federal Trade Commission Act.

Count II of the complaint alleges unlawfulness of the customer restriction provisions in the Corning fair trade contracts whereby Corning requires free trade state wholesalers and retailers to boycott sales to fair trade state resellers, particularly retailers in signer-only states, who have not, or will not, sign fair trade contracts with respondent or who have breached such contracts by price cutting. Such boycott agreements are also alleged not to be immunized from the Federal antitrust laws by virtue of the McGuire Act and therefore are unlawful under the Sherman Act and the Federal Trade Commission Act.

Count IV in substance alleges that respondent's fair trade contracts are so worded as to obfuscate the circumstances in which price and customer restrictions are applicable. By this and the practices alleged in Counts I and II Corning has diminished the likelihood that distributors handling Corning products will resell at prices of their own choosing in instances where it is lawful for them to do so, and for other resellers to obtain such goods.

In its answer, respondent admitted that it has fair trade contracts with wholesalers in free trade states. It asserted however that, contrary to what is alleged in Count I, it does not attempt to regulate the resale prices of wholesalers in free trade states selling to resellers in fair trade states. As to Count II, however, it admitted that the same contracts do require such wholesalers (and retailers) to boycott sales to non-signing retailers in fair trade states. As noted, however, despite the fact that respondent denied

the factual underpinning of Count I, it subsequently stipulated that upon any finding of unlawfulness of the contracts as alleged under Count II, the relief requested by complaint counsel as to Count I and Count IV shall also be entered.

2. Count III. Count III alleges that Corning has unlawfully required wholesalers and other resellers in certain fair trade states ("signer-only" states) to refuse to sell to retailers who decline to sign fair trade contracts with Corning. As will become evident later in this opinion, this count rests on a completely different question of law than Count II. Whereas Count II depends upon the proper construction of the McGuire Act passed by Congress in 1952, Count III rests on the premise that certain state statutes are no longer valid and in effect by virtue of court decisions in those states holding unconstitutional under state constitutions the non-signer provisions in state fair trade legislation. Respondent denies that this has been the effect of those court decisions.

3. Count V. This count alleges, and respondent admits, that it sets minimum prices for resale by its fair trade state wholesalers that may vary depending upon the quantity of merchandise purchased by a retailer. The complaint alleges that respondent's quantity discount schedule is not based upon differences in costs of sale and delivery to individual retailers and that as a result many smaller retailers are discriminated against. Corning's quantity discount schedule is alleged to be an unfair practice under the Federal Trade Commission Act. Respondent denies that its quantity discount schedule is unlawful.

Before the law judge, the parties stipulated certain facts and what issues should control. No evidentiary hearings were necessary. Each side filed a motion under Rule 3.24 for summary decision in their favor. On December 27, 1972, Administrative Law Judge Lynch filed an initial decision granting respondent's motion and dismissing the complaint in its entirety.

III. COUNT II—LEGALITY OF CUSTOMER RESTRICTIONS IN CONTRACTS FOR RESALE OCCURRING IN FREE TRADE STATES.

Count II raises an important question whether the McGuire Act of July 14, 1952, 66 Stat. 631, permits a manufacturer to place an embargo on resales by distributors in free trade states to potential price cutters in "signer-only" fair trade states even though price-cutting activities by non-signing retailers are lawful in the states

in which they operate.⁷ The McGuire Act amended Section 5(a) of the Federal Trade Commission Act to add Paragraphs (2) through (5), 15 U.S.C. 45(a)(2)-(5). Paragraph (2), which is the controlling paragraph for purposes of this case, reads as follows:⁸

(2) Nothing contained in this section or in any of the Antitrust Acts shall render unlawful contracts or agreements prescribing minimum or stipulated prices, or requiring a vendee to enter into contracts or agreements prescribing minimum or stipulated prices, for the resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale.

It is established by prior court decisions that the McGuire Act does not create a completely impenetrable barrier to the flow of merchandise into fair trade states where such merchandise may not have been originally resold at a fair trade price. Thus, a distributor in a fair trade state coming into possession of the goods of a fair-trading manufacturer may create a mail-order branch in a "free trade" state and solicit consumers in the fair trade state to buy merchandise at discount prices from him through the mail. See *General Electric Co. v. Masters Mail Order*

⁷ Count II similarly charges that the restrictions upon free trade state distributors selling to non-signing retailers in *non-signer* states are unlawful. It would appear, however, that as a practical matter the enforceability of these restrictions is not important since a non-signing retailer in such states can usually be required to adhere to minimum or stipulated prices under the state's non-signer provisions. The importance of this count is related to the increasing number of "signer-only" states which do not countenance resale price maintenance against non-willing tradesmen.

⁸ Paragraphs (3)-(5), 15 U.S.C. 45(a)(3)-(5), read as follows:

"(3) Nothing contained in this section or in any of the Antitrust Acts shall render unlawful the exercise or the enforcement of any right or right of action created by any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia, which in substance provides that willfully and knowingly advertising, offering for sale, or selling any commodity at less than the price or prices prescribed in such contracts or agreements whether the person so advertising, offering for sale, or selling is or is not a party to such a contract or agreement, is unfair competition and is actionable at the suit of any person damaged thereby.

"(4) Neither the making of contracts or agreements as described in paragraph (2) of this subsection, nor the exercise or enforcement of any right or right of action as described in paragraph (3) of this subsection shall constitute an unlawful burden or restraint upon, or interference with, commerce.

"(5) Nothing contained in paragraph (2) of this subsection shall make lawful contracts or agreements providing for the establishment or maintenance of minimum or stipulated resale prices on any commodity referred to in paragraph (2) of this subsection, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms or corporations in competition with each other."

Co., 244 F.2d 681 (2d Cir. 1957), *cert. denied*, 355 U.S. 824 (1957); *Bissell Carpet Sweeper Co. v. Masters Mail Order Co.*, 240 F.2d 684 (4th Cir. 1957).

Count II presents a somewhat similar question, but involves the right of wholesalers in free trade states to supply merchandise to non-signing *retailers* located in fair trade states, particularly those 20 states not permitting enforcement of price maintenance against non-signing parties. Corning has taken the position that it can enter into agreements with such wholesalers requiring them to boycott sales to retailers in fair trade states who decline to sign fair trade contracts with Corning or adhere to its minimum prices.

To give an example, Missouri is a free trade state. It has no fair trade legislation permitting resale price maintenance contracts of the kind involved here.⁹ However, in selling to wholesalers located in Missouri, Corning requires these wholesalers to sign its wholesale fair trade agreement. Although Corning admits that a Missouri wholesaler is legally free to sell at any price he chooses, if he receives an order or request to sell to a retailer located in a fair trade state Corning requires the Missouri wholesaler to refuse to sell to such a retailer unless the retailer signs a Corning fair trade contract. This is true whether the retailer is located in a "non-signer" fair trade state, such as neighboring Illinois, or a "signer-only" fair trade state, such as neighboring Arkansas.

