IN THE MATTER OF

LEVI STRAUSS & CO.

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

Docket 9081. Complaint, May 5, 1976 — Decision, July 12, 1978

This consent order, among other things, requires a San Francisco, Calif. clothing manufacturer to cease establishing and enforcing resale price agreements; soliciting the identities of recalcitrant dealers; and threatening, penalizing or terminating such dealerships. Further, the firm is prohibited from unfairly restricting the use of its trademark; engaging in unlawful tie-in practices; and disseminating any materials suggesting resale prices for five years.

Appearances

For the Commission: *David M. Newman, Paul D. Hodge* and *Jeffrey A. Klurfeld.*

For the respondent: *Heller, Ehrman, White & McAuliffe,* San Francisco, Calif. and *Howrey & Simon,* Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (U.S.C. Title 15, Section 14, *et seq.,* as amended), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Levi Strauss & Co., a corporation, hereinafter referred to as "respondent," has violated the provisions of Section 5 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 respect thereto as follows:

For purposes of this complaint, the following definitions shall apply:

"Product" is defined as any item of wearing apparel and any related accessory which is manufactured, offered for sale, or sold by Levi Strauss & Co.

"Dealer" is defined as any person, partnership, corporation or firm which purchases any product from Levi Strauss & Co. for resale.

"Prospective Dealer" is defined as any person, partnership, corporation or firm which may desire to purchase any product from Levi Strauss & Co. for resale but has not been accepted by Levi Strauss & Co. as a dealer.

PARAGRAPH 1. Respondent Levi Strauss & Co. 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 at 2 Embarcadero Center, San Francisco, California.

PAR. 2. Respondent is now and has been for many years engaged in the manufacture, sale and distribution of a wide variety of wearing apparel for men, women and children, including but not limited to jeans, slacks, shorts, shirts, jackets and related items. Gross sales by respondent for the 1975 fiscal year exceeded $1,000,000,000. Respondent claims to be the largest apparel manufacturer in the world.

PAR. 3. Respondent sells and distributes its products directly to more than 15,000 retail dealers located throughout the United States who in turn resell respondent's products to the general public.

PAR. 4. Respondent maintains a comprehensive and integrated manufacturing, sales and distribution system throughout the United States. Sales of respondent's products are effectuated through seven regional sales offices located in New York, New York; Atlanta, Georgia; Chicago, Illinois; Dallas, Texas; Los Angeles, California; San Francisco, California, and Seattle, Washington. More than 500 salesmen working under control of these regional sales offices sell respondent's products throughout the United States.

Respondent also maintains manufacturing plants located in the States of California, New Mexico, Texas, Tennessee, Arkansas, Mississippi, Georgia, Virginia, North Carolina, Missouri, and Louisiana. Respondent transports its products, either directly from its manufacturing plants located in the aforementioned States to dealers or from these manufacturing plants to warehouses located in California, Texas and Kentucky, and from there, distributes such products to its dealers located in every State of the United States and the District of Columbia. There is now and has been at all times mentioned in this complaint, a pattern and course of commerce in respondent's products which is in and affects interstate commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondent has been and is now in substantial competition with other corporations, individuals and partnerships engaged in the manufacture, sale and distribution of wearing apparel similar to that listed and described in Paragraph Two hereinabove.

PAR. 6. In the course and conduct of its business as above described, respondent has for some time last past effectuated and pursued a policy throughout the United States, the purpose or effect of which is and has been to fix, control, establish, manipulate and maintain the resale prices at which its dealers advertise, offer for sale and sell its products.

PAR. 7. By various means and methods, respondent has effectuated and enforced the aforesaid practice and policy by which it can and does fix, control, establish, manipulate and maintain the resale prices at which its products are advertised, offered for sale and sold by its dealers. To carry out said practice or policy, respondent adopted and employed, and still employs, the following means and methods among others:

(a) It requires prospective dealers as a condition of becoming dealers, or requires dealers as a condition of remaining dealers, to enter into oral agreements or understandings with respondent, or to give oral assurances to respondent, that they will adhere to those resale prices established or suggested by respondent for its products.

