IN THE MATTER OF

RSR CORPORATION

Docket 8959. Order, July 28, 1976

Order to show cause and order granting temporary *in camera* treatment.

Appearances

For the Commission: *K. Keith Thurman, James C. Egan* and *Annthalia Lingos.*

For the respondent: *Robert L. Wald, Wald, Harkrader & Ross,* Washington, D. C. *Merrill L. Hartman, Hewett, Johnson, Swanson & Barbee,* Dallas, Tex.

ORDER TO SHOW CAUSE AND ORDER GRANTING TEMPORARY *In Camera* TREATMENT

On July 22, 1976, respondent filed a document styled "Motion to Strike Pages 19 through 25 of 'Complaint Counsel's Reply Brief'." Respondent requested expedited treatment of its motion, alleging that the pages sought to be expunged contained information contained in *in camera* portions of the record in this proceeding.

The Commission has not as yet determined what disposition it will make of respondent's motion. However, pending a determination as to the alleged *in camera* status of the information contained in complaint counsel's brief it will order that this brief be maintained in the *in camera* portion of the docket of this case. The Commission notes, however, that *in camera* treatment should be granted sparingly. If respondent's allegation of *in camera* status is meant seriously as a separate claim from its motion to strike, respondent should specify within 15 days precisely those portions of pp. 19-25 which it believes should be maintained *in camera*, in the event that the motion to strike is not granted.

In addition, the Commission notes that the *in camera* findings of the administrative law judge filed in this matter contain information pertaining to market shares of RSR and Quemetco in 1971 and 1972 (I.D. 246-248, 256-258) and pertaining to the distances to which various plants of RSR and Quemetco shipped lead in those same years. (I.D. 217-218, 223) There is an obvious and substantial public interest in having decisions of the Commission contain, for public inspection and review, all information relevant to the Commission's determination. In light of this public interest, and in light of the fact that the information contained *in camera* is four to five years old, the Commission will order the parties within 15 days to show cause as to why the information

described below, to the extent that the Commission may determine it to be relevant, should not be made available to the public in the opinion of the Commission rendered in this matter. Therefore,

It is ordered, That the parties shall, within 15 days, file memoranda indicating for what reason, if any, the following categories of information may not be included in the opinion of the Commission in this matter and be made available to the public:

(1) *In camera* findings of the administrative law judge Nos. 246-248, 256-258 (whether or not CX 64 is placed on the public record).

(2) *In camera* findings of the administrative law judge 217-218, and 223, as well as other shipping distance figures derivable from CX 69-77, 79, including average plant shipping distance, percentage of plant production shipped to various States, and percentage of plant production shipped various distances.

It is further ordered, That pages 19-25 of complaint counsel's Reply Brief in this matter shall be maintained in the *in camera* portion of the record, pending Commission resolution of respondent's "Motion to Strike."

IN THE MATTER OF

HORIZON CORPORATION

Docket 9017. Order, July 28, 1976

Denial of respondent's motion to quash subpoenas duces tecum.

Appearances

For the Commission: *Eugene Kaplan, Lemuel W. Dowdy, John M. Tifford* and *Paul L. Chassy.*

For the respondent: *Basil Mezines, Stein, Mitchell & Mezines,* Washington, D. C. *J. Michael Brennan* and *Samuel Pruitt, Jr., Gibson, Dunn & Crutcher,* Los Angeles, Calif.

ORDER DENYING MOTION TO QUASH SUBPOENAS DUCES TECUM

The administrative law judge ("ALJ") has certified to the Commission respondent's motion to quash subpoenas duces tecum issued to Aetna Business Credit, Inc., and FNB Financial Co.,[1] both of which, according to the motion, are respondent's creditors.[2] The subpoenas were issued by the Assistant Director of Marketing Practices, Bureau of Consumer Protection, in connection with an investigation of Unnamed Promoters and Sellers of Interests in Subdivided Land, File No. 742 3193 under Part II of the Rules of Practice.

