

IN THE MATTER OF  
JOHN HANCOCK MUTUAL LIFE INSURANCE CO., ET  
AL.

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

*Docket C-2930. Complaint, Sept. 19, 1978 — Decision, Sept. 19, 1978*

These four (4) consent orders, among other things, require four (4) Boston, Massachusetts insurance companies to cease interlocking directors by allowing any individual to sit on their boards who is simultaneously sitting on the board of any of the other boards or of any other competitive firms. The consent orders additionally require the companies to initiate prescribed procedures designed to eliminate interlocking directorates, and to submit detailed compliance reports to the Commission annually for a five-year period.

*Appearances*

For the Commission: *Patrick J. Quinlan* and *Alan Proctor*.

For the respondents: *Andrew C. Hartzell, Jr.* for John Hancock Mutual Life Insurance Co., *John S. Kingdon* for New England Mutual Life Insurance Co. and *Edwin M. Zimmerman* for State Mutual Life Assurance Co. and Liberty Mutual Insurance Co., Boston, Mass.

COMPLAINT

The Federal Trade Commission having reason to believe that the above-named respondents have violated Section 8 of the Clayton Act and Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof, would be in the interest of the public, issues this complaint, stating its charges as follows:

PARAGRAPH 1. The following definitions apply in this complaint:

(a) "John Hancock" means John Hancock Mutual Life Insurance Company, the respondent, and all of its insurance company subsidiaries.

(b) "Liberty Mutual" means Liberty Mutual Insurance Company, the respondent, Liberty Mutual Fire Insurance Company and all of their insurance company subsidiaries.

(c) "New England Mutual" means New England Mutual Life Insurance Company, the respondent, and all of its insurance company subsidiaries.

(d) "State Mutual" means State Mutual Life Assurance Company of America, the respondent, and all insurance company members of

"The America Group," including American Variable Annuity Life Assurance Company, The Hanover Insurance Company, Worcester Mutual Insurance Company, and The Beacon Mutual Indemnity Company, and all of their insurance company subsidiaries.

(e) "Subsidiary" of a corporation (parent) means any corporation 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of which is owned or controlled, directly or indirectly, other than as a fiduciary, by such corporation (parent).

(f) "Sister" of a corporation means any corporation of which more than 50 percent of the voting stock (or other indicia of control for non-stock corporations) is directly or indirectly owned or controlled by the same corporation which owns or controls directly or indirectly 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of the subject corporation.

(g) "Insurance company" means any corporation engaged in the underwriting of insurance which is organized and existing as an insurance company under the laws of any state and which files an Annual Statement to Insurance Commissioner in such state or any corporation which has such an insurance company as a subsidiary.

(h) "Lines of insurance" means the lines of business shown in the NAIC Annual Statement to Insurance Commissioner blank forms, as amended from time to time.

(i) "Annual premiums" means the total direct premiums derived by an insurance company from any line of insurance during a calendar year less dividends to policyholders attributable to that line of insurance, and excluding premiums derived from any line of insurance sold to a subsidiary, sister or parent.

PAR. 2. Respondent John Hancock Mutual Life Insurance Company is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. It maintains its principal place of business at John Hancock Place, Boston, Massachusetts and has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 3. Respondent Liberty Mutual Insurance Company is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. It maintains its principal place of business at 175 Berkeley St., Boston, Massachusetts and has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 4. Respondent New England Mutual Life Insurance Company is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. It maintains its principal place of business at 501 Boylston St., Boston, Massachu-

setts and has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 5. Respondent State Mutual Life Assurance Company of America is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. It maintains its principal place of business at 440 Lincoln St., Worcester, Massachusetts and has capital, surplus and undivided profits aggregating more than one million dollars.

PAR. 6. Roger C. Damon is a member of the boards of directors of Liberty Mutual Insurance Company and New England Mutual Life Insurance Company. He is also a member of the Finance Committee of New England Mutual Life Insurance Company.

PAR. 7. Thomas J. Galligan, Jr., is a member of the boards of directors of Liberty Mutual Insurance Company and New England Mutual Life Insurance Company. He is also a member of the Finance Committee of New England Mutual Life Insurance Company.

PAR. 8. Richard D. Hill is a member of the boards of directors of Liberty Mutual Insurance Company and John Hancock Mutual Life Insurance Company.

PAR. 9. D. Thomas Trigg is a member of the boards of directors of Liberty Mutual Insurance Company and State Mutual Life Assurance Company of America.

PAR. 10. John Hancock conducts its business in the fifty States of the United States and the District of Columbia. During the calendar year ending December 31, 1975, its business encompassed, but was not limited to, the sale of the following lines of insurance in the following amounts:

Lines of Business	Annual Premiums Written During 1975
Group Accident and Health	407,519,427
Ordinary Life	586,604,681
Group Life	212,735,047
Individual Annuities	5,619,142

PAR. 11. Liberty Mutual conducts its business in the fifty States of the United States and the District of Columbia. During the calendar year ending December 31, 1975, its business encompassed, but was not limited to, the sale of the following lines of insurance in the following amounts:

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Lines of Business	Annual Premiums Written During 1975
Fire	6,482,256
Allied Lines	4,561,932
Homeowner's Multiple Peril	56,062,660
Commercial Multiple Peril	21,324,904
Inland Marine	12,081,305
Group Accident and Health	98,410,880
Other Accident and Health	2,924,900
Workmen's Compensation	413,965,016
Other Liability	112,867,361
Auto Liability	271,919,902
Auto Physical Damage	124,330,409
Fidelity	2,157,232
Burglary/Theft	2,025,214
Ordinary Life	5,766,025
Group Life	8,811,364
Individual Annuities	66,331