Complaint counsel, on the other hand, contend that since Missouri is a free trade state, Corning cannot enter into an agreement

⁹ Nor has respondent contended that by common law or "public policy," Missouri or any of the other 15 "free trade" jurisdictions listed, *supra* n.3, now permit resale price maintenance contracts, whether they are in the form of resale price fixing, customer restrictions on resale, or both. Indeed, Missouri, as is true in most other states, has state antitrust laws which prohibit contracts in restraint of trade, including boycotts. See 4 CCH Trade Reg. Rep. ¶¶ 32,801.01 and 32,801.03. In the absence of express fair trade legislation, resale price maintenance programs are usually deemed to be in derogation of the common law or violative of state antitrust legislation. See *Menmen Co. v. Krauss Co.*, 37 F.Supp. 161, 163 (E.D. La. 1941); *Mead Johnson & Co., v. Breggar*, 410 Pa. 408, 189 A.2d 866, 869 (1963); *Venable v. J. Engle & Co.*, 193 Md. 544, 69 A.2d 498, 495 (1949); *Rogers v. Lane Drug Co.*, 138 Ohio St. 401, 35 N.E. 2d 477, 451 (1941); *Bathasweet Corp. v. Wissbard*, 128 N.J. Eq. 135, 15 A.2d 337, 339 (1940). See also *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U.S. 373, 406-19 (1911). The rule was contra under Massachusetts common law, *United States v. Socony Mobil Oil Co.*, 150 F.Supp. 202 (D. Mass. 1957), but Massachusetts, in any event, is now a "fair trade" state by virtue of state legislation, see n.2, *supra*.

Since the burden is clearly on respondent to show that its resale price and customer restriction agreements would be lawful in intrastate sales in any of the states listed in footnote 3, *supra*, and it has not made such a showing, we must assume that such agreements are not "lawful" in those states. *Sandura Co.*, 61 F.T.C. 756, 819-820 (1962). See also Corning's *Fair Trade Procedures* booklet (Appendix E to complaint; Appendix A to answer) listing these states as having "no Fair Trade Laws."

restricting, for price maintenance purposes, a Missouri wholesaler's choice of customers.

Before taking up each party's argument in detail, it is pertinent to review the overall purpose and design of the McGuire Act.

The basic purpose of the McGuire Act, and its predecessor the Miller-Tydings Act of 1937, was to enable manufacturers and distributors to enter into resale price maintenance contracts affecting or involving interstate commerce when such contracts are permitted by state law. In the absence of a Federal enabling law, the Federal courts had declared such contracts to be illegal under the Sherman Act, *Dr. Miles Medical Co. v. John D. Park & Sons*, 220 U.S. 373 (1911), and unfair methods of competition under the Federal Trade Commission Act, *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U.S. 441 (1922).

After the *Dr. Miles* case was handed down, efforts were made by the proponents of "fair trade" as early as the next Congress to have legislation passed removing the effects of that case.¹⁰ In *Dr. Miles*, a manufacturer of proprietary medicines sought, by various contracts with vendees and sub-vendees, to maintain and control all resale prices. The manufacturer also required its vendees to boycott resellers who refused to enter into resale price-fixing agreements. However, one such "non-signer" party persuaded a signing distributor to breach his contract and supply him with the products which he then sold at a price below that favored by the manufacturer. The Supreme Court held that the manufacturer could not enjoin such a non-signing wholesaler from inducing breaches of the contracts, because the contracts were unlawful under the Sherman Act.

It was with repeated reference to resale price maintenance programs as that held unlawful in *Dr. Miles* that supporters of fair trade urged an exemption from the Federal antitrust laws from Congress. In 1937 Congress passed the Miller-Tydings Act which permitted minimum resale price contracts under certain conditions.¹¹ In 1952 the McGuire Act was passed, incorporating

¹⁰ See *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384 (1951) and House Report No. 1516 on H.R. 6925, 82d Cong., 2d Sess. (1952) for history of events leading up to passage of the Miller-Tydings Act.

¹¹ The Miller-Tydings Act, 50 Stat. 693, was enacted in 1937 as an amendment to Section 1 of the Sherman Act, 15 U.S.C. Section 1. That amendment provided in material part that nothing in the Sherman Act or the Federal Trade Commission Act—
"shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when con-

with little change the terms of the Miller-Tydings Act but further allowing fair trade enforcement against non-signing retailers where non-signers by state law could be bound by fair trade prices.¹²

The McGuire Act by its terms deals with the two types of provisions found in resale price maintenance contracts such as those exemplified in the *Dr. Miles* case. Where certain conditions are met it permits, notwithstanding the Federal antitrust laws:

1. contracts or agreements prescribing minimum or stipulated prices, and
2. contracts or agreements * * * requiring a vendee to enter into contracts or agreements prescribing minimum or stipulated prices. (This second clause in the McGuire Act is sometimes referred to as the "vendee clause".)

For easy reference we shall refer to the first type of contractual provision as the "price provision," and the second as the "boycott provision." Both provisions are commonly found in one document or "Fair Trade Contract" between a seller and a buyer. The statutory vendee clause, *supra*, contemplates that there may be a further and distinct fair trade contract—one between the "vendee" and a sub-vendee reseller. There would seem to be nothing that would prevent a series of fair trade contracts between successive vendees and sub-vendees as long as the conditions of the statute are satisfied.¹³

To come within the immunity granted under the McGuire Act, however, fair trade contracts such as Corning's must meet the specific conditions set forth in the Act. This is true not only as to the minimum price provisions but also to any boycott provisions.

See *United States v. Bausch & Lomb Optical Co.*, 321 U.S. 707, 721 (1944):

tracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State * * * in which such resale is to be made, or to which the commodity is to be transported for such resale * * *

¹² Although the exempting provisions of the Miller-Tydings Act were never repealed and still appear in Section 1 of the Sherman Act, it is clear that the subsequently-enacted McGuire Act is controlling here.

¹³ It might be noted that the statutory vendee clause does not expressly state that a manufacturer can require a reseller, such as a wholesaler, to restrict its sales to retailers who have signed a fair trade agreement *with the manufacturer*. It states only that the manufacturer can require a *vendee* in turn to enter into a vertical price-fixing contract. Under Corning's wholesale fair trade contract there is no subsequent wholesaler-retailer contract contemplated, rather a Corning-retailer contract is required. It has been argued elsewhere that the McGuire Act does not permit customer restrictions on wholesalers which require them to sell only to retailers approved by the manufacturer. See "Customer Restrictions in Fair Trade Contracts," 10 Boston College Ind. & Comm. L. Rev. 392 (1969). However, complaint counsel have not urged such a reading of the statute here and we will assume for purposes of this case that the McGuire Act permits this type of customer restriction imposed on wholesalers where lawful under state law.

* * * A distributor of a trade-marked article may not lawfully limit by agreement, express or implied, the price at which *or the persons to whom its purchasers may resell*, except as the seller moves along the route which is marked by the Miller-Tydings Act.

Two conditions set forth in Paragraph (2) of the McGuire Act—that the “goods bear the trade-mark, brand, or name of the producer or distributor” and be “in free and open competition with commodities of the same general class”—need not concern us, as complaint counsel do not claim that these requirements are not met in this case.¹⁴

A third condition, however, is of critical importance here. The Act sanctions price stipulation clauses and customer restriction clauses in fair trade contracts only—

when contracts or agreements of that description are lawful as applied to intrastate transactions under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale.

Corning interprets these statutory words as permitting it to enter into agreements with free trade state wholesalers, *e.g.*, Missouri wholesalers, which require them to boycott sales to retailers in fair trade states who do not sign a Corning retail fair trade contract or who are named on Corning’s list of price cutters. It argues as follows:

The last clause of McGuire Act subsection (2) immunizes both resale price maintenance agreements and dealer restriction agreements from attack under the Federal Trade Commission and Sherman Acts if state law permits such agreements either

- i) in the state where a resale at a maintained price is made; or
- ii) in the state to which the commodity is to be transported for resale at a maintained price—*i.e.*, Arkansas or Illinois.

* * * * *

The McGuire Act says in so many words that this law of Arkansas (the state “to which the commodity is to be transported for such resale”) must be referred to to determine whether or not the challenged dealer restriction provision can be regarded as unlawful. Since the law of Arkansas makes the dealer restriction agreement lawful, nothing contained in the Federal Trade Commission Act may (according to the McGuire Act) render Respondent’s agreement unlawful.

