

Interlocutory Order

IN THE MATTER OF

BORDEN, INC.

Docket 8978. Interlocutory Order, Apr. 5, 1977

Order granting motion by Department of Commerce to file brief as *amicus curiae*; accepting brief as filed; and granting counsel 30 days to file responsive briefs.

ORDER

On March 8, 1977, the United States Department of Commerce moved for leave to file a brief as *amicus curiae* in this appeal. The Department's brief was conditionally filed therewith. Complaint counsel and counsel for respondent Borden, Inc. have informally indicated to the Office of the Secretary that they do not intend to file in opposition to the motion.

While the Commission's Rules of Practice do not expressly provide for the filing of *amicus curiae* briefs, we have granted *amicus* treatment to certain filings under section 3.14, which governs intervention in Commission proceedings. See, e.g., *Corning Glass Works*, 82 F.T.C. 1082 (March 22, 1973). Section 3.14 is broadly drafted, providing for orders permitting intervention "to such extent and upon such terms as are provided by law or as otherwise may be deemed proper."

A motion for leave to file a brief *amicus curiae* addresses the discretion of the tribunal. As the term itself and the tradition from which it arises make clear, the role of the *amicus* is not to vindicate its own rights but to clarify for the tribunal the broad implications of the question before it. The brief of the Department of Commerce fits squarely within this role.

It would obviously have been preferable to receive this motion and brief at an earlier stage of the appeal.¹ At this point, all briefs have been filed and oral argument heard. Absent special circumstances, leave to file at this point might well be denied to avoid the disruption and possible delay attendant on granting it. In the present instance, however, the importance of the issue involved and the uniqueness of the Department's perspective outweigh these considerations.

It is therefore ordered, That the motion for leave to file a brief as *amicus curiae* be granted, that the brief be accepted as filed, and that complaint counsel and counsel for respondent Borden, Inc., have thirty days to file responsive briefs, if they so desire.

¹ The U.S. Courts of Appeals, by way of analogy, require generally that an *amicus* brief be filed no later than that of the party the brief will support. Rule 29, Federal Rules of Appellate Procedure.

Interlocutory Order

89 F.T.C.

IN THE MATTER OF
THE RAYMOND LEE ORGANIZATION, INC., ET AL.

Docket 9045. Interlocutory Order, Apr. 5, 1977

Order determining that record does not establish any violations of the code of professional responsibility.

ORDER

The administrative law judge has certified to the Commission certain allegations made by respondents that complaint counsel and other Commission personnel have made improper statements concerning respondents and other members of the idea promotion industry. The Commission, of course, expects counsel appearing before this agency to comply with Disciplinary Rule 7-107 (H).¹

The Commission has determined that only the alleged comments made by counsel of record ought to be considered in the context of this adjudicative proceeding. The Commission has also determined that the record does not establish any violations of the Code of Professional Responsibility.

It is so ordered.

¹ The rule provides that during the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to: (1) Evidence regarding the occurrence or transaction involved. (2) The character, credibility, or criminal record of a party, witness, or prospective witness. (3) Physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to such. (4) His opinion as to the merits of the claims, defenses, or positions of an interested person. (5) Any other matter reasonably likely to interfere with a fair hearing.

Complaint

IN THE MATTER OF
GENERAL ELECTRIC COMPANYCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 9049. Complaint, July 29, 1975 --- Decision, Apr. 7, 1977

Consent order requiring a Fairfield, Conn., manufacturer of television sets and other electrical household appliances, among other things, to cease misrepresenting the comparative superiority, special features and reliability of their products through use of unsubstantiated advertising claims.

Appearances

For the Commission: *Walter B. Fisherow* and *James H. Skiles*.

For the respondent: *James Bruce*, Fairfield, Conn. and *White & Case*, New York City and Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that General Electric Company, a corporation hereinafter referred to as respondent, has violated the provisions 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 in that respect as follows:

PARAGRAPH 1. Respondent General Electric Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 3135 Easton Turnpike, Fairfield, Connecticut.

PAR. 2. Respondent General Electric Company is now and for some time past, has been engaged in the production, advertising, and sale of consumer electronic products, including color television receivers, which when sold are shipped to purchasers located in various States of the United States. Thus respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said consumer electronic products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

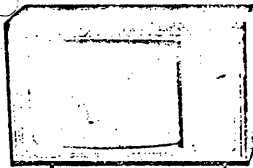
PAR. 3. Respondent General Electric Company at all times mentioned herein has been, and now is, in substantial competition in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, with individuals, firms and corporations engaged in

the sale and distribution of consumer electronic products of the same general kind and nature as those produced and sold by respondent.

