

of respondent's notification, a written agreement to be bound by the terms of this order; *Provided*, That if respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, respondent shall submit to the Commission a written statement setting forth said reasons at least sixty (60) days prior to the consumation of said succession or transfer.

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

The matter was argued before Commissioner Thompson was sworn in. Therefore, he elected not to participate.

IN THE MATTER OF
CORNING GLASS WORKS

Docket 8874. Interlocutory Order, July 24, 1973.

Order denying respondent's motion for reconsideration of final order, or in the alternative, for reopening of proceeding.

Appearances

For the Commission: *R. A. Bloch, S. B. Gold.*

For the respondent: *Sherman & Sterling*, New York, New York, *William C. Ughetta*, secretary and general counsel, Corning Glass Works, Corning, New York.

ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION
OF THE FINAL ORDER OR IN THE ALTERNATIVE FOR
REOPENING OF PROCEEDING

On June 5, 1973 [82 F.T.C. 1675], the Commission issued its decision sustaining Counts I, II, and IV of the complaint and dismissing Counts III and V. Accompanying the Commission's Opinion was an order to cease and desist which was virtually identical to the proposed order which accompanied service of the complaint (the "notice order"), except for deletion of language which pertained to the two counts that were dismissed.

Respondent has now filed a motion pursuant to Section 3.55 of

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the Commission's rules for reconsideration of the terms of the Commission's Order.¹ Alternatively, it requests that the Commission reopen the proceeding pursuant to Section 3.72(a) for purposes of altering the terms of the order.²

Complaint counsel has filed an answer opposing respondent's motion on both procedural and substantive grounds. It argues, first of all, that except for certain editorial changes made by the Commission from the original notice order, respondent had full opportunity throughout the proceeding to raise objections to the terms of the order as they pertained to the counts that were sustained, but never raised any objection. Having failed to voice any objection, complaint counsel argues that respondent has failed to meet the requirement of Section 3.55 which limits reconsideration to "questions * * * upon which the petitioner had no opportunity to argue before the Commission."

Complaint counsel also strenuously avows that in a stipulation entered into by the parties, respondent agreed to the appropriateness of the terms of the notice order as they applied to respective counts of the complaint, should liability on any of those counts be established.³ Complaint counsel states that this was his understanding of the stipulation and that he repeatedly referred throughout the record to the stipulation as having this meaning

¹ Section 3.55 provides in pertinent part:

"Within twenty (20) days after completion of service of a Commission decision, any party may file with the Commission a petition for reconsideration of such decision, setting forth the relief desired and the ground in support thereof. Any petition filed under this subsection must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Commission."

² Section 3.72(a) provides:

"At any time prior to the expiration of the time allowed for filing a petition for review or prior to the filing of the transcript of the record of a proceeding in a United States court of appeals pursuant to a petition for review, the Commission may upon its own initiative and without prior notice to the parties reopen the proceeding and enter a new decision modifying or setting aside the whole or any part of the findings as to the facts, conclusions, rule, order, or opinion issued by the Commission in such proceeding."

³ The stipulation entered into by the parties during the pre-hearing stage of the proceeding reads:

"1. Relief relating to the allegations of Counts I, II, and IV of the complaint shall be entered against Respondent Corning Glass Works only in the extent that the allegations of Count II of the complaint are sustained.

"2. Relief relating to the allegations of Count III of the complaint shall be entered against Respondent Corning Glass Works only in the event that the allegations of Count III of the complaint are sustained.

"3. Relief relating to the allegations of Count V of the complaint shall be entered against Respondent Corning Glass Works only in the event that the allegations of Count V of the complaint are sustained. * * *"

and respondent never indicated disagreement.⁴

Although we think there is considerable merit to complaint counsel's argument that respondent should be deemed to have stipulated as to the appropriateness of the terms of the notice order and, in any case, should have raised objections to the provisions in the notice order before now, we believe that no useful purpose would be served by refusing to consider respondent's arguments.⁵

Nevertheless, having considered the objections set forth by respondent, the Commission finds no reason to disturb its June 5 order or remand for additional proceeding before an administrative law judge.⁶ We will deal with its arguments *seriatim* as they are presented in respondent's motion.