PAR. 12. New England Mutual conducts its business in the fifty States of the United States and the District of Columbia. During the calendar year ending December 31, 1975, its business encompassed, but was not limited to, the sale of the following lines of insurance in the following amounts:

Lines of Business	Annual Premiums Written During 1975
Group Accident and Health	56,167,752
Ordinary Life	318,329,892
Group Life	21,133,487
Individual Annuities	22,791,633

PAR. 13. State Mutual conducts its business in the fifty States of the United States and the District of Columbia. During the calendar year ending December 31, 1975 its business encompassed, but was not limited to, the sale of the following lines of insurance in the following amounts:

Lines of Business	Annual Premiums Written During 1975
Fire	24,765,253
Allied Lines	10,683,161

Homeowner's Multiple Peril	34,434,834
Commercial Multiple Peril	23,957,896
Inland Marine	6,497,439
Group Accident and Health	50,636,102
Other Accident and Health	4,086,048
Workmen's Compensation	31,998,014
Other Liability	108,356,934
Auto Liability	55,692,894
Auto Physical Damage	41,380,235
Ocean Marine	6,004,993
Aircraft	9,767,027
Surety	2,329,641
Ordinary Life	103,594,266
Group Life	18,621,943
Individual Annuities	1,198,888

PAR. 14. (a) By the nature of their business and the locations of their operations as hereinabove described, Liberty Mutual and New England Mutual are competitors of each other in the sale of insurance, including but not necessarily limited to, the sale of the following lines of insurance: group accident and health, ordinary life, group life, and individual annuities.

(b) The elimination, by agreement or otherwise, of competition between Liberty Mutual and New England Mutual would constitute a violation of the antitrust laws.

PAR. 15. (a) By the nature of their business and the locations of their operations as hereinabove described, John Hancock and Liberty Mutual are competitors in the sale of insurance, including but not necessarily limited to, the sale of the following lines of insurance: group accident and health, ordinary life, group life, and individual annuities.

(b) The elimination, by agreement or otherwise, of competition between John Hancock and Liberty Mutual would constitute a violation of the antitrust laws.

PAR. 16. (a) By the nature of their business and the locations of their operations as hereinabove described, State Mutual and Liberty Mutual are competitors of each other in the sale of insurance, including but not necessarily limited to, the sale of the following lines of insurance: fire, allied lines, homeowner's multiple peril, commercial multiple peril, inland marine, group accident and health, other accident and health, workmen's compensation, other

liability, auto liability, auto physical damage, ordinary life, group life, and individual annuities.

(b) The elimination, by agreement or otherwise, of competition between State Mutual and Liberty Mutual would constitute a violation of the antitrust laws.

PAR. 17. (a) John Hancock, Liberty Mutual, New England Mutual and State Mutual conduct their business, as hereinabove described, in the District of Columbia and in various States of the United States.

(b) John Hancock, Liberty Mutual, New England Mutual and State Mutual engage in "commerce" and conduct their business, including activities involving their boards of directors, so as to have an effect upon "commerce," as the term "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44 and in Section 1 of the Clayton Act, 15 U.S.C. 12.

PAR. 18. Roger C. Damon's simultaneous membership on the boards of directors of both Liberty Mutual Insurance Company and New England Mutual Life Insurance Company is a violation by Liberty Mutual Insurance Company and New England Mutual Life Insurance Company of Section 8 of the Clayton Act, 15 U.S.C. 21. It is also an unfair act, practice, or method of competition in or affecting commerce and, therefore, constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by Liberty Mutual Insurance Company and New England Mutual Life Insurance Company.

PAR. 19. Thomas J. Galligan, Jr.'s simultaneous membership on the boards of directors of both Liberty Mutual Insurance Company and New England Mutual Life Insurance Company is a violation by Liberty Mutual Insurance Company and New England Mutual Life Insurance Company of Section 8 of the Clayton Act, 15 U.S.C. 21. It is also an unfair act, practice, or method of competition in or affecting commerce and, therefore, constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by Liberty Mutual Insurance Company and New England Mutual Life Insurance Company.

PAR. 20. Richard D. Hill's simultaneous membership on the boards of directors of both Liberty Mutual Insurance Company and John Hancock Mutual Life Insurance Company is a violation by Liberty Mutual Insurance Company and John Hancock Mutual Life Insurance Company of Section 8 of the Clayton Act, 15 U.S.C. 21. It is also an unfair act, practice, or method of competition in or affecting commerce and, therefore, constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by Liberty Mutual

Insurance Company and John Hancock Mutual Life Insurance Company.

PAR. 21. D. Thomas Trigg's simultaneous membership on the boards of directors of both Liberty Mutual Insurance Company and State Mutual Life Assurance Company of America is a violation by Liberty Mutual Insurance Company and State Mutual Life Assurance Company of America of Section 8 of the Clayton Act, 15 U.S.C. 21. It is also an unfair act, practice, or method of competition in or affecting commerce and, therefore, constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by Liberty Mutual Insurance Company and State Mutual Life Assurance Company of America.

DECISION AND ORDER RE RESPONDENT JOHN HANCOCK  
MUTUAL LIFE INSURANCE COMPANY

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act; and

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days, and now in conformity with the procedure provided by Section 2.34 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent is a corporation incorporated under the laws of the Commonwealth of Massachusetts and maintains its principal office at John Hancock Place, Boston, Massachusetts.
2. The Federal Trade Commission has jurisdiction over the

subject matter of this proceeding and over the respondent, and the proceeding is in the public interest.