(b) It requires prospective dealers as a condition of becoming dealers, or requires dealers as a condition of remaining dealers, to enter into oral agreements or understandings with respondent, or to give oral assurances to respondent, that they will not advertise any of respondent's first-line quality products, whether or not in conjunction with any of respondent's trademarks, at resale prices other than those respondent has established or suggested.

(c) It requires prospective dealers as a condition of becoming dealers, or requires dealers as a condition of remaining dealers, to enter into oral agreements or understandings with respondent, or to give oral assurances to respondent, that they will not advertise any of respondent's second-line quality or irregular products as having been manufactured by respondent.

(d) It requires prospective dealers as a condition of becoming dealers, or requires dealers as a condition of remaining dealers, to enter into oral agreements or understandings with respondent or to give oral assurances to respondent, that they will not resell respondent's products to any retailer not authorized by respondent to sell its products.

(e) It has established and employed, and still employs, a surveillance system, the purpose of which is to ascertain whether any dealer, prospective dealer, person or firm is engaged in any of the following activities:

(1) offering for sale or selling any product at a price other than that which respondent has established or suggested.

(2) advertising any first-line quality product, whether or not in conjunction with any of respondent's trademarks, at a price other than that which respondent has established or suggested.

(3) advertising any second-line quality or irregular product as having been manufactured by respondent.

(4) reselling any product to any retailer not authorized by respondent to sell its products.

(f) As part of the surveillance system as set forth in subparagraph (e) hereinabove, respondent has:

(1) Solicited and encouraged the cooperation and assistance of dealers to identify and report any dealer, prospective dealer, person or firm who engages in any of the activites set forth in subparagraph (e)(1)–(4) hereinabove.

(2) Shopped retailers not authorized by respondent to sell its products who are selling *any* product in order to ascertain from which dealer said retailers obtained said product.

(g) It warns, intimidates, harasses and uses various forms of coercion and discipline, including but not limited to delaying order shipments, restricting the availability of products, limiting the frequency of salesmen's visits, and threatening termination, against dealers engaged in, or suspected of engaging in, any of the activities set forth in subparagraph (e)(1)–(4) hereinabove.

(h) It terminates dealers engaged in, or suspected of engaging in, any of the activities set forth in subparagraph (e) (1)–(4) hereinabove.

(i) It refuses to deal with certain prospective dealers for the reason that respondent believes that such prospective dealers will engage in any of the activities set forth in subparagraph (e)(1)–(4) hereinabove.

(j) It prohibits any dealer from being reimbursed pursuant to respondent's cooperative advertising program for any advertisement offering any product at a price other than that which respondent has established or suggested.

(k) It misrepresents to dealers that its products are fair traded and that dealers must, as a matter of law, adhere to respondent's established resale prices.

The above are among the various means and methods which have been used, and are now being used, by respondent in the enforcement of its system of maintaining resale prices, all with the result that said prices have been and are generally observed and maintained by dealers handling respondent's products.

PAR. 8. The aforesaid acts and practices have had and still have the capacity, tendency and effect of hindering, suppressing or eliminating competition between or among all dealers selling respondent's products, by requiring them to resell the same at prices fixed or controlled by respondent as aforesaid; such practices prevent dealers from selling these products at prices of their own choosing; hinder and suppress price competition in the resale of such products

in the various States of the United States and the District of Columbia, thus tending to obstruct the free and natural flow of commerce and the freedom of competition in the channels of interstate commerce.

PAR. 9. In the course and conduct of its business as above described, respondent has refused to sell and continues to refuse to sell its blue denim jeans to dealers and prospective dealers desirous of purchasing said products unless said dealers and prospective dealers also purchase certain other products manufactured by the respondent.

Further, through the use of an allocation program, respondent has refused to and continues to refuse to increase the allotments of its blue denim jeans to dealers unless said dealers also purchase or increase their purchases of certain other products manufactured by respondent.

PAR. 10. The aforesaid acts and practices of the respondent have the tendency to unduly hinder competition; have injured, hindered, suppressed, lessened or eliminated actual and potential competition, and thus are to the prejudice and injury of the public; and constitute unfair methods of competition in or affecting commerce or unfair acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorneys, 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 thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by an

interested person pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Levi Strauss & Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Two Embarcadero Center, San Francisco, California.