Respondent asserts that the subpoenas seek information directly related only to matters involved in the instant adjudicatory proceeding, and that, accordingly, application for the subpoenas should have been made to the ALJ under Section 3.34. Respondent further argues that complaint counsel are attempting to circumvent the Commission's ruling in *Electronic Computer Programming Institute, Inc.*, 3 CCH Trade Reg. Rep. ¶21,039 (November 11, 1975) [86 F.T.C. 109], that the law judges should not permit the discovery or introduction of evidence relevant only to Section 19 of the F.T.C. Act[3] and the ALJ'S statements to complaint counsel during a May 3, 1976, prehearing conference that any additional subpoenas against respondent would have to be "very specific and very limited and you are going to have to demonstrate relevancy beyond any doubt. My advice is to wait until you get full

[1] An investigational subpoena has also issued to Ford Motor Credit Company. See Opposition and Answer by Complaint Counsel to Respondent's Motion to Quash Subpoenas Duces Tecum Issued to Respondent's Creditors and to Enjoin Complaint Counsel from Obtaining Documents Pursuant to these Subpoenas and Other Relief at 2. According to complaint counsel none of the subpoenaed companies has moved to quash or modify its subpoena. *Id.* at 9.

[2] The ALJ denied respondent's motion to enjoin complaint counsel from seeking or accepting documents or testimony from Aetna, FNB, or others through any Commission process other than that authorized by the Part III rules.

[3] Section 19 authorizes the Commission to bring consumer redress actions in State and Federal courts.

compliance [with the subpoenas already issued] and give me one more subpoena."

Complaint counsel respond that the purpose of the aforesaid subpoenas is to determine whether any of respondent's lenders have themselves violated Section 5 and not to obtain "backdoor discovery" against Horizon. Complaint counsel note that respondent has tentatively offered to supply complaint counsel with information bearing on Section 19 relief.

The Commission "* * * may conduct such investigations as it deems necessary even though such investigations may cover ground which is already the subject of an adjudicative proceeding." *FTC* v. *Waltham Watch Co.*, 169 F. Supp. 614, 620 (S.D.N.Y. 1959). Of course, investigational subpoenas should not be used to circumvent safeguards designed to ensure fair and expeditious trials. We have already held that it is not in the public interest to delay Part III proceedings by the discovery and reception of evidence relevant only to Section 19 issues. *Electronic Computer Programming Institute, supra.* However, the ALJ has the means of preventing the introduction of irrelevant evidence, or evidence obtained in violation of any orders he issues relating to the timing and scope of discovery.[4]

No showing having been made that the investigational subpoenas will deprive respondent of a prompt and fair trial[5] the Commission has determined to deny the aforesaid motion to quash.

It is so ordered.

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[4] We do not mean to suggest that relevant evidence which happens to be obtained pursuant to the investigational subpoenas will necessarily be inadmissible. See Rules of Practice, Section 3.43(c).

[5] We disagree with complaint counsel that respondent lacks standing to move to quash the instant subpoenas. While a party may not ask for an order to protect the rights of another party or a witness if that party or witness does not claim protection for himself, see Commercial Laundry v. Linen Supply Assn., 90 F. Supp. 470 (S.D.N.Y. 1950); 8 C. Wright & A. Miller, *Federal Practice and Procedure* §2035 at 261 (1970), he may seek an order if he believes his own interest is jeopardized. *Id.* Respondent, as the subject of an adjudicative proceeding, was entitled to raise its claim that the investigational subpoenas would jeopardize its procedural rights.

IN THE MATTER OF

CROWN CENTRAL PETROLEUM CORPORATION

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

Docket 8851. Complaint, July 14, 1971 — Modifying order, Aug. 3, 1976

Order modifying an earlier order dated Nov. 26, 1974, 40 F.R. 12775, 84 F.T.C. 1493, by entering the modifying words "performance" before the words "quality" and "characteristic" in order provision 7(d) of the order.

Appearances

For the Commission: *Fauster J. Vittone* and *Jean F. Greene.*

For the respondent: *James H. Kelley* and *Leonard A. Tokus, Bergson, Borkland, Margolis & Adler*, Washington, D.C. and *Morton H. Sacks, Cable, McDaniel, Bowie & Bond*, Baltimore, Md.

ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondent having filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and that Court having issued, on March 4, 1976, its order affirming the Commission's order to cease and desist entered November 26, 1974 [84 F.T.C. 1493], with the insertion of modifying words in one provision thereof:

It is ordered, That the Commission's order issued in this matter on November 26, 1974, be modified in accordance with the decision and judgment of the Court so as to read in full as follows:

> *It is ordered*, That respondent Crown Central Petroleum Corporation, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, sale or distribution of Crown gasolines, or the additive CA-101, or any other product in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:
>
> 1. Representing directly or by implication that any such product:
>
> (a) Will produce or result in motor vehicle exhaust which is pollution free or generally pollution free; or
>
> (b) Will eliminate or reduce air pollution caused by motor vehicles; or

(c) Will eliminate or reduce emissions from all or any number or group of motor vehicles in which it is used;

or that:

(d) Any gasoline or gasoline additive product has any other performance quality, performance ability or performance characteristic; or

(e) Tests, demonstrations, research or experiments have been conducted which prove or substantiate any of said representations;

unless and only to the extent that each and every such representation is true and has been fully and completely substantiated by competent scientific tests. The results of said tests, the original data collected in the course thereof and a detailed description of how said tests were performed shall be kept available in written form for at least three years following the final use of the representation.

2. Representing directly or by implication that any such product has any effectiveness in reducing air pollution or any air pollutant or air pollutants without at the same time, in the same advertisement or other form of communication, conspicuously disclosing that not all of the harmful pollutants in automotive exhaust are affected by said product.

3. Representing directly or by implication that any product will reduce any emissions of pollutants from automobile exhaust by any percentage or numerical quantity unless in connection therewith there is a clear, accurate and conspicuous disclosure of the type of vehicle which can expect to achieve reductions of such magnitude and the approximate percentage of such vehicles in the general car population.

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

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

It is further ordered, That respondent shall, within sixty (60) days after service of the order upon it, file with the Commission a written report, signed by the respondent, setting forth in detail the manner and form of its compliance with the order to cease and desist.

IN THE MATTER OF

WEAVER AIRLINE PERSONNEL SCHOOL, INC., ET AL.

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

Docket C-2638. Complaint, Feb. 13, 1975 — Modifying order, Aug. 3, 1976

Order modifying an earlier order dated Feb. 13, 1975, 40 F.R. 15872, 85 F.T.C. 237, adds to Paragraph 12(2)(c) of the order the provision that if money required to be deposited in the Escrow Funds cannot be distributed, respondent must make direct pro rata payments to eligible students within 60 days.

Appearances

For the Commission: *Walter E. Diercks* and *Lawrence M. Hodapp.*

For the respondents: *Charles Edward Fairfax, III, Cahill, Gordon & Reindel,* New York City.

ORDER MODIFYING ORDER TO CEASE AND DESIST AND ORDER DISCONTINUING STAY

On May 18, 1976 [87 F.T.C.1288], the Commission issued an order to show cause why the Commission's order to cease and desist, issued February 13, 1975 [85 F.T.C. 237], in this proceeding, should not be altered and modified by language specified in the order. The modification was proposed to make clear that respondent General Educational Services Corporation's obligation to pay restitution would not be affected by the removal of monies from the escrow account which will be funded by certain students of respondent Weaver Airline Personnel School, Inc. Respondents, in their answer to the order to show cause, indicate that they and Commission's staff have negotiated a modification that differs from the modification proposed in the order to show cause by providing that respondent General Educational Services Corporation "shall make direct pro rata payments to" eligible Weaver students "if any of the sums required to be deposited into the Escrow Funds have been removed or cannot be distributed." The modification proposed in the order to show cause was not so specific, providing that General Educational Services Corporation "shall assure * * * that the total sums required be deposited into the Escrow Fund for restitution are paid." We agree that the modification recommended by respondents is preferable, and we will order that the Commission's order to cease and desist be modified by the language recommended in respondents' answer to the order to show cause.