#### ORDER

##### I

*It is ordered,* That the following definitions shall apply in this order:

(a) "John Hancock" means John Hancock Mutual Life Insurance Company, the respondent, and all of its insurance company subsidiaries.

(b) "Subsidiary" of a corporation (parent) means any corporation 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of which is owned or controlled, directly or indirectly, other than as a fiduciary, by such corporation (parent).

(c) "Sister" of a corporation means any corporation of which more than 50 percent of the voting stock (or other indicia of control for non-stock corporations) is directly or indirectly owned or controlled by the same corporation which owns or controls directly or indirectly 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of the subject corporation.

(d) "Insurance company" means any corporation engaged in the underwriting of insurance which is organized and existing as an insurance company under the laws of any state and which files an Annual Statement to Insurance Commissioner in such state or any corporation which has such an insurance company as a subsidiary.

(e) "Lines of insurance" means the lines of business shown in the NAIC Annual Statement to Insurance Commissioner blank forms, as amended from time to time.

(f) "Annual premiums" means the total direct premiums derived by an insurance company from any line of insurance during a calendar year less dividends to policyholders attributable to that line of insurance, and excluding premiums derived from any line of insurance sold to a subsidiary, sister or parent.

##### II

*It is further ordered,* That respondent, its successors and assigns, do forthwith cease and desist from permitting any individual to serve as a director or to be a nominee for director of respondent if such individual is or would be at the same time a director or nominee for director of Liberty Mutual Insurance Company so long as respondent and Liberty Mutual Insurance Company are in competition in the underwriting of one or more lines of insurance.

## III

*It is further ordered*, That respondent, its successors and assigns, do as follows:

(a) Thirty days after the date upon which this order, as finally issued by the Commission, is served on the respondent, the respondent shall report in writing to the Commission that no director of the respondent nor any nominee for director of the respondent is then a director or nominee for director of Liberty Mutual Insurance Company. Thereafter, annually for a period of five (5) years beginning on October 15, 1978, and ending on October 15, 1982, the respondent shall report in writing to the Commission that no director of the respondent, nor any nominee for director of the respondent, serves as a director, or is then a nominee for director, of an insurance company which has, pursuant to the reports and review prescribed in Paragraph III(b), been disclosed and determined to be in competition with John Hancock, or that all legally available steps to remove or prevent such persons from service on the Board of respondent have been taken.

(b) Prior to and as the basis for making the annual report required in Paragraph III(a) hereto, the respondent shall do the following:

(1) The respondent shall require a written report to the respondent from each director and each nominee for director, identifying each other corporation as to which said director or nominee for director is also a director or nominee for director, and, if such corporation is an insurance company, listing each line of insurance underwritten by each such insurance company for which, during the immediately preceding calendar year, annual premiums received by that company exceeded \$2,000,000. When requesting such report, the respondent shall furnish each director and nominee for director a copy of the complaint and order in this proceeding.

(2) The respondent shall determine by reviewing *Best's Insurance Reports, Fire and Casualty* and *Best's Insurance Reports, Life*, published by Alfred M. Best Company, Inc., and consulting appropriate personnel within John Hancock, whether the lists of lines of insurance reported to the respondent pursuant to Paragraph III(b)(1) hereof are complete and accurate and shall use reasonable diligence to determine whether any line of insurance required to be reported pursuant to Paragraph III(b)(1) hereof is in competition with any line of insurance underwritten by John Hancock for which, during the immediately preceding calendar year, annual premiums received by John Hancock exceeded \$2,000,000.

(c) In the event that the process of review required by Paragraph

III(b) hereof discloses the existence of competition in any line of insurance between John Hancock and any other insurance company identified in any report furnished pursuant to Paragraph III(b)(1), the respondent shall prevent the service as director or the nomination or election as director of any person who remains as a director or nominee for director of that insurance company, provided that the Respondent shall be allowed a reasonable period of time from the date of such disclosure within which so to prevent such service, nomination or election by taking such steps as are legally available to it to comply with this provision.

(d) In the event that any director or nominee for director of the respondent fails or refuses to provide in good faith the report required by Paragraph III(b)(1) hereof, the respondent shall prevent such person from remaining as a director or nominee for director of the respondent, provided that the respondent shall be allowed a reasonable period of time from the date of such failure or refusal within which so to prevent such person from so remaining by taking such steps as are legally available to it to comply with this provision.

(e) The respondent's report to the Commission, which is to be made on an annual basis as described in Paragraph III(a) hereof, shall contain the written reports of the individual directors and nominees for director required by Paragraph III(b)(1) hereof and a copy of the respondent's written request to such directors and nominees for director and shall set forth the manner and form in which the respondent has complied with this order.

#### IV

*It is further ordered.* That the provisions of Paragraph III hereof shall not apply where the corporation referred to is included in the definition of John Hancock above or is John Hancock's (1) parent, (2) sister, or (3) subsidiary.

#### DECISION AND ORDER RE RESPONDENT LIBERTY MUTUAL INSURANCE COMPANY

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act; and

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days, and now in conformity with the procedure provided by Section 2.34 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent is a corporation incorporated under the laws of the Commonwealth of Massachusetts and maintains its principal office at 175 Berkeley St., Boston, Massachusetts.
2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the respondent, and the proceeding is in the public interest.

#### ORDER

##### I

*It is ordered,* That the following definitions shall apply in this order:

(a) "Liberty Mutual" means Liberty Mutual Insurance Company, the respondent, Liberty Mutual Fire Insurance Company and all of their insurance company subsidiaries.