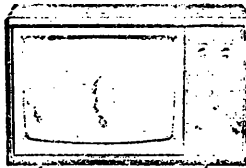
PAR. 4. In the course and conduct of its said business, respondent General Electric Company has disseminated or caused the dissemination of, certain advertisements concerning the said products by the United States mail and by various means in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products, and has disseminated and caused the dissemination of advertisements concerning said products by various means for the purpose of inducing and which is likely to induce, directly, or indirectly, the purchase of said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Typical of the representations and statements contained in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are the following print advertisements which have been reproduced, attached to this complaint, and made a part hereof:

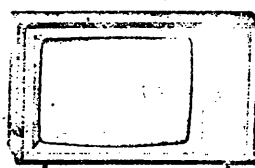
WHICH COLOR TV REQUIRED LESS SERVICE IN 1973?



RCA



GENERAL ELECTRIC



ZENITH

In 1973, independent surveys* of recent color TV buyers showed that General Electric color required less service than any other U.S. brand. Not merely an opinion poll, this was a survey of actual TV owners. People like you, who expect the most in reliable TV performance for their money.

To get the kind of picture you expect for your money, go into a store and compare pictures. Ours against any other set.

The best way we know to buy color TV is to compare performance.

To help you compare, get GE's booklet, "How to Buy Color TV in Plain English." For the store nearest you, where you can pick it up free, call this special toll-free number anytime. 800-243-6000. Dial as you normally dial long distance. (In Connecticut, call 1-800-882-6500.)

PERFORMANCE
TELEVISION

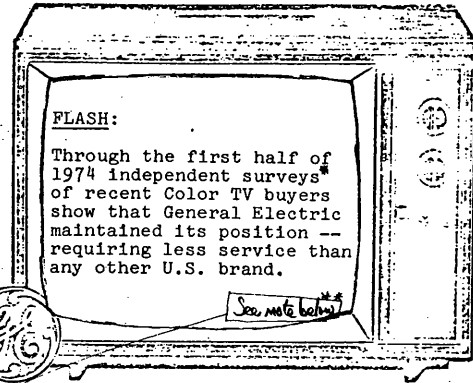
GENERAL  ELECTRIC

US. NEWS
10/7/74.

*Details available on request.
TV Receiver Product Dept., Pittsfield, Va.

Exhibit 122

**BEFORE YOU BUY
 COLOR TV, CONSIDER GE'S
 RECORD FOR RELIABILITY.**



PERFORMANCE TELEVISION

Reassure yourself. This survey quoted above wasn't merely an opinion poll, but an independent survey based on hard facts reported by actual TV owners. *Details available upon request.

Compare picture quality, too. Thanks to GE's 100% Solid State chassis and the Black Matrix picture tube, you'll see brilliance and crispness of detail that will stack up against anyone's. Reliability, superb picture... add up to GE Performance Television.

Come see the GE Performance Television line and get your free copy of "How to Buy Color TV. In Plain English!"



**CALL THIS TOLL FREE NUMBER
 800-243-3000
 *FOR THE NAME OF YOUR NEAREST
 GE PERFORMANCE COLOR TV DEALER**

THE PITTSBURGH PRESS

GE 100% SOLID STATE
 1974
 1974



** Due to poor reproductions, staff has typed-in the message within the TV screen. 6/14/75

TRIC'S

In 1973, independent surveys* of recent color TV buyers showed that GE color required less service than any other U.S. make. Reassure yourself. This survey wasn't merely an opinion poll, but an independent survey based on hard facts reported by actual TV owners. Great values in black and white sets, too!

*Details available on request.



to Co. TV's—Each
eral Electric History.

GE RELIACOLOR CHASSIS

100% SOLID-STATE MODULAR CHASSIS ONE TOUCH COLOR SYSTEM



Model YA5504RW

•tube-type
•70
•4-tuning

ONLY \$348*



Model CD7314RW

- Spectra Blue® picture tube
- Automatic fine tuning control
- 70 position "click-in" UHF tuning
- UHF solid-state tuner

ONLY \$348*



Model MB9504PN

•100% solid-state chassis uses less power than tube-type sets of comparable size •Black matrix Spectra Blue® 19 picture tube •Hi contrast picture control •70 position "click-in" UHF tuning •Hi contrast control •Fastest initial set-up •Fast & easy tune control •Auto-Ready™ automatic auto-tune •Picture set cabinet simulated wood-grain finish

ONLY \$648* EITHER STYLE

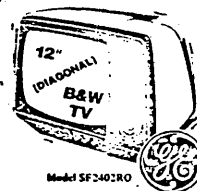
Large stylized text: "LAWYER'S MORTGAGE"

Portable!