Accordingly, *it is ordered,* That the following language be added to Paragraph 12(2)(c) of the order:

Provided, however, That if, other than with the express written consent of the Federal Trade Commission, any of the sums required to be deposited in the Escrow Funds have been removed or cannot be distributed, then within sixty (60) days after the final date established for submission of student requests for restitution under this Paragraph, respondent General Educational Services Corporation shall make direct pro rata payments to the eligible Weaver students described in this Paragraph in the same amounts that each such eligible student would have received had such payments been made from the Escrow Funds, but the total amount so paid shall not exceed the total amount required to be deposited in the Escrow Funds.

* * * * * * *

The Commission further ordered on May 18, 1976, the reopening of this proceeding so as to stay and suspend enforcement of compliance with the notification provision of Paragraph 12 of the order of February 13, 1975. Because the obligation of General Educational Services Corporation has now been clarified, the stay and suspension of compliance is no longer necessary and compliance will be required.

Accordingly, *it is ordered*, that the stay and suspension of compliance with Paragraph 12 of the order of February 13, 1975 be, and it hereby is, discontinued.

IN THE MATTER OF

MAICO HEARING INSTRUMENTS, INC.

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

Docket 8927. Amended Complaint, April 30, 1976 — Decision, Aug. 4, 1976

Consent order requiring a Minneapolis, Minn., manufacturer of hearing aids, among other things to cease imposing on its dealers customer and territorial restrictions and exclusive dealing requirements. The order also requires the firm, under certain circumstances, to make its products available to all qualified dealers, and to maintain, for a ten-year period, a file record of any refusal to sell.

Appearances

For the Commission: *Alan I. Leibowitz, L. Barry Costilo, James C. Donoghue* and *Dennis R. Carluzzo.*

For the respondent: *Thomas C. Kayser, Robins, Davis & Lyons,* Minneapolis, Minn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. §41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Maico Hearing Instruments, Inc. (hereinafter sometimes "Maico") is a corporation organized under the laws of the State of Minnesota, with its principal office and place of business at 7375 Bush Lake Road, Minneapolis, Minnesota.

PAR. 2. Maico is engaged in the business of manufacturing, distributing, selling and repairing of Maico brand hearing aids. It distributes and sells to selected retail dealers located throughout the United States, who then resell to the general public.

PAR. 3. In the course and conduct of its business respondent ships or causes to be shipped hearing aids from Maico facilities in the State of Minnesota to selected retail dealers throughout the United States. There is now and has been for several years a constant and substantial flow of respondent's hearing aids in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent that competition has been restrained by reason of the practices hereinafter alleged, respondent's selected retail dealers in the course and conduct of their business of offering for sale and selling Maico hearing aids are in substantial competition in commerce with one another and with dealers engaged in the offering for sale and selling of other brands of hearing aids; and respondent is in substantial competition in commerce with others engaged in the manufacturing, distributing, selling and repairing of hearing aids.

PAR. 5. Trade and commerce in the United States in hearing aids is substantial. In 1970, the total value of shipments amounted to approximately $50 million at the manufacturers' prices, and is estimated to have exceeded $175 million at retail prices. In 1970, about fifty domestic manufacturers, domestic subsidiaries of foreign manufacturers and domestic distributors of foreign manufacturers sold approximately 510,000 hearing aids through 5,000 retail dealers who employed over 10,000 salesmen.

PAR. 6. In 1970, the top four companies in the hearing aid industry, including Maico, accounted for approximately 50 percent of the dollar value of shipments; the top eight companies accounted for approximately 70 percent of such shipments; and the top twenty companies accounted for over 90 percent of the industry's shipments.

PAR. 7. In 1970, Maico, which has manufactured hearing aids since 1939, was the fourth largest manufacturer of hearing aids in the United States with sales in excess of $3 million, representing more than 6 percent of the market.