(b) "Subsidiary" of a corporation (parent) means any corporation 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of which is owned or controlled, directly or indirectly, other than as a fiduciary, by such corporation (parent).

(c) "Sister" of a corporation means any corporation of which more than 50 percent of the voting stock (or other indicia of control for non-stock corporations) is directly or indirectly owned or controlled by the same corporation which owns or controls directly or indirectly 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of the subject corporation.

(d) "Insurance company" means any corporation engaged in the underwriting of insurance which is organized and existing as an

insurance company under the laws of any state and which files an Annual Statement to Insurance Commissioner in such state or any corporation which has such an insurance company as a subsidiary.

(e) "Lines of insurance" means the lines of business shown in the NAIC Annual Statement to Insurance Commissioner blank forms, as amended from time to time.

(f) "Annual premiums" means the total direct premiums derived by an insurance company from any line of insurance during a calendar year less dividends to policyholders attributable to that line of insurance, and excluding premiums derived from any line of insurance sold to a subsidiary, sister or parent.

## II

*It is further ordered,* That respondent, its successors and assigns, do forthwith cease and desist from permitting any individual to serve as a director or to be a nominee for director of respondent if such individual is or would be at the same time a director or nominee for director of John Hancock Mutual Life Insurance Company or New England Mutual Life Insurance Company or State Mutual Life Assurance Company of America so long as respondent and any of the said companies of which said individual is or would at the same time be a director or nominee for director are in competition in the underwriting of one or more lines of insurance.

## III

*It is further ordered,* That respondent, its successors and assigns, do as follows:

(a) Thirty days after the date upon which this order, as finally issued by the Commission, is served on the respondent, the respondent shall report in writing to the Commission that no director of the respondent nor any nominee for director of the respondent is then a director or nominee for director of John Hancock Mutual Life Insurance Company or New England Mutual Life Insurance Company or State Mutual Life Assurance Company of America. Thereafter, annually for a period of five (5) years beginning on October 15, 1978, and ending on October 15, 1982, the respondent shall report in writing to the Commission that no director of the respondent, nor any nominee for director of the respondent, serves as a director, or is then a nominee for director, of an insurance company which has, pursuant to the reports and review prescribed in Paragraph III(b), been disclosed and determined to be in competition with Liberty Mutual, or that all legally

available steps to remove or prevent such persons from service on the Board of respondent have been taken.

(b) Prior to and as the basis for making the annual report required in Paragraph III(a) hereto, the respondent shall do the following:

(1) The respondent shall require a written report to the respondent from each director and each nominee for director, identifying each other corporation as to which said director or nominee for director is also a director or nominee for director, and, if such corporation is an insurance company, listing each line of insurance underwritten by each such insurance company for which, during the immediately preceding calendar year, annual premiums received by that company exceeded \$2,000,000. When requesting such report, the respondent shall furnish each director and nominee for director a copy of the complaint and order in this proceeding.

(2) The respondent shall determine by reviewing *Best's Insurance Reports, Fire and Casualty* and *Best's Insurance Reports, Life*, published by Alfred M. Best Company, Inc., and consulting appropriate personnel within Liberty Mutual, whether the lists of lines of insurance reported to the respondent pursuant to Paragraph III(b)(1) hereof are complete and accurate and shall use reasonable diligence to determine whether any line of insurance required to be reported pursuant to Paragraph III(b)(1) hereof is in competition with any line of insurance underwritten by Liberty Mutual for which, during the immediately preceding calendar year, annual premiums received by Liberty Mutual exceeded \$2,000,000.

(c) In the event that the process of review required by Paragraph III(b) hereof discloses the existence of competition in any line of insurance between Liberty Mutual and any other insurance company identified in any report furnished pursuant to Paragraph III(b)(1), the respondent shall prevent the service as director or the nomination or election as director of any person who remains as a director or nominee for director of that insurance company, provided that the respondent shall be allowed a reasonable period of time from the date of such disclosure within which so to prevent such service, nomination or election by taking such steps as are legally available to it to comply with this provision.

(d) In the event that any director or nominee for director of the respondent fails or refuses to provide in good faith the report required by Paragraph III(b)(1) hereof, the respondent shall prevent such person from remaining as a director or nominee for director of the respondent, provided that the respondent shall be allowed a reasonable period of time from the date of such failure or refusal

within which so to prevent such person from so remaining by taking such steps as are legally available to it to comply with this provision.

(e) The respondent's report to the Commission, which is to be made on an annual basis as described in Paragraph III(a) hereof, shall contain the written reports of the individual directors and nominees for director required by Paragraph III(b)(1) hereof and a copy of the respondent's written request to such directors and nominees for director and shall set forth the manner and form in which the respondent has complied with this order.

#### IV

*It is further ordered*, That the provisions of Paragraph III hereof shall not apply where the corporation referred to is included in the definition of Liberty Mutual above or is Liberty Mutual's (1) parent, (2) sister, or (3) subsidiary.

#### DECISION AND ORDER RE RESPONDENT NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act; and

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days, and now in conformity with the procedure provided by Section 2.34 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent is a corporation incorporated under the laws of the Commonwealth of Massachusetts and maintains its principal office at 501 Boylston St., Boston, Massachusetts.

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

## ORDER

### I

*It is ordered,* That the following definitions shall apply in this order:

(a) "New England Mutual" means New England Mutual Life Insurance Company, the respondent, and all of its insurance company subsidiaries.