¹⁴ Nor is there any contention here that Corning competes with its distributors in their resale of Corning Ware. The absence of such competition is a further condition imposed under Paragraph (5) of the McGuire Act, 15 U.S.C. 45(a) (5). *United States v. McKesson & Robbins, Inc.*, 351 U.S. 305 (1956).

Complaint counsel, on the other hand, argue that the statute means that the validity of the boycott clause in a manufacturer-wholesaler fair trade contract, such as one entered into with a Missouri wholesaler, must be determined by reference to whether boycott arrangements against price cutters are valid under *Missouri* law, because *that* contract (the manufacturer-wholesaler contract) pertains to "resales" which will take place within Missouri and cannot be saved by the law of a state where a subsequent vendee (retailer) might resell the goods.¹⁵ That being the case, such boycott provisions are not immunized from the Federal antitrust laws, because they are not lawful in states such as Missouri which do not have fair trade legislation permitting boycott provisions against possible price cutters. It should again be stressed that it is only the contractual provision in the *wholesaler* contract that complaint counsel attack. They do not deny the right of Corning to enter into retail fair trade contracts with willing retailers in fair trade states who might have purchased from wholesalers in free trade states.

Both sides argue that the plain language of the statute supports only their respective interpretation, although complaint counsel also rely on legislative history. The administrative law judge rejected any reliance on legislative history and accepted respondent's reading of the statute.

However, we think the answer to this issue is elusive if examination is confined to the statutory words without reference to the underlying purpose of the legislation. If attention is paid only to parsing the precise words of the statute, against complaint counsel's interpretation it can be argued that Congress' insertion of the so-called "transport clause" (the second conditional clause in Paragraph (2)—"* * * or [State] to which the commodity is to be transported for such resale") was a meaningless gesture since the preceding clause ("State * * * in which such resale is to be made") would seem to have been sufficient to reach the result urged by complaint counsel.

But on the other hand, respondent's reading of the statute raises substantial problems. Under its interpretation, the term "such resale," which occurs twice in the same sentence, would have a chameleon-like quality. It would refer to two different

¹⁵ Respondent does not deny that where a wholesaler receives goods into a warehouse located in Missouri, subsequent "resales" by him take place "in Missouri" within the meaning of the McGuire Act, and that this is true even though the wholesaler's customer may be a retailer located in another state. See *General Electric Co. v. Masters Mail Order Co.*, 244 F.2d 681 (2d Cir. 1957).

resales made by different parties and at different times. Yet surely the normal presumption would be that a draftsman using the term "such resale" twice in the same sentence means to refer to the same resale in each instance.

Respondent's interpretation leads to the following unusual result. In its wholesale fair trade contract with the hypothetical Missouri wholesaler, the legality of the price stipulation provision of the Corning contract is controlled in all instances by Missouri law, because "such resale" in that instance refers to resale by the Missouri wholesaler. Respondent does not dispute this. However, the boycott provision in the same contract, according to Corning, lawfully restricts the wholesaler's freedom as to which retailers he may deal with. This is because, according to respondent, the validity of the boycott clause is determined not by the law of the state of the wholesaler's resale (Missouri), but by the law of the state where the wholesaler's *customer* will ultimately resell. In that situation, Corning argues that "such resale" refers to a resale by the sub-vendee and that this was the result intended by Congress in adding the transport clause.

It will be quickly seen that, in order to accept respondent's construction of the statute, we would have to be willing to believe that Congress intended to give extra-territorial effect to the law of fair trade states such as Arkansas. Under this view Arkansas legislation would make an agreement between Corning (a New York corporation) and a Missouri wholesaler lawful, even though there is no Arkansas party to that agreement. It would be binding upon the Missouri wholesaler, and the "resale" that is the subject matter of the agreement would, as respondent concedes, take place within Missouri—all this, even though such a contract is repugnant to Missouri law.

A reading of the legislative history of the Miller-Tydings Act and the McGuire Act dispels any notion that this was the intent of Congress. The legislative history also shows that the so-called "transport clause" was placed in the statute not for the reason envisioned by respondent but for the reason given by complaint counsel—that out of an abundance of caution Congress wanted to make it clear that not only could a manufacturer and a distributor both located within a fair trade state enter into a fair trade contract, but a manufacturer in *another* state could enter into such contract with a distributor in a fair trade state even though his goods would be transported across state lines to that distributor.

In testifying in support of the Miller-Tydings legislation,¹⁶ Senator Tydings stressed that the Act was to be an enabling Act, allowing only for state supervision of contracts for resale transactions occurring within each state's own boundaries:

[I]t should be observed, in the first place, that the bill under consideration is simply an enabling act. It permits the States, without the complications of possible violation of Federal law, to carry into effect their own public policy, and it is limited to a specific type of legislation now on the statute books of 27 States.

These State laws are applicable only to transactions consummated wholly within the borders of the State in which the legislation is in effect, that is to say, they apply only to sales made by one person to another within the territorial confines of the State.

The only possible application of the Sherman and Federal Trade Commission Acts is that the contract, even though actually entered into in the State in which the act is in force, may involve interstate commerce, because of the nonresidence or nondomestication in that State of the producer by whom the resale price is established *and the transportation of the commodity into the State by the producer to the distributor before any transaction to which the State act would be applicable*, namely, the wholly intrastate sale, could possibly take place. Hearings before the Subcommittee of the Senate Committee on the Judiciary, on S. 100, "Resale Price Maintenance", 75th Cong., 1st Sess. (1937), at p. 42. (Emphasis added)¹⁷

In favorably reporting the bill, the House Committee on the Judiciary stated: "The sole objective of this proposed legislation is to permit the public policy of States having 'fair trade acts' to operate with respect to interstate contracts for the *resale of goods within those states.*" House Report No. 382, 75th Cong., 1st Sess. (1937) at 2. See also Senate Report No. 257, 75th Cong., 1st Sess. (1937) at 2, and Senate Report No. 879, 75th Cong., 1st Sess. at 5-6 (1937).

¹⁶ The "transport clause" was in the Miller-Tydings Act and was carried over to the McGuire Act when the latter was enacted in 1952.

¹⁷ Congressman McLaughlin, a member of the House Committee on the Judiciary that favorably reported on H.R. 1611, the House counterpart to the Tydings bill, stated the purpose of the bill in similar terms on the floor of the House:

"* * * There exists grave doubt whether goods transported from outside State into a State having a fair-trade act can be legally made the subject of the type of contract permitted by the State act. The enactment of this bill (H.R. 1611) would so amend the existing Federal law—the Sherman Act—as to allow these goods shipped in interstate commerce legally to become the subject of a State fair-trade contract * * *.

"* * * The bill before us today, if enacted, merely makes effective the law which has been enacted by the respective State legislatures to govern transactions within their own borders." 81 Cong. Rec. 8142 (Aug. 3, 1937).

See also, Hearing Before Subcommittee No. 3 of the Committee on the Judiciary, House of Representatives, 75th Cong., 1st Sess., on H.R. 1611 (January 27, 29, 1937) at 13 (Crichton Clarke, Counsel, American Book Sellers' Assoc.); *Id.*, at 27 (E.L. Newcomb, Exec. V.P., National Wholesale Druggist Assoc.); *Id.*, at 69-70 (Statement of Rowland Jones, Jr., National Assoc. of Retail Druggists); *Id.*, at 79 (Statement of Sidney Hollander, President, Maryland Pharmaceutical Co.); *Id.*, at 196 (E.F. Kelly, American Pharmaceutical Assoc.).

The Miller-Tydings measure was passed without additional changes, and in amending Section 1 of the Sherman Act it provided in pertinent part:

That nothing herein contained shall render illegal contracts or agreements prescribing minimum prices *for the resale of a commodity* * * * when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy * * * in any State * * * *in which such resale is to be made, or to which the commodity is to be transported for such resale* * * * (Emphasis added.)