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

For the purposes of this order, the following definitions shall apply:

"Product" is defined as any item of wearing apparel and any related accessory which is manufactured, offered for sale or sold by Levi Strauss & Co.

"Dealer" is defined as any person, partnership, corporation, or firm authorized by Levi Strauss & Co. to sell any product.

"Prospective dealer" is defined as any person, partnership, corporation or firm which may desire to purchase any product from Levi Strauss & Co., but has not been accepted as a dealer.

It is ordered, That respondent Levi Strauss & Co., a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacture, offering for sale, sale, distribution or advertising of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

I

1. Fixing, establishing, controlling or maintaining, directly or indirectly, the price at which any dealer may advertise, promote, offer for sale or sell any product at retail.

2. Establishing, exacting any assurance to comply with, continuing, enforcing, or announcing the terms of any contract, agreement, understanding, or arrangement with any dealer or prospective dealer which fixes, establishes, maintains or enforces the price at which any product is to be sold or advertised at retail by such dealer or prospective dealer.

3. Securing or attempting to secure any promise or assurance from any dealer or prospective dealer regarding the retail price at which such dealer or prospective dealer will or may advertise or sell any product, or requiring or requesting any dealer or prospective dealer to obtain approval from respondent for any retail price at which such dealer or prospective dealer may or will advertise or sell any product.

4. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any dealer or limiting or restricting the right of any dealer to participate in any cooperative advertising program for which it would otherwise qualify because of the retail price at which said dealer advertises or sells any product.

5. Requiring or soliciting any dealer or prospective dealer to report the identity of any dealer, prospective dealer, person or firm because of the retail price at which such dealer, prospective dealer, person or firm is advertising, offering to sell or selling any product; or acting on any reports or information so obtained by threatening, intimidating or coercing any dealer, prospective dealer, person or firm, or by terminating any dealer.

6. Conducting any surveillance program to determine whether any dealer, prospective dealer, person or firm is advertising, offering for sale or selling any product at a retail price other than that which respondent has established or suggested, where such surveillance program is conducted to fix, maintain, control, or enforce the retail price at which any product is sold or advertised.

7. Terminating or taking any other action to restrict, prevent, or limit the sale of any product by any dealer because of the retail price at which said dealer has sold, is selling, or is suspected of selling such product.

8. Terminating or taking any other action to restrict, prevent, or limit the sale of any product by any dealer because of the retail price at which said dealer has advertised, is advertising, or is suspected of advertising any product, whether or not in conjunction with any of respondent's trademarks.

9. Fixing, establishing, controlling or maintaining the retail price at which any product is advertised, promoted, offered for sale or sold, by means of any of the following:

a. Threatening or coercing any person, firm or prospective dealer because of the retail price at which said person, firm or prospective dealer, has sold, is selling or is suspected of selling any product.

b. Threatening or coercing any person, firm or prospective dealer, because of the retail price at which said person, firm or prospective dealer has advertised, is advertising or is suspected of

advertising any product, whether or not in conjuction with any of respondent's trademarks.

c. Controlling or restricting in any manner, including by termination of any dealer, any customer or class of customers to whom any dealer may sell any product, where such control or restriction is exercised because of the retail price at which the customer or class of customers to whom said product has been resold has advertised, promoted, offered for sale or sold such product.

II

Publishing, disseminating, circulating or providing by any means, any suggested retail price for a period of five (5) years after the date on which this order becomes final; *provided, however,* that, if, after said five (5) year period, respondent suggests any retail price, respondent shall:

a. Clearly and conspicuously state on any material on which such suggested price is stated that such price is suggested only.

b. Mail to all dealers a letter stating that no dealer is obligated to adhere to any suggested retail price and that such suggested retail price is advisory only.

III

1. Restricting any dealer, prospective dealer, person, or firm who purchases any product which respondent had denominated irregular or second quality from offering for sale or advertising such products as "second quality or irregular products manufactured by Levi Strauss & Co."

2. Restricting any dealer, prospective dealer, person or firm who has purchased any product which respondent had denominated "closeout" and which bears any of respondent's trademarks affixed thereto from using any trademark so affixed in the sale or advertising of such product.

3. Nothing contained in Paragraph III of this order shall affect respondent's rights in law and equity respecting the protection of respondent's trademarks in conjunction with the offer for sale or advertising of any product.