(b) "Subsidiary" of a corporation (parent) means any corporation 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of which is owned or controlled, directly or indirectly, other than as a fiduciary, by such corporation (parent).

(c) "Sister" of a corporation means any corporation of which more than 50 percent of the voting stock (or other indicia of control for non-stock corporations) is directly or indirectly owned or controlled by the same corporation which owns or controls directly or indirectly 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of the subject corporation.

(d) "Insurance company" means any corporation engaged in the underwriting of insurance which is organized and existing as an insurance company under the laws of any state and which files an Annual Statement to Insurance Commissioner in such state or any corporation which has such an insurance company as a subsidiary.

(e) "Lines of insurance" means the lines of business shown in the NAIC Annual Statement to Insurance Commissioner blank forms, as amended from time to time.

(f) "Annual premiums" means the total direct premiums derived by an insurance company from any line of insurance during a calendar year less dividends to policyholders attributable to that line of insurance, and excluding premiums derived from any line of insurance sold to a subsidiary, sister or parent.

### II

*It is further ordered,* That respondent, its successors and assigns, do forthwith cease and desist from permitting any individual to serve as a director or to be a nominee for director of respondent if such

individual is or would be at the same time a director or nominee for director of Liberty Mutual Insurance Company so long as respondent and Liberty Mutual Insurance Company are in competition in the underwriting of one or more lines of insurance.

### III

*It is further ordered,* That respondent, its successors and assigns, do as follows:

(a) Thirty days after the date upon which this order, as finally issued by the Commission, is served on the respondent, the respondent shall report in writing to the Commission that no director of the respondent nor any nominee for director of the respondent is then a director or nominee for director of Liberty Mutual Insurance Company. Thereafter, annually for a period of five (5) years beginning on October 15, 1978, and ending on October 15, 1982, the respondent shall report in writing to the Commission that no director of the respondent, nor any nominee for director of the respondent, serves as a director, or is then a nominee for director, of an insurance company which has, pursuant to the reports and review prescribed in Paragraph III(b), been disclosed and determined to be in competition with New England Mutual, or that all legally available steps to remove or prevent such persons from service on the Board of respondent have been taken.

(b) Prior to and as the basis for making the annual report required in Paragraph III(a) hereto, the respondent shall do the following:

(1) The respondent shall require a written report to the respondent from each director and each nominee for director, identifying each other corporation as to which said director or nominee for director is also a director or nominee for director, and, if such corporation is an insurance company, listing each line of insurance underwritten by each such insurance company for which, during the immediately preceding calendar year, annual premiums received by that company exceeded \$2,000,000. When requesting such report, the respondent shall furnish each director and nominee for director a copy of the complaint and order in this proceeding.

(2) The respondent shall determine, by reviewing *Best's Insurance Reports, Fire and Casualty* and *Best's Insurance Reports, Life*, published by Alfred M. Best Company, Inc., and consulting appropriate personnel within New England Mutual, whether the lists of lines of insurance reported to the respondent pursuant to Paragraph III(b)(1) hereof are complete and accurate and shall use reasonable diligence to determine whether any line of insurance required to be reported pursuant to Paragraph III(b)(1) hereof is in competition

with any line of insurance underwritten by New England Mutual for which, during the immediately preceding calendar year, annual premiums received by New England Mutual exceeded \$2,000,000.

(c) In the event that the process of review required by Paragraph III(b) hereof discloses the existence of competition in any line of insurance between New England Mutual and any other insurance company identified in any report furnished pursuant to Paragraph III(b)(1), the respondent shall prevent the service as director or the nomination or election as director of any person who remains as a director or nominee for director of that insurance company, provided that the respondent shall be allowed a reasonable period of time from the date of such disclosure within which so to prevent such service, nomination or election by taking such steps as are legally available to it to comply with this provision.

(d) In the event that any director or nominee for director of the respondent fails or refuses to provide in good faith the report required by Paragraph III(b)(1) hereof, the respondent shall prevent such person from remaining as a director or nominee for director of the respondent, provided that the respondent shall be allowed a reasonable period of time from the date of such failure or refusal within which so to prevent such person from so remaining by taking such steps as are legally available to it to comply with this provision.

(e) The respondent's report to the Commission, which is to be made on an annual basis as described in Paragraph III(a) hereof, shall contain the written reports of the individual directors and nominees for director required by Paragraph III(b)(1) hereof and a copy of the respondent's written request to such directors and nominees for director and shall set forth the manner and form in which the respondent has complied with this order.

#### IV

*It is further ordered,* That the provisions of Paragraph III hereof shall not apply where the corporation referred to is included in the definition of New England Mutual above or is New England Mutual's (1) parent, (2) sister, or (3) subsidiary.

#### DECISION AND ORDER RE RESPONDENT STATE MUTUAL LIFE ASSURANCE COMPANY OF AMERICA

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to

present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 8 of the Clayton Act and Section 5(a)(1) of the Federal Trade Commission Act; and

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days, and now in conformity with the procedure provided by Section 2.34 of its Rules, the Commission hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following order:

1. Respondent is a corporation incorporated under the laws of the Commonwealth of Massachusetts and maintains its principal office at 440 Lincoln St., Worcester, Massachusetts.
2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the respondent, and the proceeding is in the public interest.

## I

*It is ordered,* That the following definitions shall apply in this order:

(a) "State Mutual" means State Mutual Life Assurance Company of America, the respondent, and all insurance company members of "The American Group," including American Variable Annuity Life Assurance Company, The Hanover Insurance Company, Worcester Mutual Insurance Company, and The Beacon Mutual Indemnity Company, and all of their insurance company subsidiaries.