As the foregoing explanation by the sponsors of the legislation makes clear, the Act was not to interfere with the applicability of the policies of each state dealing with price maintenance contracts as to resale transactions within those states. There was no intent to extend territorially the laws of fair trade states to sales occurring in free trade states. The "transport clause" was designed simply to remove any doubt that a seller shipping goods *into*, as well as *within*, a fair trade state could enter into fair trade agreements with resellers for resale within that state.

The only change in the Miller-Tydings Act that was made by the McGuire Act (passed in 1952) that could arguably be pertinent to the issue in this case was the addition of the so-called vendee clause.¹⁸ There is no indication, however, that Congress by adding that clause intended to change the foregoing purpose of the Miller-Tydings Act. The Congressional reports and debates show that Congress passed the McGuire Act in response to certain court decisions, particularly the Supreme Court's holding in *Schwegmann Bros. v. Calvert Corp.*, 341 U.S. 384 (1951) that the Miller-Tydings Act did not exempt from the Federal antitrust laws resale price maintenance enforcement against non-signing retailers.¹⁹

Although there was much debate on the pro's and con's of resale price maintenance, there was no indication that Congress in passing the McGuire Act intended by the addition of the vendee clause to give extraterritoriality to state fair trade legislation. On the

¹⁸ " * * * requiring a vendee to enter into contracts or agreements prescribing minimum or stipulated prices * * * ." In addition to the vendee clause, Paragraph (2) of the McGuire Act substituted the words "minimum or stipulated prices" in lieu of "minimum prices" throughout.

¹⁹ The McGuire Act added subparagraph (3) to Section 5(a) of the Federal Trade Commission Act to expand the immunity as to enforcement against non-signers pursuant to state law permitting such enforcement.

Also subparagraph (4) was added to make clear that enforcement of fair trade as to mail-order firms selling *out of fair trade states* did not constitute an impermissible burdening of interstate commerce as had been held by a Circuit Court of Appeals in *Sunbeam Corp. v. Wentling*, 185 F.2d 903 (3d Cir. 1951), *vacated on other grounds and remanded*, 341 U.S. 944 (1951), *modified in light of Schwegmann case*, 192 F.2d 7 (3d Cir. 1951).

contrary, in introducing his measure, Representative McGuire explained:

This bill is merely an enabling measure * * * If a State does not believe in price maintenance, it is not forced to tolerate the practice. In the absence of State legislation authorizing price maintenance, the Federal law remains unchanged. No State need fear any encroachment on its internal affairs by neighboring States pursuing a different policy. 97 Cong. Rec. 13404-05 (Oct. 17, 1951).

Similar statements were frequently repeated by supporters of the bill throughout its passage to the effect that it was only a state enabling measure and not a bill to create new substantive law in states which did not tolerate vertical price maintenance contracts.²⁰ Attempts were made by others, however, to amend the bill in a manner that would have amounted to just that, but they failed.

Thus, Representative Cole of Kansas offered an amendment from the floor of the House which would have made it unlawful to deliver goods into a fair trade state pursuant to a resale at a price below the minimum or stipulated price established with other resellers in that state even though the resale may have taken place in a free trade state.²¹ In introducing his amendment, Representative Cole specified what he considered to be the McGuire Act's shortcoming:

If you do not have this amendment, if you do not enact this amendment, you will not have a fair-trade law. Why? One of the best illustrations I can give is what occurs in my own State. We are adjacent to the State of Missouri, which is a non-fair trade State. Merchants in Missouri attempt to send merchandise into Kansas, merchandise which in Kansas can be sold only under the fair-trade law. The merchants in Missouri attempt to send into Kansas and sell in that State, merchandise at a price lower than is permitted by law in Kansas. Thus, they are circumventing the fair-trade law of Kansas. This amendment merely permits Kansas to protect itself from the unfair competition of a non-fair-trade State. Without this type of amendment you cannot have a true fair-trade State. With this amendment you can protect Kansas, a fair-trade State, from those who would attempt to circumvent its laws. 98 Cong. Rec. 4952 (May 8, 1952).

Representative Patman spoke in opposition to the Cole amendment and of the restrictions such an amendment would place upon free trade state resellers:

²⁰ See also 98 Cong. Rec. 4917 (May 7, 1952) (remarks of Rep. Beamer); *Id.*, at 4938-40 (May 8, 1952) (remarks of Rep. Patman); *Id.*, at 8819 (July 2, 1952) (remarks of Sen. Humphrey); House Hearings on H.R. 5767 at 7 (Feb. 4, 1952) (Statement of Rep. Patman).

²¹ The full text of the Cole Amendment (98 Cong. Rec. 4952) is set forth in Judge Waterman's concurring opinion in *General Electric Co. v. Masters Mail Order Co.*, 244 F.2d 681, 689 (2d Cir. 1957).

[I]n practice let us see what this amendment will do. It applies to the non-fair-trade States, in particular—Texas, Missouri, Vermont and the District of Columbia. It means in the case of a merchant in Texarkana, Texas, who advertises a certain product for sale and delivers anywhere in that territory, if some of his orders should come by telephone, mail, or otherwise from the State of Arkansas, where they have a fair trade law, the merchant would have to stop his shipment at its State line. He could not go over into Arkansas at all. In other words, he would be prevented from selling to his Arkansas customers at the same price he sells to his Texas customers. That same example could be used for Kansas City, Mo., and Kansas City, Kans. It could be used in the case of other States and State lines. * * *

The fact is that Texas does not have it, Missouri does not have it, Vermont does not have it, and the District of Columbia does not have it, because Congress has never legislated a fair-trade law for the District of Columbia. This is an attempt to compel fair trade prices in States that have never adopted the law at all. It is entirely contrary to the concept we have in advocating the McGuire bill. In advocating the McGuire bill we say it is a States' rights bill. We just permit the States to carry out the contracts that the States have said that they want carried out, and because there is a State line between them, why we will permit it in interstate commerce under the McGuire bill. But here you are placing a burden upon the merchants in those States where they have no fair-trade law. You restrict his efficiency, you restrict the value of his advertising. You take in cities like Kansas City, half of the benefit of advertising goes over into Kansas and vice versa. But here you could not deliver the goods in one of these States; you would be absolutely stopped at the State line. It would be a violation of the law to deliver the goods. 98 Cong. Rec. 4953 (May 8, 1952)

Immediately thereafter the House rejected Representative Cole's amendment, 98 Cong. Rec. 4954 (May 8, 1952).