IV

It is further ordered, That respondent shall forthwith cease and desist from:

1. Engaging in any unlawful tie-in selling practice.

2. Establishing or administering an allocation program under

which a dealer's entitlement to any product which such dealer has not previously purchased, is dependent upon the volume of such dealer's purchases of a different product style or a group of different product styles.

V

It is further ordered, That respondent shall:

1. Within thirty (30) days after service of this order, mail under separate cover a copy of this order and a copy of the enclosure set forth in the attached Exhibit A to every present dealer. An affidavit of mailing shall be sworn to by an official of respondent verifying that said mailing of the order and of the enclosure in the attached Exhibit A was completed.

2. Mail under separate cover a copy of this order and a copy of the enclosure set forth in the attached Exhibit A to any person partnership, corporation or firm that within five (5) years after service of this order becomes a new dealer.

3. Within thirty (30) days after service of this order, distribute a copy of this order to each of its operating divisions and subsidiaries and to all officers, sales personnel, sales representatives and advertising agencies retained by respondent and secure from each such entity or person a signed statement acknowledging receipt of said order.

VI

It is further ordered, That respondent, 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.

VII

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

Commissioner Pitofsky did not participate.

EXHIBIT A

Dear Levi Strauss Retailer:

Levi Strauss & Co. has consented to the entry of an Order by the Federal Trade

Commission. In connection therewith Levi Strauss & Co. has agreed to send you this letter describing the provisions contained in the Order. A copy of the Order is enclosed.

The Order provides, among other things, as follows:

1. With respect to retail prices:

a. You are free to sell and advertise products purchased from Levi Strauss & Co. at any price you choose.

b. Levi Strauss & Co. cannot take any action against you, including termination, because of the retail price at which you sell or advertise its products.

c. Levi Strauss & Co. cannot suggest retail prices for any product until [five years from date on which the Order becomes final].

d. You are free to participate in any cooperative advertising program sponsored by Levi Strauss & Co. for which you otherwise qualify and to recieve any advertising credit or allowance allowed thereunder regardless of the price at which you advertise any product from Levi Strauss & Co.

e. You may use any of Levi Strauss & Co.'s trademarks in a lawful manner in conjunction with the advertising of any first-line products at any price you choose. For example you may advertise any product bearing the "Levi's(r)" trademark as "Levi's(r)."

f. You may sell or advertise any Levi Strauss & Co. irregular or second quality merchandise as "irregular or second quality merchandise manufactured by Levi Strauss & Co." However, Levi Strauss & Co. reserves the right to restrict the use of its trademarks in connection with the sale or advertising of such merchandise.

g. In connection with the advertising or sale of Levi Strauss & Co. "close-outs," you may use, in a lawful manner, the trademarks, if any, affixed to such close-out products. You may also advertise or sell these products as "close-outs manufactured by Levi Strauss & Co."

h. Levi Strauss & Co. cannot control or restrict the customers to whom you or any other dealer may sell any product where such control or restriction is exercised because of the retail price at which the customer to whom said product has been resold is advertising or selling such product.

2. With respect to other sales practices:

a. Levi Strauss & Co. cannot engage in any unlawful tie-in selling practices.

b. If Levi Strauss & Co. places any product style on allocation, your allotment of such product style, other than a product style you have not previously purchased, will not be dependent upon the volume of your purchases of a different product style or a different group of product styles.

If you have any questions regarding the contents of this letter or the attached Order, please contact Mr. ———— at Levi Strauss & Co.

IN THE MATTER OF

TENNECO, INC.

Docket 9097. Interlocutory Order, July 12, 1978

This order sets forth specific provisions to be followed relative to the designation of certain documents as exempt from release.