(b) "Subsidiary" of a corporation (parent) means any corporation 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of which is owned or controlled, directly or indirectly, other than as a fiduciary, by such corporation (parent).

(c) "Sister" of a corporation means any corporation of which more than 50 percent of the voting stock (or other indicia of control for non-stock corporations) is directly or indirectly owned or controlled

by the same corporation which owns or controls directly or indirectly 50 percent or more of the voting stock (or other indicia of control for non-stock corporations) of the subject corporation.

(d) "Insurance company" means any corporation engaged in the underwriting of insurance which is organized and existing as an insurance company under the laws of any state and which files an Annual Statement to Insurance Commissioner in such state or any corporation which has such an insurance company as a subsidiary.

(e) "Lines of insurance" means the lines of business shown in the NAIC Annual Statement to Insurance Commissioner blank forms, as amended from time to time.

(f) "Annual premiums" means the total direct premiums derived by an insurance company from any line of insurance during a calendar year less dividends to policyholders attributable to that line of insurance, and excluding premiums derived from any line of insurance sold to a subsidiary, sister or parent.

## II

*It is further ordered,* That respondent, its successors and assigns, do forthwith cease and desist from permitting any individual to serve as a director or to be a nominee for director of respondent if such individual is or would be at the same time a director or nominee for director of Liberty Mutual Insurance Company so long as respondent and Liberty Mutual Insurance Company are in competition in the underwriting of one or more lines of insurance.

## III

*It is further ordered,* That respondent, its successors and assigns, do as follows:

(a) Thirty days after the date upon which this order, as finally issued by the Commission, is served on the respondent, the respondent shall report in writing to the Commission that no director of the respondent nor any nominee for director of the respondent is then a director or nominee for director of Liberty Mutual Insurance Company. Thereafter, annually for a period of five (5) years beginning on October 15, 1978, and ending on October 15, 1982, the respondent shall report in writing to the Commission that no director of the respondent, nor any nominee for director of the respondent, serves as a director, or is then a nominee for director, of an insurance company which has, pursuant to the reports and review prescribed in Paragraph III(b), been disclosed and determined to be in competition with State Mutual, or that all legally available

steps to remove or prevent such persons from service on the Board of respondent have been taken.

(b) Prior to and as the basis for making the annual report required in Paragraph III(a) hereto, the respondent shall do the following:

(1) The respondent shall require a written report to the respondent from each director and each nominee for director, identifying each other corporation as to which said director or nominee for director is also a director or nominee for director, and, if such corporation is an insurance company, listing each line of insurance underwritten by each such insurance company for which, during the immediately preceding calendar year, annual premiums received by that company exceeded \$2,000,000. When requesting such report, the respondent shall furnish each director and nominee for director a copy of the complaint and order in this proceeding.

(2) The respondent shall determine by reviewing *Best's Insurance Reports, Fire and Casualty* and *Best's Insurance Reports, Life*, published by Alfred M. Best Company, Inc., and consulting appropriate personnel within State Mutual, whether the lists of lines of insurance reported to the respondent pursuant to Paragraph III(b)(1) hereof are complete and accurate and shall use reasonable diligence to determine whether any line of insurance required to be reported pursuant to Paragraph III(b)(1) hereof is in competition with any line of insurance underwritten by State Mutual for which, during the immediately preceding calendar year, annual premiums received by State Mutual exceeded \$2,000,000.

(c) In the event that the process of review required by Paragraph III(b) hereof discloses the existence of competition in any line of insurance between State Mutual and any other insurance company identified in any report furnished pursuant to Paragraph III(b)(1), the respondent shall prevent the service as director or the nomination or election as director of any person who remains as a director or nominee for director of that insurance company, provided that the respondent shall be allowed a reasonable period of time from the date of such disclosure within which so to prevent such service, nomination or election by taking such steps as are legally available to it to comply with this provision.

(d) In the event that any director or nominee for director of the respondent fails or refuses to provide in good faith the report required by Paragraph III(b)(1) hereof, the Respondent shall prevent such person from remaining as a director or nominee for director of the respondent, provided that the respondent shall be allowed a reasonable period of time from the date of such failure or refusal

## INTERLOCUTORY ORDER

within which so to prevent such person from so remaining by taking such steps as are legally available to it to comply with this provision.

(e) The respondent's report to the Commission, which is to be made on an annual basis as described in Paragraph III(a) hereof, shall contain the written reports of the individual directors and nominees for director required by Paragraph III(b)(1) hereof and a copy of the respondent's written request to such directors and nominees for director and shall set forth the manner and form in which the respondent has complied with this order.

## IV

*It is further ordered,* That the provisions of Paragraph III hereof shall not apply where the corporation referred to is included in the definition of State Mutual above or is State Mutual's (1) parent, (2) sister, or (3) subsidiary.

## INTERLOCUTORY ORDER

92 F.T.C.

## IN THE MATTER OF

## CENTURY 21 COMMODORE PLAZA, INC., ET AL.

*Docket 9088. Interlocutory Order, Sept. 21, 1978*

ORDER DENYING AS MOOT RESPONDENTS' MOTIONS TO  
COMPEL PRODUCTION OF DOCUMENTS SUBMITTED TO THE  
COMMISSION ON PROPOSED INJUNCTION AND FOR DISCOVERY OF  
ALL MEMORANDA, DOCUMENTS, COMMUNICATIONS OR  
CONTACTS WITH THE COMMISSION REGARDING PROPOSED  
INJUNCTION

Administrative Law Judge Lewis F. Parker has certified to the Commission respondents' motions to compel production of documents submitted to the Commission on an injunction proposed by complaint counsel, and for discovery of all memoranda, documents, communications or contacts with the Commission regarding the proposed injunction. The administrative law judge has recommended that all *ex parte* communications regarding the merits of this case which staff may have made to the Commission with respect to the proposed injunction be released.