After passage by the House of Representatives, the bill went to the Senate where a similar attempt to create a protective wall around each fair trade state was unsuccessful. In hearings before the Senate Committee having jurisdiction over the bill, an amendment identical to the Cole amendment, but referred to as the "home town" amendment to H.R. 5767, was urged by different groups. See Hearings before the Senate Committee on Interstate and Foreign Commerce on H.R. 5767 ("Resale Price Fixing"), 82d Cong., 2d Sess. (1952) at 105-108. However, the McGuire bill was reported out and passed without such amendment.²²

²² See also the preamble to the Act, 66 Stat. 631-632, which states:

"* * * That it is the purpose of this Act to protect the rights of States under the United States Constitution to regulate their internal affairs and more particularly to enact statutes and laws, and to adopt policies, which authorize contracts and agreements prescribing minimum or stipulated prices for the resale of commodities and to extend the minimum or stipulated prices prescribed by such contracts and agreements to persons who are not parties thereto. It is the further purpose of this Act to permit such statutes, laws, and public policies to apply to commodities, contracts, agreements, and activities in or affecting interstate or foreign commerce." (Emphasis added)

The underscored portion of the preamble was construed by the district court in *Bissell Carpet Sweeper Co. v. Masters Mail Order Co.*, 140 F. Supp. 165, 178-179 (D. Md. 1956), *aff'd* 240

Consistent with the view that Congress did not intend to construct an absolute barrier around fair trade states that would prevent resellers located in free trade states from filling orders received from buyers located in the fair trade states, the courts have refused to give extra-territorial effect of the fair trade laws of buyers' states over such transactions. *General Electric Co. v. Masters Mail Order Co.*, 244 F.2d 681 (2d Cir. 1957); *Bissell Carpet Sweeper Co. v. Masters Mail Order Co.*, 240 F.2d 684 (4th Cir. 1957); *Revere Camera Co. v. Masters Mail Order Co.*, 128 F. Supp. 457 (D. Md. 1955).²³

We are persuaded from the foregoing review of the legislative history, that complaint counsel's interpretation of the McGuire Act is the correct one. Under this view, the legality under the Federal Trade Commission Act of *both* the price stipulation clause and the boycott clause in Corning's wholesale fair trade contracts depends upon the law of the state where the wholesalers resell the merchandise covered by the contract. If they resell the goods in Missouri or any of the other free trade jurisdictions, Corning cannot enter into fair trade contracts with such wholesalers requiring them to boycott retailers for price maintenance purposes. To the extent that such contracts have been entered into, they are contracts in restraint of trade under Section 1 of the Sherman Act and hence are violative of the Federal Trade Commission Act.²⁴ Corning will be ordered to abrogate the contracts and cease and desist from entering into them in the future.

In addition, Corning will be ordered to abrogate fair trade contracts with retailers in signer-only states which were obtained by wholesalers in free trade states subject to the illegal boycott provision. However, as provided in the notice order, Corning will be

F.2d 684 (4th Cir. 1957), as evincing a purpose on the part of Congress, *inter alia*, not to extend the price maintenance laws of fair trade states to resales occurring in free trade jurisdictions.

²³ Although the above decisions involved mail-order resellers in free trade jurisdictions who advertised and sold to members of the *consuming public* in fair trade states, and therefore the decisions did not take up the precise issue of statutory interpretation presented here, they do support the view that Congress in enacting the McGuire Act left open the possibility of lines of supply from free-trade state resellers into fair trade states; that no absolute embargo against all such sales could be maintained by fair trade manufacturers who choose to sell to distributors in free trade states.

²⁴ *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. 373 (1912); *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U.S. 441 (1922); *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 386 (1951); *United States v. General Motors Corp.*, 384 U.S. 127, 145 (1966) ("Elimination by joint collaborative action, of discounters from access to the market is a *per se* violation of the [Sherman] Act."). Even aside from the fact that the customer restriction provisions in such contracts amount to joint boycotts in a price-fixing scheme, it is clear that standing alone they are unlawful. See *United States v. Arnold, Schwinn & Co.*, 388 U.S. 365 (1967).

free to re-execute any fair trade contracts with any retailers in such jurisdictions willing to sign such contracts with Corning, since nothing in our decision forbids such agreements if entered into voluntarily in those states.

Finally, pursuant to the stipulation of the parties (see p. 5, *supra* [p. 1750-51 herein]) the order will also include the relief proposed by complaint counsel in connection with alleged price fixing in free trade states.

IV. COUNT III—LEGALITY OF BOYCOTT CLAUSE IN FAIR TRADE CONTRACTS WHICH APPLY WITHIN STATES HAVING NO FAIR TRADE LAWS IN EFFECT AS TO NON-SIGNERS.

Count II dealt with the legality of boycott provisions in Corning contracts with resellers in *free trade states*. Count III, on the other hand, deals with the legality of boycott provisions in Corning contracts with resellers in *signer-only* states, *i.e.*, states in which courts have struck down as unconstitutional (under state constitutions)²⁵ the non-signer enforcement provisions of the states' fair trade laws. Complaint counsel maintain that as a result of these declarations of policy the boycott clauses in contracts with resellers in those states are unlawful and entitled to no immunity under the McGuire Act.

The fair trade statutes in the 20 signer-only states have specific provisions authorizing certain boycott clauses in fair trade contracts within those states.²⁶ These provisions are in sections of the statutes separate and apart from the provisions dealing with enforcement against non-signers which the courts have expressly struck down on constitutional grounds. In order to reach the result urged upon us by complaint counsel, we would have to determine

²⁵ The validity under the Federal Constitution of state fair trade Acts, including non-signer provisions, was sustained in *Old Dearborn Distributing Co. v. Seagram Distillers Corp.*, 299 U.S. 183 (1936). See also *Schwegmann Bros. Giant Super Mkts. v. Eli Lilly & Co.*, 205 F.2d 788 (1953), *cert. denied*, 346 U.S. 856 (1953).

²⁶ Thus Title 70 of the Arkansas Statutes Section 70-202 provides that no contract shall be deemed in violation of any law of the state by virtue of provisions:

"(b) That the buyer will require of any dealer to whom he may resell such commodity an agreement that he will not, in turn, resell at less than the minimum price stipulated by the seller.

"(c) That the seller will not sell such commodity:

"(1) To any wholesaler, unless such wholesaler will agree not to resell the same to any retailer unless the retailer will in turn agree not to resell the same except to consumers for use at not less than the stipulated minimum price, and such wholesaler will likewise agree not to resell the same to any other wholesaler unless such other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell; or

"(2) To any retailer, unless the retailer will agree not to resell the same except to consumers for use and at not less than the stipulated minimum price."

that certain provisions remaining on the statute books of some 20 states, which purport to authorize customer restriction agreements, are also invalid under the constitutional law of those states.

The effect on the legality of boycott clauses of state courts holding non-signer statutory provisions unconstitutional has not been directly considered before. However, in a few cases in which manufacturers have sought to enjoin non-signing retailers from *purchasing* fair traded goods, the courts have declined to grant the relief sought. Complaint counsel point to these decisions as support for their argument.

In *Sunbeam Corp. v. Masters of Miami, Inc.*, 225 F.2d 191 (5th Cir. 1955), the plaintiff brought suit to enjoin Masters, a non-signing discounting retailer, from buying Sunbeam's fair traded products in Florida. The case was brought not under the Florida non-signer provision (since that had previously been held unconstitutional in *Miles Laboratories, Inc. v. Eckerd*, 73 So. 2d 680 (1954)), but under the theory that it was a common-law tort for Masters to induce wholesalers to breach the boycott clause in their fair trade contracts with Sunbeam. Noting that "the Florida Supreme Court seems to have been more consistently opposed to the Fair Trade Acts on public policy grounds than any other court," the Federal court construed the public policy of Florida as not permitting recognition of a cause of action against a non-signing retailer on a tortious interference-with-contract theory. The court reasoned: "Preventing nonsigners from buying goods diminishes the scope of competition just as surely as preventing them from selling below list prices, though it is true that it is a more indirect way of accomplishing that object of the Fair Trade supporters." 225 F.2d at 196.

We note, however, that the court did not go so far as to rule that a boycott agreement between signatories was *unlawful* under Florida law. Rather, it cited authorities for the proposition that a third party may be privileged to breach certain types of contracts *even though they may be valid and enforceable in some manner between the contracting parties*.²⁷ The court held that fair trade contracts fall within this category of contracts insofar as the public policy of Florida is concerned, and on that ground it refused to hold actionable Masters' inducement of breach of any fair trade contract.

²⁷ The court cited Restatement, Torts Section 774, Comment a; *Fairbanks, Morse & Co. v. Texas Electric Service Co.*, 63 F.2d 702 (5th Cir. 1933); Prosser, Torts 982.