ORDER REGARDING REQUEST FOR DESIGNATION OF DOCUMENTS AS EXEMPT FROM RELEASE

On March 22, 1978, Sears, Roebuck and Co. ("Sears") filed a motion to quash a third party subpoena duces tecum served upon it, claiming, *inter alia,* that the protective order issued by the administrative law judge ("ALJ") in this proceeding was insufficient to protect it from disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552 (1970). The ALJ denied the motion to quash from the bench on April 25, 1978, on the assumption that the Commission would not release confidential information covered by the protective order. The transcipt of the ALJ's ruling indicates that he recognized a limitation upon his authority with respect to FOIA disclosure. Sears filed a motion for reconsideration on May 3, 1978, arguing again, *inter alia,* that the protective order was inadequate, and that the ALJ was without authority to bind the Commission with respect to disclosure under the FOIA. Alternatively, Sears asked the ALJ to certify the matter to the Commission under Rule 3.23(b). By order of May 10, 1978, the ALJ denied the motion for reconsideration and found that the matters raised by Sears did not involve a controlling question of law or policy which would justify certification of an immediate appeal under Rule 3.23(b). The ALJ did not address in his order whether the confidentiality issue was within his authority to decide or should be forwarded to the Commission under Rule 3.22(a). By motion of May 22, 1978, directly to the Commission, Sears asks that the Commission enter an order designating documents produced in response to Specifications 5 and 8[1] as confidential and not subject to future release, noting that the ALJ cannot bind the Commission with respect to release of information under the FOIA.

The chronology of actions with respect to the subpoena duces tecum served upon the J. C. Penney Company ("Penney") charts a similar sequence of events. Penney filed a motion to quash on April

[1] Specification 5 requires production of documents showing, by part number, the net purchase price paid by Sears to Maremont, its supplier, for shock absorbers in 1975 and 1976. Specification 8 requests, *inter alia,* production of Sears' Redetermination Audit for 1975 which contains a summary of the price information requested in Specification 5.

25, 1978, claiming that the protective order issued by the ALJ provided insufficient protection for documents responsive to Specifications 1–5 and 7–8 of the subpoena. By order of May 9, 1978, the ALJ denied Penney's motion for the same reasons he rejected Sears' motion to quash. Penney then moved directly before the Commission for designation of the information produced in response to Specification 5 of the subpoena[2] as confidential information exempt from release under the Freedom of Information Act and as not subject to release or disclosure by the Commission.

Normally, the Commission would not entertain an interlocutory appeal on a discovery question in the absence of a certification by the ALJ. However, it is clear in this instance that under Rule 4.10(a)(2) the ALJ does not have authority to bind the Commission with respect to the release of documents[3] and that these motions should have been certified, with the ALJ's recommendation, pursuant to Rule 3.22(a). Because remand of these motions to the ALJ would unnecessarily delay the administrative proceeding, the Commission, in its discretion, has considered both motions and issues the following order:

> Notwithstanding any of the provisions of the protective order issued by the ALJ on January 9, 1978, in the event of a Freedom of Information Act request or an official request from any Congressional committee or subcommittee or from a court pursuant to compulsory process, for disclosure of any document or portion of any document submitted by Sears in response to Specification 5 of the subpoena duces tecum or to Specification 8, to the extent such information summarizes information provided pursuant to Specification 5, and by Penney in response to Specification 5 of the subpoena duces tecum, and which is designated as "Confidential" under said protective order, authorized representatives of the Commission's Office of General Counsel may inspect such document for purposes of considering the request and, where necessary, advising the Commission on the request and defending the Commission's interests in court. Furthermore, the Commission shall provide the party which supplied such "Confidential" document or portion thereof with ten (10) days' notice prior to release of such document or portion thereof in response to such a request or otherwise. *Provided, however,* that in the case of release of such document or portion thereof, designated as "Confidential," in response to

[2] Specification 5 requires production of Penney's net cost per item of shock absorbers and exhaust system parts for 1975 and 1976.

[3] Such authority would be granted to the ALJ under the Commission's proposed confidentiality rules. 43 F.R. 3571 (January 26, 1978).

an official request from a committee or subcommittee of Congress or to a court in response to compulsory process, the Congressional committee or subcommittee or the court will be advised that the party which supplied the document considers the material to be confidential and the party will be provided ten days' prior notice where possible, and in any event as much advance notice as can reasonably be given.

It is so ordered.

IN THE MATTER OF

LUSTRASILK CORPORATION OF AMERICA, INC., ET AL.

MODIFYING ORDER, IN REGARD TO ALLEGED VIOLATION OF SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2894. Decision, Jan. 27, 1976 — Modifying Order, July 13, 1978.