(i) Respondent contends that Paragraph I(3)(b) is overbroad because it allegedly will prevent fair trade state wholesalers from soliciting contracts from fair trade state retailers. This is not a correct reading of the order. The proviso that immediately follows excepts (b)'s prohibitions with respect to "lawfully obtained" fair trade contracts. This permits respondent to continue to require fair trade state wholesalers to obtain fair trade contracts from fair trade state retailers, subject only to the prohibition, for a limited period of time, of resolicitation of contracts from

⁴ It might be noted that the Commission also was under this impression. See Opinion, p. 5. Our view was based in part on the characterization of the stipulation in the Initial Decision at p. 2 that:

"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.*" (Emphasis added)

The quoted passage originally appeared in respondents' proposed initial decision.

⁵ Technically, the Final Order issued by the Commission on June 5, 1973, was not *verbatim* the notice order served with the complaint. In addition to deletion of some paragraphs which dealt only with the two counts that were dismissed, other paragraphs necessarily had to be redrafted to some extent and some editorial changes were made. Therefore, it can be argued that the manner, at least, in which the order was redrafted to accommodate dismissal of the two counts presented a "new question" under Rule 3.55. Furthermore, the Commission always has discretion to re-examine the propriety or correctness of its orders, including stipulated orders, prior to the time the record is before a court for review. (See Rule 3.71.)

⁶ The Commission takes due note of the fact that respondent prefaces its arguments with the statement that they are not intended to be "all-inclusive." However, respondent cannot expect this Commission to entertain its objections and arguments for reopening on a piecemeal basis. All grounds must be raised in the moving papers. Since, on the basis of the present motion, we find insufficient reason to revise the order or remand for further proceedings, our decision here will be final as to all matters which respondent could have raised at this time.

certain signer-only state retailers as provided in Paragraph IV (3).

(ii) Respondent complains that the exempting proviso contained in Paragraph I(3) of the Final Order is limited to subparagraph (b), rather than to both subparagraph (a) and (b) as contained in the notice order. The order as it now reads is correct. This was a change made by the Commission simply because the proviso—which permits actions taken in states having fair trade laws—could have no application, in any event, to subparagraph (a) which pertains to certain actions (circulation of blacklists) in states which have no fair trade laws.

(iii) Respondent suggests that clarifying language added by the Commission to Paragraph I(4) to permit actions expressly sanctioned by Sections 5(a)(3) of the McGuire Act, as well as Section 5(a)(2) of that Act, needs further revision. However, we think the language as it now reads adequately indicates that this is the meaning.

(iv) Respondent questions the reference to Paragraph III(2)(b) contained in Paragraph V, which reference was added in the Final Order by the Commission. Respondent overlooks that this change was necessary in view of our change in line 6 to refer to “fair trade states” rather than just “non-signer” fair trade states as the notice order previously read. The latter change, in turn, was necessitated by our dismissal of Count III.

(v) Respondent raises a question as to the “any reseller located within” language of Paragraph I(1). It suggests the language needs qualification to make it clear that fair trade contracts can apply to resales from wholesale locations in fair trade states to retailers for resale in fair trade states, regardless of the fact that the wholesaler or retailer may have a main office or other outlets in free trade states. Respondent does not suggest what clarifying language it wants, but we think the Commission’s decision of June 5 makes it clear that the locus of a “resale,” as that term is used in the McGuire Act, is the location of individual wholesale outlets from which the goods are to be shipped. (See Slip Opinion at 16 n.15.) This same rule applies to resales by retailers, *i.e.*, the locus of “resales” are the stores from which the goods can be purchased by the customer—or in the case of mail-order firms, from where the goods are shipped. Thus, for purposes of our order, “reseller” will refer not to an entire corporate entity in the case of a chain reseller, but to its individual sales outlets from which the goods will be shipped. Respondent may enter into a fair trade contract with a buyer’s headquarters as long as the

contract clearly will apply only to resales of goods that take place (*i.e.*, shipped) from facilities located in fair trade states.

(vi) Respondent requests that exemption of actions taken pursuant to Section 5(a) (3) of the McGuire Act be added to Paragraph II. Such a change would be superfluous since nothing in that paragraph would prevent actions taken pursuant to Section 5(a) (3).