Subsequently, the Florida Supreme Court passed on an identical interference-with-contract theory and it followed the reasoning of the Fifth Circuit in *Sunbeam v. Masters, supra*. In doing so it expressly noted that it found it unnecessary to pass on the constitutionality of provisions of the state fair trade statute, which permit enforcement against signatories. *Sunbeam Corporation v. Gilbert Simmons Associates, Inc.*, 91 So. 2d 335 (1956). The same result was reached with respect to a tortious interference-with-contract claim asserted in Michigan. *Argus Cameras, Inc., v. Hall of Distributors, Inc.*, 72 N.W.2d 152 (Mich. 1955).²⁸ *But cf. Stauffer Chemical Co. v. Allied Gas & Chemical Co.*, 328 F.Supp. 785, 788 (S.D. Iowa 1971) where in granting certain limited preliminary relief in a case presenting the same tort theory the court stated: "Wrongful interference with contractual relations is actionable under the Iowa law * * * To date, this theory has never been employed in fair trade litigation in Iowa, and at best, is germinal in its development in other jurisdictions where the authority is in conflict."

It may well be that if presented with the issue raised in Count III, the highest courts in Florida and Michigan would agree with complaint counsel that by striking down the non-signer provisions in those states' fair trade laws they in essence also struck down statutory provisions permitting the boycott clause between signatories. However, we do not believe that this *necessarily* follows from the decisions cited since the courts were willing to assume in those cases the validity of the boycott provision *inter partes*. Furthermore, even if complaint counsel correctly reads the laws of Michigan and Florida, we have no sure way of knowing whether all the other 18 non-signer states would follow suit. The reasons given by the courts in striking down non-signer provisions are not uniform. See 3 CCH Trade Reg. Rep. ¶ 6021. What to a court in one state might seem clearly unconstitutional in the wake of a previous decision adverse to non-signer enforcement, might be viewed by a court of another state as permissible legislation as long as it applies only to parties who have voluntarily entered into an agreement.

When confronted with a difficult and delicate question of state policy not easily resolved by reference to traditional legal sources, the rule usually followed by Federal tribunals is to stay their hand

²⁸ Michigan, like Florida, is a jurisdiction in which the non-signer enforcement provisions of the state fair trade law had been held unconstitutional. *Shakespeare Co. v. Lippman's Tool Shop Sporting Goods Co.*, 334 Mich. 109, 54 N.W. 2d 268 (1952).

until there has been an authoritative ruling by a state court. See *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 500 (1941): "Few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies, whether the policy relates to the enforcement of the criminal law * * * or the final authority of a state court to interpret doubtful regulatory laws of the state * * * ." See also *Burford v. Sun Oil Co.*, 319 U.S. 315, 332 (1943); *Reetz v. Bozanich*, 397 U.S. 82 (1970). Although Count III may not fall within the paradigm category of cases for Federal abstention—where the challenged state statute is susceptible of a construction by the state's courts that would avoid or modify a Federal constitutional question, *Lake Carriers Ass'n v. MacMullan*, 406 U.S. 498, 510 (1972)—in view of the intent of Congress to permit states to set their own individual policies as to resale price maintenance, we deem abstention to be particularly appropriate here. See *Hudson Distributors v. Lilly & Co.*, 377 U.S. 386, 395 (1964) (declining to review question of legality of fair trade contracts when it involved question of interpretation of Ohio fair trade law not yet decided by Ohio courts).

Accordingly, we defer any ruling on Count III until there has been a clearer pronouncement by the courts of the states involved. Although we dismiss this Count, we do so without prejudice to the right to reopen this matter in the event that the highest courts of any fair trade states hold boycott clauses, such as those used in Corning's contracts, unlawful or against public policy. See Section 5(b) of the Federal Trade Commission Act which provides for the reopening of Commission decisions and orders where "conditions of fact or of law have so changed as to require such action or if the public interest shall so require." See also *Glenn v. Field Packing Co.*, 290 U.S. 177 (1933); *Lee v. Bickell*, 292 U.S. 415, 426 (1934).

V. COUNT V—CORNING'S QUANTITY DISCOUNT SCHEDULE.

In establishing minimum wholesale resale prices Corning circulates to wholesalers a schedule of maximum quantity discounts which wholesalers may grant. Thus, Corning provides that Corning Ware products shall be sold to retail dealers at or above retail prices listed *less a discount not in excess of 35 percent for 17 pieces ordered and 40 percent discount for 18 pieces or more*. Other quantity discount schedules are published for other Corning products such as Pyrex and Corelle.

Count V of the complaint alleges that the schedule results in price discrimination among retailers without regard to individual differences in costs and delivery. Since dealers are not permitted to engage in price competition, the result of the price discrimination is that larger dealers who can afford to purchase in quantities carrying higher discounts are enriched as compared to smaller dealers. Count V charges that the maintenance of such a schedule resulting in price discrimination among competing dealers is a violation of Section 5 of the Federal Trade Commission Act.

Respondent admitted that its quantity discount schedule is not based upon wholesalers' individual differences in costs of sale and delivery and stipulated that "in some instances" wholesalers grant the maximum quantity discounts to retail customers qualifying for them and give lesser discounts to other customers qualifying for lesser discounts. Aside from these stipulations and the matters admitted by respondent's pleadings, no further evidence was adduced in support of this count.

We agree with the administrative law judge's dismissal of this count. The stipulation and admissions on file do not provide a sufficient basis to adjudicate the legality of Corning's price schedule in this regard. Price discrimination is not a *per se* violation of law. See Section 2(a) of the Clayton Act, 15 U.S.C. 13(a). Before condemning such a discount schedule as an unfair act or method of competition under the Federal Trade Commission Act, we would have to have some basis in the record for inferring injury to competition or to retailers. In the bare-bones stipulation and admissions relied upon by complaint counsel there is not even a statement that price discrimination among *competing* retailers has occurred,²⁹ let alone sufficient additional facts indicating whether the price differentials involved would lead to injury to competition or to individual retailers.

Lacking any satisfactory basis in the record to make findings on the probable competitive effect of Corning's discount schedule, we are compelled to dismiss Count V.

An appropriate order accompanies this Opinion.

FINAL ORDER

This matter having been heard by the Commission upon the

²⁹ Clearly no primary-line injury is raised by this count. Paragraph 17 of the complaint alleges that "Respondent has established and maintained minimum wholesaler resale prices which have resulted in price discrimination between *competing retailers* of said goods. * * * Respondent has thereby violated Section 5(a)(1) of the Federal Trade Commission Act" (emphasis added).

appeal of counsel supporting the complaint from the initial decision, and upon briefs and oral argument in support thereof and in opposition thereto, and the Commission, for the reasons stated in the accompanying opinion, having granted in part the appeal:

It is ordered, That, except for Paragraph 1 (p. 3 of the initial decision) and the last two sentences of Paragraph 16 (p. 14), the Findings of Fact contained in the initial decision up to and including Paragraph 17 are adopted as Findings of Fact of the Commission as supplemented by the findings and conclusions contained in the accompanying opinion.

It is further ordered, That the remainder of the initial decision, except for Paragraph 1 of the conclusions which is hereby adopted, be vacated and the appeal of complaint counsel be granted as to Count II of the complaint. Counts III and V are dismissed for the reasons set forth in the accompanying opinion.

In accordance with the stipulation of the parties filed October 17, 1972, Counts I and IV need not be litigated, but the relief proposed as to these counts, as well as Count II, shall be entered.