PAR. 8. Hearing aids are sold by the manufacturers directly to the retail dealers, who resell the hearing aids to members of the general public. Wholesalers are rarely used in the distribution process.

Approximately 60 percent of the retail sales of hearing aids occur as a result of an initial, direct contact between the hearing aid dealer and the hearing handicapped, while most of the remaining sales are made after the hearing handicapped are referred to dealers by medical doctors or hearing clinics. It is the practice among medical doctors and hearing clinics, after having determined that an individual may benefit from use of a hearing aid, to recommend a hearing aid to the patient by the brand name and model, rather than by its general performance characteristics. This is done on the basis of actual tests with hearing aids which have been placed with such doctors or clinics by either the manufacturers or dealers. Then, because the doctors and clinics do not sell hearing aids, the patient is referred to the hearing aid dealer in his locale who deals in the brand of hearing aid recommended. While the average price of a hearing aid to a dealer is about $100, the average retail price to the hearing handicapped is about $350. More than 50

percent of the persons with hearing impairment who purchase hearing aids are over 65 years of age.

PAR. 9. In the distribution and sale of their hearing aids, a number of the manufacturers of hearing aids for many years have used and pursued parallel courses of business behavior.

Among such courses of business behavior are the following:

(1) distributing and selling their hearing aids directly to selected retail dealers, refusing to deal with all other dealers;

(2) entering into agreements or understandings with their dealers, which agreements:

(a) establish territories within which the dealers may advertise and sell their products;

(b) require exclusive dealing in the manufacturers' products;

(c) assign sale or purchase quotas to be met by their dealers;

(d) encourage or require the use of the manufacturers' brand name in the dealers' trade style;

(e) restrict the classes of customers with whom their dealers may deal;

(f) require their dealers to submit the names and addresses of their customers to the manufacturers;

(g) permit the manufacturers to terminate such agreements without cause upon thirty days notice; and

(h) in the event of such termination permit the manufacturers to repurchase the terminated dealers' products purchased from such manufacturers;

(3) refusing to issue the express product warranty to consumers unless and until their dealers have reported the names and addresses of their customers to the manufacturers;

(4) encouraging or requiring their dealers to participate in cooperative advertising programs which preclude mention that the dealers offer competing brands of hearing aids for sale;

(5) engaging in extensive national brand advertising of their hearing aids;

(6) suggesting to their dealers retail prices for hearing aids which are often more than 300 percent above the manufacturers' prices to the dealers, with dealers generally selling at such suggested retail prices;

(7) selling repair parts and offering repair service only to their selected dealers, refusing to sell such parts to all others, including

independent repairmen or repair centers, and refusing to offer repair service to all other dealers.

The effect of the aforesaid parallel courses of business behavior has been to eliminate intra-brand and to hinder or suppress inter-brand competition in the hearing aid industry, and, further, to aggravate the unfair and anticompetitive effect of the acts and practices of the respondent as alleged in Paragraphs Ten and Eleven.

PAR. 10. In the course and conduct of its business of manufacturing, distributing, selling and repairing its hearing aids in commerce, Maico pursues the following course of action:

A. It requires its selected dealers to sell Maico hearing aids within assigned geographic territories;

B. It requires its selected dealers to deal exclusively in Maico hearing aids;

C. It fixes, establishes, controls and maintains the retail prices at which its selected dealers sell or repair Maico hearing aids;

D. It prohibits its dealers from dealing with certain potential customers;

E. It prevents others, not its dealers, from dealing in, or repairing Maico hearing aids;

F. It appropriates and uses for its own purposes the names and addresses of its dealers' customers.

PAR. 11. In furtherance of this course of action, respondent has been and now is engaged alone or with its dealers in the following acts and practices, among others:

(1) Respondent uses agreements or understandings which

(a) require a dealer to sell Maico hearing aids within an assigned territory;

(b) require a dealer to achieve a sales quota fixed from time to time by Maico;

(c) prohibit a dealer from soliciting, selling, repairing or making delivery of any of Maico hearing aids outside the assigned territory;

(d) require a dealer to submit to Maico the name and address of each customer who purchases Maico hearing aids;