PORTABLE

- Recessed molded-in handle • 70 position "click-in" UHF tuning • "Daylight Bright" picture tube • High impact Polystyrene control in red-orange finish

ONLY \$98*



Model SF3402RO



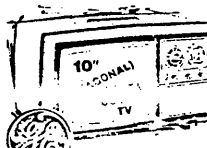
Model AM514PN

100% SOLID-STATE BUILT-IN UHF & VHF ANTENNAS

- 100% solid-state chassis uses less power than tube-type sets of comparable size
- Pre-set VHF fine-tuner • 70 position "click-in" UHF tuner • VHF & UHF

ONLY \$233*

SLOTTED MASK "IN-LINE" COLOR PICTURE TUBE SYSTEM



Model HE5216WD

- 70 position "click-in" UHF tuning • VHF pre-set fine tuning • UHF solid-state tuner • Luggage-type strap handle for easy portability

\$243*

Call 1: "National Sales Office" failed - General also Atlanta zone office

PAR. 6. Through the dissemination of these advertisements and others similar thereto not specifically set out herein, respondent has represented directly or by implication that General Electric color television sets purchased or in use in 1973 required less service in that year than Zenith or RCA color television sets.

PAR. 7. At the time of said representation, respondent did not possess and rely upon a reasonable basis for making such representation.

Therefore, the representation set forth in Paragraph Six was, and is, a deceptive or unfair act or practice.

PAR. 8. Through the use of these advertisements and others similar thereto not specifically set out herein, respondent had represented directly or by implication that independent surveys of persons who had bought a color television set in 1973 show that General Electric color television sets bought in that year required less service during the initial period of ownership than all other U.S. brands of color television sets bought in 1973.

PAR. 9. In truth and in fact, independent surveys of persons who had bought a color television set in 1973 did not and do not show that General Electric color television sets bought in that year required less service during the initial period of ownership than all other U.S. brands of color television sets bought in 1973.

Therefore, the representation referred to in Paragraph Eight was and is false, misleading and deceptive.

PAR. 10. Through the dissemination of the aforementioned advertisements and others similar thereto not specifically set out herein, respondent has represented directly or by implication, that independent surveys of persons who had bought a color television set in 1973 show that General Electric color television sets bought in that year will require less service than all other U.S. brands of color television sets bought in 1973.

PAR. 11. In truth and in fact, independent surveys of persons who had bought a color television set in 1973 did not and do not show that General Electric color television sets bought in that year will require less service than all other U.S. brands of color television sets bought in 1973.

Therefore, the representation referred to in Paragraph Ten was and is false, misleading and deceptive.

PAR. 12. Respondent continued to disseminate the aforementioned advertisements, representing that 1973 survey evidence of service levels of General Electric color television sets is a reason to purchase such sets in 1974/75, when respondent knew of and had available to it subsequently acquired evidence of a substantially identical type and

quality which contradicted or was inconsistent with the 1973 survey evidence expressly relied upon.

PAR. 13. Therefore, at the time of the representation referred to in Paragraph Twelve respondent did not possess and rely upon a reasonable basis for making such representation, and the representation set forth in Paragraph Twelve was, and is, an unfair act or practice.

PAR. 14. Furthermore, through its continued dissemination of the aforementioned advertisements, respondent represented, directly or by implication, that it neither knew of nor possessed evidence which contradicted or was inconsistent with the 1973 survey evidence expressly relied upon.

PAR. 15. In truth and in fact, during the time respondent continued to disseminate the aforementioned advertisements, it did know of and possess evidence of an identical type and quality which contradicted or was inconsistent with the 1973 survey evidence expressly relied upon.

Therefore, the representation referred to in Paragraph Fourteen was false, misleading and deceptive.

PAR. 16. Through the use of these advertisements and others similar thereto not specifically set out herein, it was represented directly or by implication that respondent would upon request forward the true and complete details regarding the comparative service information obtained from surveys of recent color television set buyers conducted in 1973.

PAR. 17. In truth and in fact, upon request respondent did not and does not forward the true and complete details regarding the comparative service information obtained from the surveys of recent color television set buyers conducted in 1973.