Accordingly, the following cease-and-desist order is hereby entered:

ORDER

I

It is ordered, That respondent, Corning Glass Works, a corporation, directly or indirectly, through its officers, agents, representatives, employees, subsidiaries, successors, licensees, or assign, or through any reseller or any other corporate or other devices in connection with the manufacture, advertising, offering for sale, sale, or distribution, in commerce, as "commerce" is defined in the Federal Trade Commission Act, of Pyrex, Corning Ware, and Corelle brand commodities, or of any other commodity which bears, or the label or container of which bears, any other trademark, brand, or name owned by respondent, with respect to which commodity respondent has now established, or in the future may establish, any fair trade program, shall forthwith cease and desist from:

1. Maintaining or enforcing any existing understanding, contract, or agreement, or entering into, maintaining, or enforcing any future understanding, contract, or agreement, with any reseller located within, or applicable to resales occur-

ring within, any state which is, or henceforth shall become, a free trade state¹—

(a) which contains any provision which establishes, is intended to establish, or may be construed by the reseller to establish, any stipulated or minimum price at which resales shall be made; or which contains any circumstance or condition under which any such provision shall become applicable to any resale; or

(b) which contains any provision which restricts, is intended to restrict, or may be construed by the reseller to restrict, the reseller's right to deal with any customer, whether for subsequent resale or otherwise, in any state; or which otherwise imposes, is intended to impose, or may be construed by the reseller to impose, any qualification, precondition, or other limitation on said right; or which contains any circumstance or condition under which any such provision shall become applicable to any resale.

2. Maintaining or enforcing any existing understanding, contract, or agreement, or entering into, maintaining, or enforcing any future understanding, contract or agreement, with any reseller located within any state which is, or henceforth shall become a free trade state, which requires, is intended to require, or may be construed by the reseller to require, as a precondition to any resale or as a qualification or other limitation on the right to resell, that said reseller—

(a) obtain from any customer or potential customer in any state any understanding, contract, or agreement by which said customer or potential customer agrees with respondent to maintain the fair trade price of the commodity to be resold; or

(b) refuse to deal with any customer or potential customer in any state unless such customer or potential customer has agreed to maintain the fair trade price of the commodity to be resold.

3. (a) Circulating to any free trade state reseller any list ("blacklist") of retailers who have advertised, offered for sale, or sold any of respondent's fair traded commodities at less than the fair trade prices established therefor, or who

¹ The definitions of terms contained in Part I.A. of the Commission's opinion in this matter shall apply to this order.

have not signed a fair trade contract, or whose retailer contracts have been terminated; or in any other manner communicating the names of such retailers to any free trade state resellers; or (b) taking any other action which is intended to, or which may in fact, prevent or have a tendency to prevent any retailer from obtaining any such commodity; *Provided, however,* That nothing in (b) of this subparagraph 3 shall apply to any action taken by virtue of the breach of a signed contract, lawfully obtained and entered into pursuant to a fair trade law which is valid as of the time of both the breach and the action taken; or to any action taken to enforce any right against a non-signer created by a fair trade law or provision thereof which is enforceable as of the time of the action taken.

4. Imposing, by refusing to deal, termination, or any other unilateral action, or by contract, combination or conspiracy, any limitation, qualification, or precondition not expressly permitted by Sections 5(a) (2) and 5(a) (3) of the Federal Trade Commission Act, on any reseller's right or ability to purchase or sell any fair traded commodity—

(a) where the purpose or effect thereof is, or is likely to be, adherence to resale prices or any course of conduct established, required, or suggested by respondent, by any reseller whose resale prices or conduct are not, or cannot be, lawfully controlled by respondent; or

(b) where the purpose or effect thereof is, or is likely to be, the unavailability, through normal channels of distribution, of respondent's commodities to, or any discrimination with respect thereto against, any such reseller due to his failure or unwillingness to adhere to said resale prices or course of conduct.

5. Suggesting, for three (3) years from the date on which this order becomes final, or upon a showing by respondent pursuant to a petition filed after two (2) years from said date, that price competition in the resale of its goods has been created, any resale price whatsoever, by price list, discount schedule, invoicing procedure, prepricing of commodities or their containers, or by any other means, to any reseller whose resale prices are not or cannot lawfully be controlled by respondent in the manner prescribed by law and this order.

II

It is further ordered, That respondent, directly or indirectly, through its officers, agents, representatives, employees, subsidiaries, successors, licensees, or assigns, or through any reseller or any other corporate or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution, in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any commodity, shall forthwith cease and desist from entering into, maintaining, or enforcing any contract, combination or conspiracy which imposes any limitation, qualification, or pre-condition not expressly permitted by applicable state law and granted immunity by Section 5 (a) (2) of the Federal Trade Commission Act, on any reseller—

1. Where the purpose or effect thereof is, or is likely to be, adherence to resale prices or any course of conduct established, required, or suggested by respondent, by any reseller whose resale prices or conduct are not, or cannot be lawfully controlled by respondent; or

2. Where the purpose or effect thereof is, or is likely to be, the unavailability through normal channels of distribution of respondent's commodities to, or any discrimination with respect thereto against, any such reseller due to his failure or unwillingness to adhere to said resale prices or course of conduct.

III

It is further ordered, That respondent shall:

1. Forthwith upon this order becoming final, mail or deliver, and obtain signed receipts for, copies of this order to—

(a) every reseller who was either under fair trade contract on March 1, 1971 or who was placed under such contract thereafter, and to whom neither subparagraph 1 (b) nor 1 (c) of this Paragraph III applies;

(b) every reseller whose fair trade contract has been terminated by respondent since January 1, 1966; and

(c) every reseller whose name has appeared on any blacklist since January 1, 1966.

2. Within sixty (60) days from the date on which this order becomes final, and every three (3) months for a period of two (2) years thereafter, mail or deliver, and obtain signed receipts for, notices, in forms submitted to and approved by the

Commission prior to mailing or delivery, which clearly inform—

(a) all resellers in free trade states to whom subparagraph 1(a) of this Paragraph III applies—

(i) that all provisions of their contracts relating to fair trade are (or in the case of subsequent notices, have been) cancelled;

(ii) that such provisions cannot lawfully, nor will they therefore, be enforced;

(iii) that said free trade state resellers may and are encouraged to sell respondent's goods to any customer at such price as may be individually determined by each such reseller;

(iv) that said free trade state resellers may and are encouraged to sell respondent's goods to any customer, whether for subsequent resale or otherwise, without restriction or precondition, and irrespective of whether the customer is located within, or may resell the goods within, any fair trade state;

(v) that the exercise by said free trade state resellers of any of their rights previously subject to the fair trade provisions of respondent's fair trade contracts shall in no way prejudice said resellers' ability to obtain or to continue to obtain respondent's merchandise; and

(vi) that any free trade state reseller who believes that respondent is violating any provision of this order, either directly or indirectly (through its wholesalers or otherwise), should set forth the facts and circumstances believed relevant and submit them to

Assistant Director,
Division of Compliance,
Bureau of Competition,
Federal Trade Commission,
Washington, D.C. 20580

(b) all retailers in signer-only states to whom subparagraph 1(a) of this Paragraph III applies, and whose retailer contracts were submitted by any free trade state wholesaler at a time when the submitting wholesaler's contract with respondent contained any provision which required said wholesaler to deal only with resellers who

had agreed with respondent to maintain respondent's fair trade prices—

(i) that all provisions of their retailer contracts relating to fair trade are (or in the case of subsequent notices, have been) cancelled;

(ii) that with respect to all resales of respondent's goods made since the date on which this order became final, said retailers have been deemed non-signers of respondent's retailer contracts, and that unless and until any of said retailers re-execute retailer contracts they shall continue to be so deemed;

(iii) that said retailers are under no legal duty to re-enter into such agreements, and that their failure to do so will in no way prejudice said retailers' ability to obtain or to continue to obtain respondent's merchandise;