This is an order which modifies a cease and desist order issued January 27, 1976, 41 FR 7744, 87 F.T.C. 145, to conform with the product coverage of a consent order issued against a competitive company, by substituting the words "hair straightening products" for the word "cosmetics" in Sections I and II of the original order, and "is " for "are" in the *It is ordered* paragraph in Section I; and by deleting the words "as 'cosmetic' is defined in the Federal Trade Commission Act" in the *It is further ordered* paragraph in Section II.

ORDER MODIFYING ORDER TO CEASE AND DESIST

ORDER*

On April 26, 1977, respondents in this matter requested by letter that the Commission order of January 27, 1976, be modified, first by limiting the product coverage of the order to "hair straightening products" which would replace the broader "cosmetics" products description, and second, by excluding the individually named respondents from the order.

Complaint counsel support the limitation on product coverage and oppose the exclusion of the individually named respondents.

We agree that the product coverage should be limited as requested. After entry of its order in this matter the Commission issued a consent order against Revlon, Inc., a competitor of Lustrasilk in the sale of hair relaxers. The Revlon order's product coverage is identical to that recommended by complaint counsel here. For this reason the Commission believes that it is in the public interest to grant the modification of product coverage sought by Lustrasilk.

We reject respondents' request that the individually named respondents be released from the order. Nothing that respondents have cited indicates a change of facts or law that would warrant the exclusion of the two individually named respondents from the reach of the order, nor does it appear that the public interest would be served by their exclusion. To the contrary, because the corporation is run as the proprietorship of the two named individuals, we find it necessary to continue to hold them responsible under the order. Accordingly,

* Reported as modified by Commission *Order Correcting Order Modifying Order to Cease and Desist* issued August 7, 1978.

It is ordered, That the proceeding be, and it hereby is, reopened.

It is further ordered, That the order to cease and desist be, and it hereby is, modified by substituting the words "hair straightening products" for the word "cosmetics" in Sections I and II of the order, by substituting "is" for "are" in the *It is ordered* paragraph in Section I, and by deleting the words "as 'cosmetic' is defined in the Federal Trade Commission Act" in the *It is further ordered* paragraph in Section II.

It is further ordered That the order to cease and desist be, and it hereby is, modified by substituting "any hair straightening product" for "any such product" in Paragraph I.A.3; by deleting the words "safety or" and substituting "hair straightening product" for "cosmetic" in Paragraph I.B.; and adding a new Paragraph I.C. and renumbering subsequent paragraphs accordingly, as follows:

> "Representing, in any manner, the safety of any hair care product, or the ingredients therein, unless at the time such representation is made respondents have in their possession a reasonable basis, consisting of competent and reliable controlled tests, to support such representation; or misrepresenting in any manner the nature of any such product or its ingredients or the effect of any such product or its ingredients on hair or skin or any other structure of the body."

Commissioner Pitofsky did not participate.

IN THE MATTER OF

MEGO INTERNATIONAL, INC., ET AL.

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

Docket C-2924. Complaint, July 14, 1978 — Decision, July 14, 1978

This consent order, among other things, requires a New York City manufacturer of a "Cher" mannequin doll and other toy products to cease employing any representation that depicts children using electrical toys or appliances near water or other fluids, without adult supervision, or which may induce children to engage in behavior that creates risk of injury.

Appearances

For the Commission: *Robert C. Goldberg.*

For the respondents: *Howard Alterman, Spivack & Lasky,* Chicago, Ill.

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 Mego International, Inc., a corporation, and Mego Corporation, a corporation, hereinafter referred to as respondents, have 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 Mego International, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1 Madison Square Plaza, New York, New York.

PAR. 2. Respondent Mego Corporation is a corporation organized, existing and doing business under and by virtue of the place of business located at 1 Madison Square Plaza, New York, New York.

PAR. 3. Respondents are now, and for all times relevant to this complaint have been engaged in the production, distribution, and sale of a variety of toy products, including but not limited to, "Cher", a mannequin doll.

PAR. 4. Respondents have caused to be prepared and placed for publication and have caused the dissemination of advertising material, including, but not limited to, the advertising referred to herein, to promote the sale of Cher.

PAR. 5. In the course and conduct of their aforesaid businesses,