Therefore, the representation referred to in Paragraph Sixteen was false, misleading and deceptive.

PAR. 18. The use by the respondent of the aforesaid false, misleading, deceptive or unfair statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 19. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted and now constitute, unfair and deceptive acts and practices and unfair methods of

competition, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission issued, together with a proposed form of order; 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 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(c) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent General Electric Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and a principal place of business located at 3135 Easton Turnpike, Fairfield, Connecticut.

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 General Electric Company, a corporation, its successors and assigns, either jointly or individually, and respondent's officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, distribution or sale of any and all of the following household products manufactured or marketed by respondent: monochrome (*i.e.*, black

and white) television receivers, color television receivers, clothes washers, clothes dryers, ranges, dishwashers, trash compactors, refrigerators, freezers, room air conditioners, stereophonic consoles and nonportable stereophonic sound systems and components (any or all of which products are hereafter referred to in this Part I as "such product(s)"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Advertising or offering such product(s) for sale by referring to any test, experiment, demonstration, study or survey, or any or all of the results thereof (hereafter "evidence"), which evidence is represented, either directly or by implication, as supporting, showing or proving:

(1) the existence or nature of any fact or product feature respecting such product(s) when such evidence does not support, show or prove such fact or product feature;

(2) that such product(s) is superior to any or all competing products in any respect unless such evidence supports, shows or proves that such product(s) is superior in each respect in which it is represented to be superior, and respondent either:

(a) identifies the particular aspect of such superiority and discloses the nature or extent of such superiority in terms reasonably understandable to the class of persons to whom the representation is directed (e.g., consumers, dealers or others); or

(b) has a reasonable basis for concluding that, in connection with the possession or use of such product(s), the nature or extent of such superiority will be discernible to or of benefit to the class of persons to whom the representation is directed:

(3) that any representation about such product(s) or any competing product applies to each type or model of such product(s) or competing product, when the evidence does not support, show or prove the application of such representation to each type or model of such product(s) or such competing product referred to, either directly or by implication;

(4) that such product(s) requires less service or has any other superior service characteristic when compared to any or all competing products unless the evidence at the time such representation is made supports, shows or proves such representation and:

(a) respondent clearly and conspicuously discloses the particular aspect of such product's(s') superior service characteristic which such evidence supports, shows or proves; or

(b) if respondent represents that such product(s) requires less service and such evidence supports, shows or proves that such product(s)

requires both less frequent and less costly service, then respondent need not make the disclosure required by this subparagraph (4);

or:

(5) that such product(s) is more dependable or more reliable when compared to any or all competing products unless the evidence at the time such representation is made supports, shows or proves such representation and respondent clearly and conspicuously discloses the particular aspect of such product's(s') greater dependability or reliability which such evidence supports, shows or proves.

B. Advertising or offering such product(s) for sale by referring to evidence to support, show or prove any representation covered by Paragraph A of Part I when such evidence is inconsistent with or contradicted by any valid, reliable or substantially identical evidence known to respondent unless at the time such representation is made:

(1) respondent relies on an affidavit by a person qualified by training or experience to evaluate such evidence who, relying on standards generally recognized by qualified experts in that particular field, concludes that the inconsistent or contradictory evidence may be disregarded; and

(2) the affidavit states the qualifications of the affiant and sets forth the generally recognized standards on which he relied in reaching his conclusion.

C. Representing, directly or by implication, that the details of any evidence will be forwarded upon request, unless respondent furnishes a fair and accurate summary of all the details of such evidence as to all products to which such representation extends, including the methodology used and any qualifications respecting the applicability of the results.

D. Representing, directly or by implication:

(1) that such product(s), when compared to any or all competing products:

(a) is or will be more dependable or more reliable; or

(b) has required or does or will require less service or less frequent or less costly service,

Unless and only to the extent that respondent has a reasonable basis for such representation which, for the purpose of this subparagraph D(1), shall consist of competent and reliable studies, surveys or scientific or engineering tests. This definition of "reasonable basis" is subject to this exception: for a reasonable period following the introduction of a new feature or a new model of such product, respondent may make representations encompassed by this subpara-

graph D(1) on the basis of literature or generally recognized scientific or engineering principles, but only if respondent immediately undertakes competent and reliable studies, surveys or scientific or engineering tests relating to such representations. If the results of such studies, surveys or tests do not provide a reasonable basis for such representations with respect to the new feature or new model, respondent shall forthwith cease and desist from making such representations;

(2) that such product(s) when compared to any or all competing products has, had or will have any superior service characteristic other than frequency or cost of service, unless and only to the extent that respondent has a reasonable basis for such representation; or

(3) that such product(s) has, had or will have service needs or requirements, unless and only to the extent that respondent has a reasonable basis for such representation.