(vii) Respondent objects to the requirement in Paragraph III 1(a) that it send copies of the order to every reseller who was under a Corning fair trade contract on or after March 1, 1971. Respondent asserts that it should not be required to send copies to wholesalers and retailers in fair trade states—and particularly retailers in the non-signer states.

The Commission believes that this requirement should not be changed. Notice of the order to *wholesalers* in fair trade states is necessary because some of these wholesalers may be multistate and have outlets in free trade states. A blanket requirement of notice to all wholesalers will not be greatly burdensome since it appears that respondent's wholesalers (free trade *and* fair trade) number only about 400 (Attachment F to Complaint).

The reason for retaining the requirement of sending copies of the order to fair trade state *retailers* is that Count I of the Complaint charged that whenever a free trade state wholesaler resold Corning Ware to a fair trade state retailer, the Corning wholesale contract fixed the resale price. While not litigated, respondent agreed to accept the relief related to that count (n.3, *supra*). As complaint counsel point out, even though respondent may lawfully regulate the price at which non-signer state retailers sell, the existence of free trade state wholesalers makes it impossible to fix always their *purchase* prices. It is quite proper, therefore, to require respondents to inform non-signer state retailers, as well as signer-only state retailers, that they are free to buy from free trade state wholesalers at a price that cannot be regulated by Corning.

(viii) Contrary to respondent's assertion, Paragraph IV(3) does not require it to amend fair trade contracts which are presently in conformity to other provisions of the order.

(ix) Paragraph VI(2) requires respondent to notify the Commission in advance of any proposed changes in its method of distribution of fair traded commodities or in its contracts or agreements relating thereto. This provision relates only to matters that affect fair trade activities of respondent and is obviously a

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necessary means of assuring compliance with the order and the McGuire Act.

(x) Paragraph III(2)(b)(iv) of the order requires that respondent notify certain retailers in signer-only states (whose contracts will be cancelled by virtue of the fact they were obtained by Corning in an unlawful manner) that until they enter into new fair trade contracts they "may, and are encouraged to" sell at prices they individually determine. The quoted language is necessary to remove any doubt from such retailers' minds as to their legal rights and is a reasonable provision in our view.

(xii)-(xvi) Finally, respondent argues that the order is vague, burdensome, or impossible of fulfillment. We have examined its contentions, but disagree that any change should be made. Most of the problems raised by respondent can best be handled as a compliance matter, rather than by revising language of the order. Thus, compliance problems that may have been caused by a loss of some records due to a recent flood should be presented to the Commission after the order becomes effective. Obviously, the Commission will not insist on respondent performing acts that have been rendered impossible through no fault of its own.

Accordingly, the Commission having found no reason to modify its Final Order in this matter or to reopen for further proceeding,

It is ordered, That respondent's motion, filed July 5, 1973 for reconsideration, or in the alternative for reopening of the proceeding, be, and it hereby is, denied.

Commissioner Thompson not participating.

IN THE MATTER OF

HALL'S FURNITURE COMPANY, INC., ET AL.

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

Docket C-2426. Complaint, July 25, 1973—Decision, July 25, 1973.

Consent order requiring a Los Angeles, California seller and distributor of furniture, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *K. H. Cirlin.*

For the respondents: *Morris Kastle*, Los Angeles, California.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Hall's Furniture Company, Inc., a corporation, and Harry Heller, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hall's Furniture Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 5760 Crenshaw Boulevard, Los Angeles, California.

Respondent Harry Heller is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporation, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of furniture and other merchandise to the public.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of business as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused and are causing customers to execute a binding "Retail Installment Contract and Security Agreements," "Security Agreements and Federal Disclosure," and "Supplemental Security

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Agreements and Memorandum of Add-on Sale and Federal Disclosure," hereinafter referred to as Security Agreements." Respondents do not provide these customers with any other credit cost disclosures.

By and through the use of the security agreements, respondents:

1. Fail in some instances to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

2. Fail in some instances to disclose the number of payments scheduled to repay the indebtedness, as required by Section 226.8(b)(3) of Regulation Z.