(iv) that unless and until said retailers enter into new retailer contracts, said retailers may, and are encouraged to, sell respondent's merchandise to any customer and at such prices as may be individually determined by each such non-signer retailer;

(v) that no resellers in any free trade state may be required to refuse to deal with any other reseller due to the other reseller's failure or unwillingness to sign any fair trade contract; and that no free trade state wholesaler or retailer is now directly or indirectly required to refuse to deal with any customer in any state; and

(vi) that any non-signer retailer in any signer-only state who places an order for respondent's goods with any free trade state reseller which is not filled due to the retailer's failure or unwillingness to become a signer of a retailer contract, or due to the retailer's having advertised, offered for sale, or sold such goods at less than the stipulated or minimum fair trade price, should immediately notify respondent in writing of the name and address of the free trade state reseller so refusing to deal;

(vii) Each of the notices required to be mailed or delivered by this subparagraph 2 shall be accompanied by a list of the names and addresses (arranged by state) of all free trade state wholesalers of re-

spondent's goods. Said list shall contain a clear and conspicuous statement that all wholesalers listed therein are free to sell to any retailer in any state without qualification, limitation or precondition;

(viii) Upon the voluntary re-execution of a retailer contract pursuant to Paragraph IV. 3. of this order by any retailer to whom this subparagraph 2(b) applies, the further mailing or delivery of notices to said retailer pursuant to this subparagraph shall not be required; and upon such re-execution, said retailer shall be given the notice required by Paragraph IV. 2. of this order.

3. Within sixty (60) days from the date on which, by virtue of any legislative or judicial action, any fair trade state (which is a fair trade state on the date this order becomes final) becomes a free trade state, and every three (3) months for a period of two (2) years thereafter, mail or deliver, and obtain a signed receipt for, the notices required by subparagraph 2(a) of this Paragraph III.

4. Within sixty (60) days from the date on which this order becomes final and every month for a period of six (6) months thereafter, mail or deliver, and obtain a signed receipt for, the wholesaler list described in subparagraph 2(b)(vii) of this Paragraph III, and a notice, in a form submitted to and approved by the Commission prior to mailing or delivery, which clearly informs all retailers to whom either subparagraph 1(b) or 1(c) of this Paragraph III applies that they are free to and are encouraged to submit their orders for respondent's merchandise to any wholesaler of their choosing whose name appears on the accompanying list; that they need not sign any retailer contract in order to obtain such merchandise from any of said wholesalers; that none of respondent's wholesalers appearing on said list lawfully may be required to refuse to deal with any of said retailers because of their failure or unwillingness to sign a retailer contract or because of any past or future advertising, offering for sale, or sale of respondent's merchandise at less than the stipulated or minimum fair trade price; and that respondent should be notified immediately in writing of any listed wholesaler so refusing to deal.

5. Within sixty (60) days from the date on which this order

becomes final, mail or deliver, and obtain a signed receipt for, a written offer of reinstatement to—

(a) any free trade state wholesaler who was terminated by respondent since January 1, 1966 for failure to comply with the refusal-to-deal provision of his wholesaler contract, and

(b) any free trade state wholesaler who was terminated by respondent since January 1, 1966 for failure to comply with the resale price maintenance provision of his wholesaler contract;

and reinstate forthwith, any such wholesaler who within thirty (30) days thereafter requests reinstatement. Said offer of reinstatement shall be accompanied by a copy of this order and any notice which would have been required to be sent to such wholesaler under subparagraph 2(a) of this Paragraph III had no termination occurred.

6. Immediately upon receipt, take such action as is necessary to ensure correction of all complaints received pursuant to any provision of this Paragraph III, and retain such complaints and records of all corrective action taken thereon for a period of five years from the date on which each complaint is received. Reports of said complaints and of corrective action shall be included in reports to the Commission required by Paragraph VI. 1. of this order.

IV

It is further ordered, That respondent shall:

1. Fully acquaint all appropriate present and future personnel with the provisions and requirements of this order.

2. Mail or deliver to all future resellers, and obtain a signed receipt for, a copy of this order, together with an appropriate notice in a form submitted to and approved by the Commission prior to its use explaining the limitations hereby imposed on respondent's resale price maintenance programs and contracts.

3. Revise the fair trade provisions of its wholesaler and retailer contracts to conform with the requirements and intent of this order and submit said revised contracts to and obtain the approval of the Commission prior to their use; and neither execute nor obtain the execution of any new fair trade contract or provision thereof which is required to be cancelled

by this order on any contract or form which has not been submitted to and approved by the Commission pursuant to this subparagraph 3. In no event, however, shall any new fair trade agreement be obtained by or on behalf of respondent from any signer-only state retailer to whom subparagraph 2(b) of Paragraph III applies, before thirty (30) days following the second mailing or delivery of notices required by said subparagraph.

V

It is further ordered, That except as may be required by Paragraph III.2(b) and 3, this order shall not be construed to apply to any provision of any fair trade contract which respondent now has or may enter into with resellers located in states which were or are at the time of the making of such contract fair trade states, which requires said resellers to refuse to deal with non-signer retailers in any fair trade state, or which requires said resellers to enter into or obtain resale price maintenance agreements with their vendee retailers in fair trade states as a precondition to resales to said retailers: *Provided, however,* That nothing in this order shall be construed to permit respondent to engage in any conduct prohibited by, or otherwise relieve respondent of any of its obligations under, any of the Antitrust Acts, the Federal Trade Commission Act, or any state law, now or hereafter in effect as such Acts and state laws have been or may be enacted, amended, repealed or construed.

VI

It is further ordered, That respondent shall:

1. Within sixty (60) days from the date on which this order becomes final, and annually each year for a period of five (5) years thereafter, submit to the Commission a written report setting forth in full detail the manner in which respondent is complying with each requirement of this order, accompanied by such documents, forms, contracts, receipts, or other material as is necessary to constitute proof that respondent is in full and faithful compliance herewith.
2. Notify the Commission at least ninety (90) days in advance of any proposed change in its method of sale or distribution of fair traded commodities or in its contracts or agreements relating thereto.

Order

3. Notify the Commission at least thirty (30) days prior to any proposed change in the corporation 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.

4. Retain all receipts required to be obtained by this order for a period of five (5) years from the date of each said receipt.

IN THE MATTER OF

MCDONALD'S CORPORATION, ET AL.—DOCKET C-1897
D'ARCY ADVERTISING COMPANY, ET AL.—DOCKET
C-1898

ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Complaints, April 12, 1971—Dismissal order, June 5, 1973.

Order reopening proceedings, vacating and setting aside orders to cease and desist, 78 F.T.C. 606 and 616 (36 F.R. 11,289 and 11,284) and dismissing proceedings against a major chain of hamburger restaurants and its advertising agency which charged them with unfair methods of competition and unfair and deceptive acts and practices in their use of a "sweepstakes" sales promotion device.

SEPARATE CONCURRING STATEMENT OF COMMISSIONERS PAUL RAND
DIXON AND MARY GARDINER JONES

Although we dissented from the Commission's dismissal of the complaint in *D. L. Blair Corp.*, we agree that because there is an identity of interest in the two matters before us and *D. L. Blair Corp.*, fairness requires that the order be set aside as to respondents herein. We therefore, concur that the proceedings herein be vacated and set aside, and that the proceedings be dismissed.

ORDER REOPENING PROCEEDINGS, SETTING ASIDE CEASE AND DESIST
ORDERS AND RULING ON PETITION TO STAY

McDonald's Corporation and McDonald's System, Inc., by a petition filed on March 26, 1973, and D'Arcy-MacManus & Masius, Inc., successor to D'Arcy Advertising Company by a petition filed on March 29, 1973, request, pursuant to Rule 3.72(b)(2) of the