The matter is moot. By minute of July 31, 1978, the Commission directed that all such *ex parte* communications from the staff, which contain statements of fact and mixed statements of fact and law which appear to relate to facts in issue, be placed on the public record. By reason of a clerical oversight, this was not done; however, the Commission has been informed that the pertinent materials have since been placed on the public record, pursuant to its July 31, 1978 directive. This procedure fully conforms to Rules of Practice Section 4.7(f), which governs communications, like these, that are *not* prohibited by Section 4.7(b). Accordingly, inasmuch as the Commission is unaware of any further *ex parte* communications on this subject, either written or oral,

*It is ordered,* That respondents' motions be, and hereby are, denied as moot.

IN THE MATTER OF  
INTERCO INCORPORATED, ET AL.

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

*Docket C-2929. Complaint, Sept. 26, 1978 — Decision, Sept. 26, 1978*

This consent order, among other things, requires a St. Louis, Mo. distributor of footwear, wearing apparel and accessories and its subsidiaries to cease suggesting resale prices for their products; maintaining price fixing agreements; compelling price adherence and exclusive dealings through coercion, and penalizing recalcitrant dealers. The firms are also required to reinstate terminated resellers; and maintain relevant records for a five-year period.

*Appearances*

For the Commission: *Elliot Feinberg, Richard Gately, Judith K. Braun, Paul Eyre and Carole I. Danielson.*

For the respondents: *Ronald L. Aylward, Ephraim Jacobs and E.C. Heininger, St. Louis, Mo.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Interco Incorporated, Londontown Corporation, and Queen Casuals, Inc., corporations, hereinafter sometimes referred to as respondents, have violated the provisions of Section 5(a)(1) of the Federal Trade Commission Act, and Sections 2(d), 2(e) and 3 of the Clayton Act, and that a proceeding by it in respect thereof is in the public interest, issues this complaint stating its charges as follows:

RESPONDENTS

PARAGRAPH 1. Respondent Interco Incorporated is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its executive offices located at Ten Broadway, St. Louis, Missouri.

Respondent Londontown Corporation is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its principal place of business located at Londontown Boulevard, Eldersburg, Maryland.

Respondent Queen Casuals, Inc. is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its principal place of business located at 10175 Northeast Ave., Philadelphia, Pennsylvania.

PAR. 2. Interco Incorporated is engaged, directly or through its

subsidiaries, in the manufacture, sale, and distribution of various consumer products. Among said products are footwear and wearing apparel bearing trademarks, brands, and names owned by Interco Incorporated, including, but not limited to, "Florsheim" and "Thayer McNeil" footwear, and "London Fog," "Clipper Mist," "Queen Casuals," "Devon" and "College-Town" wearing apparel.

Florsheim Shoe Company and International Shoe Company are operated as divisions of Interco Incorporated. By and through these divisions Interco Incorporated manufactures, distributes, and sells men's, women's and children's footwear.

Interco Incorporated is a substantial nationwide seller of medium-to-high priced dress and casual leather footwear in the United States. Interco Incorporated distributes its footwear products through numerous company-owned outlets as well as through independent retailers.

College-Town and Devon are operated as divisions of Interco Incorporated. By and through these divisions Interco Incorporated manufactures, distributes, and sells wearing apparel.

Londontown Corporation and Queen Casuals, Inc. are wholly-owned subsidiaries of Interco Incorporated. By and through these subsidiaries Interco Incorporated manufactures, distributes, and sells wearing apparel.

In 1976, Interco Incorporated had net sales in excess of \$1,000,000,000. Sales of footwear and apparel constituted more than 78 percent of earnings in 1976.

#### COMMERCE

PAR. 3. Respondents are engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, and are engaged in or their business affects commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

#### DEFINITIONS

PAR. 4. For the purpose of this complaint, the following definitions shall apply:

(a) "*Dealer*" — any person, partnership, firm, or corporation which engages in the retail sale of footwear and wearing apparel, except a company-owned store.

(b) "*Company-owned store*" — any retail outlet or lease department owned or operated by any of the respondents.

(c) "*Sale period*" — any time during which company-owned stores offer to sell products at prices lower than those in effect during the

usual and ordinary course of business; or, any suggested, authorized, or customary time for selling or advertising footwear or apparel at prices lower than suggested, established, or customary resale prices.

#### COMPETITION

PAR. 5. Except to the extent that competition has been restrained by reasons of the practices hereinafter alleged, respondents are in competition with other persons, partnerships, or corporations engaged in the manufacturing, offering for sale, sale, or distribution of various products, including but not limited to footwear and wearing apparel.

#### COUNT I

PAR. 6. The allegations of Paragraphs 1 through 5 are incorporated herein by reference.

PAR. 7. Respondents are engaged and have engaged in the following acts or practices, some of which individually constitute unlawful acts or practices:

(a) Entering into combinations, agreements, or understandings with dealers or prospective dealers to adhere to certain resale prices.

(b) Disseminating price lists and supplements thereto containing suggested resale prices or resale prices in effect at company-owned stores, or otherwise informing dealers of suggested, established, or customary resale prices.