II

It is ordered. That respondent General Electric Company, a corporation, its successors and assigns, either jointly or individually, and respondent's officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, distribution or sale of any and all monochrome (*i.e.*, black and white) television receivers and color television receivers manufactured or marketed by respondent (any or all of which products are hereafter referred to in this Part II as "such product(s)"), in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, with respect to the performance or a performance characteristic of such product(s):

(1) the existence or nature of any fact or product feature;

(2) that such product(s) is superior to any or all competing products in any respect; or

(3) that any representation about such product(s) or any competing product applies to each type or model of such product(s) or such competing product referred to, either directly or by implication,

Unless and only to the extent that respondent has a reasonable basis for such representation; *provided, however,* that this Paragraph A of Part II shall not apply to representations encompassed by subparagraph A(2) of Part I or Paragraph D of Part I.

B. Representing, directly or by implication:

(1) that such product(s) is superior to any or all competing products in

any respect unless such product(s) is superior in each respect in which it is represented to be superior, and respondent either:

(a) identifies the particular aspect of such superiority and discloses the nature or extent of such superiority in terms reasonably understandable to the class of persons to whom the representation is directed (*e.g.*, consumers, dealers or others); or

(b) has a reasonable basis for concluding that, in connection with the possession or use of such product(s), the nature or extent of such superiority will be discernible to or of benefit to the class of persons to whom the representation is directed;

or:

(2) that any representation about such product(s) or any competing product applies to each type or model of such product(s) or competing product when such representation does not apply to each type or model of such product or such competing product referred to, either directly or by implication.

III

If the Federal Trade Commission hereafter promulgates any trade regulation rule or guide governing the advertising or offering for sale of any product governed by this order, which rule or guide is less restrictive than the corresponding provision(s) of this order, and respondent files a motion with the Federal Trade Commission to modify this order to correspond to such less restrictive rule or guide, the Federal Trade Commission shall rule upon respondent's motion within 120 days after such motion is filed or, if respondent's motion to modify is filed at least 60 days prior to the effective date of such rule or guide, then the Federal Trade Commission shall rule upon respondent's motion within 60 days after the effective date of such rule or guide. Should the Federal Trade Commission fail to rule upon respondent's motion to modify within such time periods, then such rule or guide shall automatically be deemed to modify and replace the corresponding provision(s) of this order.

IV

The provisions of Parts I and II of this order will not apply for a period of one year from the date of signature of this order to printed materials other than media advertisements and point of purchase displays.

v

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions engaged in the preparation or placement of advertisements of any product listed in Part I.

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 may affect compliance obligations arising out of this order.

It is further ordered, That respondent shall, within sixty (60) days after the effective date of this order, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with this order.

Complaint

89 F.T.C.

IN THE MATTER OF
NATIONAL SERVICE INDUSTRIES, INC., T/A CERTIFIED
LEASING COMPANY

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

Docket C-2876. Complaint, Apr. 7, 1977 --- Decision, Apr. 7, 1977

Consent order requiring an Atlanta, Ga., furniture leasing corporation, among other things, to cease failing to maintain adequate records for three years following the expiration date of leases; and follow prescribed procedures to locate and make proper refunds to qualified customers. Additionally, the order requires respondent to furnish lessees with detailed written notices, and prohibits the use of these notices in the collection of delinquent debts.

Appearances

For the Commission: *Michael E.K. Mpras* and *Robert L. Patterson*.
For the respondents: *Jack L. Lahr* and *Christopher Smith*, *Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that National Service Industries, Inc., a corporation, doing business as Certified Leasing Company, hereinafter sometimes referred to as respondent, has violated the provisions 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 in that respect as follows:

PARAGRAPH 1. Respondent National Service Industries, Inc., doing business as Certified Leasing Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 1180 Peachtree St., N.E., Atlanta, Georgia.

PAR. 2. Respondent National Service Industries, Inc., through its various subsidiaries and divisions, operates numerous plants, including those engaged in the production or manufacture of furniture, safety and protective products, amusement parks, and is engaged in the leasing or retail selling of furniture, through its unincorporated operating division, Certified Leasing Company, which operates approximately 17 furniture leasing and retail selling stores in seven states.