(e) provide that Maico has the right to terminate the contract for failure to make quotas at any time, or for violations of the terms thereof, upon thirty days written notice to the dealer;

(2) Respondent refuses to sell to all but a few dealers, selected in such a manner that each of such selected dealers enjoys territorial

exclusivity so that he is not in competition with any other dealer selling Maico hearing aids;

(3) Respondent requires its dealers to surrender to it all inquiries which are received from prospective purchasers residing outside of such dealers' assigned territories;

(4) Respondent refuses to issue Maico's express product warranty unless and until the dealer from whom the hearing aid was purchased forwards the retail purchaser's name and address to Maico;

(5) Respondent permits or requires its dealers to use the Maico brand name, in conjunction with a geographic identification of the dealers' locations, or otherwise, in the dealers' trade styles;

(6) Respondent supplies its dealers only with names of prospective customers arising in such dealers' assigned territories;

(7) Respondent offers to its dealers a cooperative advertising plan which provides that Maico will not share the cost of any dealer advertisement outside of his assigned territory, or which mentions in any way that the dealer also offers for sale other brands of hearing aids;

(8) Respondent issues to its dealers price lists or provides other means by which the retail prices for Maico products are set forth;

(9) Respondent requires its dealers to adhere to repair prices recommended by Maico, which prices are also made available to users of hearing aids;

(10) Respondent refuses to sell Maico repair parts or to provide schematics to all dealers, or to persons engaged in the business of repairing or servicing hearing aids;

(11) Respondent refuses to supply Maico promotional and advertising materials, price lists, hearing aid specifications or performance information to all dealers;

(12) Respondent prohibits its selected dealers from selling Maico hearing aids to other dealers of hearing aids;

(13) Respondent provides in its standard-form contract that Maico has the right to terminate the contract, at any time, upon thirty days notice to the dealer;

(14) Respondent provides in said contract that in the event of termination:

(a) a dealer is required to return to the respondent the names and addresses of Maico hearing aid users;
(b) Maico has the right to repurchase the terminated dealer's inventory of Maico products.

PAR. 12. The acts and practices of respondent enumerated hereinabove in Paragraphs Ten and Eleven, taken either individually or collectively, are oppressive, coercive, unfair and anticompetitive and have the tendency and capacity of hindering, suppressing or eliminating competition, or constitute unfair methods of competition, or unfair acts or practices with the following effects, among others:

(1) Competition between respondent and other manufacturers of hearing aids has been hindered and suppressed;

(2) Competition among dealers dealing in Maico hearing aids has been eliminated;

(3) Such dealers have sold or repaired Maico hearing aids at prices established by respondent;

(4) Such dealers have been deprived of their freedom to select their customers and otherwise to function as free and independent businessmen;

(5) Such dealers have been deprived of their ownership of, and freedom to maintain, confidential lists of their customers;

(6) Competition among dealers dealing in Maico hearing aids and dealers dealing in other brands of hearing aids has been hindered and suppressed;

(7) Retail dealers of hearing aids have been deprived of their freedom to act in the best interests of the hearing-impaired public;

(8) Consumers have been deprived of their right to fair and impartial recommendations from dealers in the selection of hearing aids for the alleviation of their hearing impairment;

(9) Consumers have been deprived of the benefits of free competition;

(10) Those engaged in the repairing or servicing of hearing aids in

competition with respondent have been deprived of their right to repair or service Maico hearing aids.

PAR. 13. The aforesaid acts and practices of respondent have the tendency unduly to restrict and restrain competition and have injured, hindered, suppressed, lessened or eliminated actual or potential competition, are to the prejudice and injury of the public, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges respondent Maico Hearing Instruments, Inc. with violating 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 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 accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Maico Hearing Instruments, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 7375 Bush Lake Road, Minneapolis, Minnesota.