3. Fail in some instances to include in the finance charge charges or premiums for credit life, accident, health, or loss of income insurance, written in connection with credit transactions when the customer has not given a specific dated and separately signed affirmative written indication of his desire for such coverage as prescribed by Section 226.4(a)(5)(ii) of Regulation Z.

4. Fail in some instances to furnish the customer with a duplicate copy of the instrument containing the disclosures required by Section 226.8 or a statement by which the required disclosures are made at the time those disclosures are made, as prescribed by Section 226.8(a) of Regulation Z.

PAR. 5. By and through the acts and practices set forth above, respondents fail to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Act, such failure to comply constitutes a violation of the Truth in Lending Act and, pursuant to Section 108 thereof, respondents have violated the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admis-

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34 (b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hall's Furniture Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 5760 Crenshaw Boulevard, Los Angeles, California.

Respondent Harry Heller is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

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

ORDER

It is ordered, That respondents Hall's Furniture Company, Inc., a corporation, its successors and assigns, and its officers, and Harry Heller, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit, as "consumer credit" is defined in Regulation Z (12 C.F.R. §226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b) (2) of Regulation Z.

2. Failing to disclose the number of payments scheduled

to repay the indebtedness, as required by Section 226.8(b) (3) of Regulation Z.

3. Failing to include in the finance charge any charges or premiums for credit life, accident health or loss of income insurance when the customer has not given a specific dated and separately signed affirmative written indication of such desire after receiving written disclosure to him of the cost of such insurance as prescribed by Section 226.4(a) (5) (ii) of Regulation Z.

4. Failing to furnish the customer with a duplicate of the instrument containing the disclosures required by Section 226.8 or a statement by which the required disclosures are made at the time those disclosures are made, as prescribed by Section 226.8(a) of Regulation Z.

5. Failing in any consumer credit transaction to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z at the time and in the manner, form, and amount required by Sections 226.6, 226.7, and 226.8 of Regulation Z.

It is further ordered, That respondents prominently display no less than two signs on each of its premises which will clearly and conspicuously state that a customer must receive a complete copy of the consumer credit cost disclosures as required by the Truth in Lending Act, in any transaction which is financed, before the transaction is consummated.

It is further ordered, That respondents deliver a copy of this order to cease and desist to each operating division and to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit, and that respondents secure a signed statement acknowledging receipt of said order for each person.

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

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

IN THE MATTER OF
WARNER-LAMBERT COMPANY

Docket 8850. Interlocutory Order, July 26, 1973.

Order directing complaint counsel to file supplemental brief in connection with interlocutory appeal regarding disclosure of certain government records; and granting respondent permission to file answering brief.

Appearances

For the Commission: *P. R. Teetor, R. Jacobs, D. A. Lofty, and T. P. Athridge.*

For the respondent: *Mudge, Rose, Guthrie & Alexander, New York, New York, Bergson, Borkland, Margolis & Adler, Washington, D. C.*

ORDER DIRECTING FURTHER BRIEFING

This matter is before the Commission upon petition of complaint counsel filed June 22, 1973, that the Commission entertain an interlocutory appeal from a ruling of the administrative law judge regarding disclosure of certain Government records. Respondent has filed an answer opposing the petition.

In order to aid further the Commission's consideration in this matter,

It is ordered, That a further supplemental brief be filed by complaint counsel directed to the following questions:

1. To what extent, if any, has complaint counsel actually used, or planned to use, the "Alphabetical List of IND Generics" print-out in preparing evidence or testimony in its case-in-chief? This information should be put in affidavit form.

2. On the question whether a firm or group of firms should be considered potential entrants into an alleged submarket because of research activity or interest, why should not the Commission, in the interest of keeping the scope of the record within reasonable bounds and confined to evidence clearly probative, grant the appeal and limit both parties' evidence and discovery to research activity that has at least reached the stage of the filing of a New Drug Application with the Food and Drug Administration?

Complaint counsel's brief shall be filed within ten (10) days of this order. Respondent may file an answering brief within ten (10) days of receipt of complaint counsel's brief.

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IN THE MATTER OF
FOREMOST-McKESSON, INC.

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

Docket C-2427. Complaint, July 26, 1973—Decision, July 26, 1973.

Consent order requiring a San Francisco, California, wholesale distributor of druggists' sundries, among other things to cease inducing or receiving discriminating payments, and offering anticompetitive inducements.