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

ORDER

I

It is ordered, That respondent and its subsidiaries, divisions, affiliates, successors, assigns, officers, directors agents, representatives and employees, directly or indirectly, or through any corporate or other

device in connection with the manufacturing, distribution, advertising, offering for sale, sale or repair of its own brand name or trademark hearing aids, or hearing aid accessories, in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Entering into, maintaining, preserving, or enforcing, by refusal to sell or repair, setting of sales quota or equivalent thereof, termination or threat thereof, request, or in any other manner, any arrangement or method of doing business with a dealer of hearing aids and/or accessories which has the purpose or effect of precluding or preventing a dealer from selling the product of one or more other hearing aid manufacturers.

2. Refusing to make available promptly upon request:

(a) Respondent's hearing aids, respondent's hearing aid accessories which respondent sells or any of respondent's written materials relating to fitting and selling such hearing aids or accessories, to any dealer engaged in the sale of hearing aids; or

(b) repair or replacement parts for respondent's hearing aids or any of respondent's written materials relating to repairing or replacing such hearing aids, to any person engaged in the repair of hearing aids, when requested for such purpose, if respondent makes repair or replacement parts available to any dealer for such purpose; *provided, however*, that respondent may impose a ten dollar ($10.00) minimum order requirement for such parts;

(c) repair service on a nondiscriminatory basis with respect to a hearing aid manufactured by respondent when requested by any dealer who sold such aid;

provided, however, that if no other provision of this order is violated thereby:

(i) Respondent may require as a condition to the availability from it of any of its products, services or materials, that the dealer or person referred to in 2(a), (b) and (c) above has received instruction or met standards necessary for the fitting, servicing, and/or repairing of respondent's hearing aids which are required at that time of all then existing dealers of respondent's products or all persons then engaged at the request of respondent in the repair of respondent's products, so long as such instruction, if made available to any dealer or person, is made available by respondent on reasonable terms and conditions to all dealers or persons wanting to deal in or repair respondent's products;

(ii) Respondent may refuse to make available directly from it any of its products or materials to any dealer or person if such requesting dealer or person is able promptly to obtain the product or materials

from another dealer or distributor at respondent's price to such dealer for a single unit (meaning the same price and discount terms available from respondent) plus a reasonable service charge not to exceed the sum of twenty five dollars ($25.00), said sum to be adjusted annually by any increase or decrease after 1974 in the Consumer Price Index as published by the United States Government;

(iii) Respondent may refuse to make available directly from it any of its products, services or materials to any dealer or person on other grounds related to that dealer's or person's professional competence or ethical conduct, so long as such refusals are uniformly made where such grounds exist;

(iv) Respondent may refuse to make available directly from it any of its products or materials to any dealer or person if such requesting dealer or person will not agree to purchase a minimum initial order of five (5) of respondent's hearing aids on a cash with order basis.

3. Entering into, maintaining, preserving or enforcing by refusal to sell or repair, setting of sales quota or equivalent thereof, termination or threat thereof, request, report of sale, warranty limitation, use of names or addresses of a dealer's customers, or in any other manner, any arrangement or method of doing business which has the purpose or effect of restricting or limiting:

(a) the territory or area in which a dealer of respondent's hearing aids advertises, offers for sale, sells or repairs such products, or

(b) the person or persons with whom a dealer of respondent's hearing aids deals.

4. Failing to return any hearing aid submitted to respondent for repair directly to the dealer who submitted such product for repair unless otherwise instructed in writing by such dealer.

5. Fixing, establishing, stabilizing, maintaining or suggesting the prices at which a dealer of respondent's hearing aids may or shall advertise, offer for sale, or sell to the public, or a person repairing respondent's hearing aid may repair such products; *provided, however,* that nothing in this order shall prohibit respondent after ten years from the date of entry of this order from exercising any lawful rights it may then have under the Miller-Tydings Act, 50 Stat. 693 (1937) and the McGuire Act, 66 Stat. 632 (1952) with respect to hearing aids, accessories or parts.

6. Requiring that a dealer participating in respondent's cooperative advertising program must not state or imply, in such cooperative advertisements, that the dealer also deals in other brands of hearing aids; *provided, however,* that respondent may continue to prohibit in