Appearances

For the Commission: *R. J. Dolan, J. E. Passarelli.*

For the respondent: *Ian R. Gilbert, Foremost-McKesson, Inc., San Francisco, California.*

COMPLAINT

The Federal Trade Commission, pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, having reason to believe that Foremost-McKesson, Inc., a corporation, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in respect thereto as follows:

COUNT 1

Foremost-McKesson, Inc.

PARAGRAPH 1. Respondent Foremost-McKesson, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office located at Crocker Plaza, One Post Street, San Francisco, California.

PAR. 2. Respondent is now, and has been for many years, engaged in the wholesale distribution of, among other products, druggists' sundries with total sales of such products of \$70 million for the fiscal year ended March 31, 1971.

Trade and Commerce

PAR. 3. Respondent, in the course and conduct of its business, has been and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent purchases a great variety of products from a large number of suppliers located throughout the United States and causes such products to be transported from various States in the United States to the warehouses of its eighty-nine (89) sales divisions in other states for resale to retail drugstores located throughout the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent is now and has been in competition with other corporations, persons, firms and partnerships in the purchase, sale and distribution at wholesale of druggists' sundries.

Respondent's Trade Shows

PAR. 5. Respondent solicits suppliers of druggists' sundries to display their merchandise at respondent's trade shows which are held annually throughout the United States. Suppliers who wish to participate are required to rent booths from respondent for the purposes of displaying such merchandise. A substantial number of respondent's suppliers participate in one or more of these trade shows and many rent more than one booth at each show. In 1971, suppliers who participated in respondent's trade shows paid respondent in excess of \$400,000 to rent booths.

PAR. 6. During respondent's trade shows, agents, employees or representatives of the participating sundries suppliers also perform valuable services, specifically, staffing the booths rented by suppliers from respondent and demonstrating and promoting the suppliers' products. In addition, some suppliers give door prizes.

PAR. 7. Respondent's trade shows are attended by many of its retail drugstore customers who purchase the displayed merchandise from or through respondent.

Violation

PAR. 8. Some of respondent's suppliers who participated in respondent's trade shows in 1971 did not offer and otherwise make available to all their customers competing with respondent in the sale and distribution of their respective products, payments, allowances, services, or other things of value, for advertising and

promoting such products on proportionally equal terms to those granted respondent in connection with its trade shows.

PAR. 9. Therefore, respondent has induced and received or received from some of its suppliers, payments, as set forth in Paragraph 5 above, and services or facilities, as set forth in Paragraph 6 above, in connection with respondent's sale, or offering for sale, of products sold to respondent by such suppliers which respondent knew or should have known were not made available by such suppliers on proportionally equal terms to all other customers who do not purchase directly from such suppliers, in the sale and distribution of such products.

Such acts and practices constitute unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45).

COUNT II

PAR. 10. The allegations of Paragraphs 1 through 7 are incorporated herein by reference.

Respondent's Inducements to Customers

PAR. 11. In connection with respondent's 1971 regional trade shows held in Acapulco, Las Vegas and Honolulu, by respectively, respondent's Northeast, South and North Pacific regions, a portion of each customer's expenses for many of its customers, and meals, the amount of such payments for travel, accommodations and customer's volume of purchases from respondent during the trade show.

PAR. 12. Respondent's offering to pay or paying the expenses of its customers as set forth in Paragraph 11 above may tend to foreclose respondent's competitors in the wholesale distribution of druggists' sundries from competing for the business of retail druggists who attend respondent's trade shows. Such acts and practices therefore constitute unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C., Section 45).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the cap-

tion hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings.

1. Respondent Foremost-McKesson, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office located at Crocker Plaza, One Post Street, San Francisco, California.

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

ORDER

It is ordered, That respondent, Foremost-McKesson, Inc., a corporation, and its officers, representatives, agents and employees, successors and assigns, directly or indirectly, through any corporate or other device, in or in connection with the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of products for resale by the respondent, or in connection with any other transactions between respondent and its various suppliers involving or pertaining to the regular business of the respondent in purchasing, promoting, advertising, distributing and selling commodities and products in commerce, as "com-