(c) Informing dealers or prospective dealers, by direct or indirect means, that respondents expect or desire such dealers to adhere to certain resale prices.

(d) Entering into combinations, agreements, or understandings with dealers or prospective dealers to adhere to certain sale periods.

(e) Disseminating information regarding sale periods, including the dates of such periods.

(f) Informing dealers or prospective dealers, by direct or indirect means, that respondents expect or desire such dealers to adhere to sale periods.

(g) Withholding allowances or other benefits from dealers who promote respondents' products at prices deviating from suggested, established, or customary resale prices or from prices in effect at company-owned stores.

(h) Identifying dealers who:

(1) Offer for sale or sell respondents' products at prices or terms deviating from established, suggested, or customary resale prices or from prices or terms in effect at company-owned stores; or

(2) Advertise respondents' products at prices or terms deviating from established, suggested or customary resale prices or from prices or terms in effect at company-owned stores; or

(3) Advertise closeout, promotional, clearance or irregular products as having been manufactured by respondents.

(i) Contacting dealers who engage in any of the activities referred to in (h)(1) through (3).

(j) Urging, inducing, persuading, compelling, or coercing dealers to cease engaging in any of the activities referred to in (h)(1) through (3).

(k) Threatening to terminate or terminating certain dealers who engage in any of the activities referred to in (h)(1) through (3).

(l) Granting rebates, credits, benefits, or allowances to dealers who sell respondents' products at suggested, established, or customary resale prices.

(m) Disseminating or assisting in the dissemination of resale price information between or among competing dealers.

(n) Refusing to sell to any existing dealer who will not adhere to certain resale prices or sale periods.

PAR. 8. The capacity, tendency, or effect of the acts and practices of respondents alleged in Count I is, or may be, to:

(a) Maintain, control or establish the prices at which respondents' products are sold; or

(b) Lessen, eliminate, frustrate, reduce, or hinder competition in the sale and distribution of respondents' products; or

(c) Deprive consumers of the benefits of free and open competition.

Therefore, the acts and practices alleged in Count I constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act.

#### COUNT II

PAR. 9. The allegations of Paragraphs 1 through 5 are incorporated herein by reference.

PAR. 10. Interco Incorporated has sold or contracted for the sale of footwear products to certain dealers on the condition, agreement, or understanding that such dealers shall not purchase the products of one or more competitors of Interco Incorporated.

PAR. 11. Interco Incorporated suggests, recommends, advises, persuades, or induces dealers to refrain from selling the footwear products of one or more competitors of Interco Incorporated.

PAR. 12. The capacity, tendency, and effect of the acts and practices of Interco Incorporated alleged in Count II is, or may be, to:

(a) Substantially lessen, hinder, restrain, or suppress competition

in the sale of medium-to-high priced dress or casual leather footwear; or

(b) Exclude or tend to exclude, competitors of Interco Incorporated from selling footwear to a substantial number of dealers.

PAR. 13. Therefore, the acts and practices alleged in Count II violate Section 3 of the Clayton Act and constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act.

### COUNT III

PAR. 14. The allegations of Paragraphs 1 through 5 are incorporated herein by reference.

PAR. 15. Interco Incorporated has paid or contracted for the payment of money, goods, or other things of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such customers in connection with the processing, handling, sale, or offering for sale of its products and Interco Incorporated has not made such payments available on proportionally equal terms to all customers competing with the customers so favored in the sale and distribution of its footwear products.

For example, Interco Incorporated is now granting and has granted advertising allowances to some of its dealers in connection with the opening of additional retail outlets or special promotional activities such as anniversary sales. Said allowances are not and were not made available on proportionally equal terms to all other dealers competing with the dealers so favored in the sale and distribution of its footwear products.

PAR. 16. Interco Incorporated has discriminated in favor of some of its purchasers against other competing purchasers of its products bought for resale by contracting to furnish or furnishing or by contributing to the furnishing of services and facilities connected with the processing, handling, sale, or offering for sale of such products so purchased upon terms or conditions not accorded to all competing footwear purchasers on proportionally equal terms.

For example, Interco Incorporated has provided to some dealers the opportunity to purchase closeout merchandise or to return unsold product inventory.

PAR. 17. Therefore, the acts and practices alleged in Count III violate Sections 2(d) and 2(e) of the Clayton Act and constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act.

## DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondents have violated the said acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Interco Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices located at Ten Broadway, St. Louis, Missouri.

Respondent Londontown Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Londontown Boulevard, Eldersburg, Maryland.

Respondent Queen Casuals, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 10175 Northeast Ave., Philadelphia, Pennsylvania.

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

## ORDER

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

"Reseller" is defined as any person, partnership, firm or corporation which purchases any product from any respondent or any person, partnership, firm or corporation owned or operated by any respondent. "Reseller" shall not include any retail outlet or lease department owned or operated by any respondent.

"Prospective reseller" is defined as any person, partnership, firm or corporation which seeks to purchase any product from a respondent or any person, partnership, firm or corporation owned or operated by any respondent. "Prospective reseller" shall not include any retail outlet or lease department owned or operated by any respondent.

"Resale price" is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any reseller for pricing any product. Such term includes but is not limited to any suggested, established or customary resale price as well as the retail price in effect at any retail outlet or lease department owned or operated by any respondent.

"Sale period" is defined as any time during which any retail outlet or lease department owned or operated by any respondent offers to sell any product at resale prices lower than those in effect during the usual and ordinary course of business; or any suggested, authorized or customary time for selling or advertising any product at prices lower than suggested, established or customary resale prices.

"Product" is defined as any footwear, apparel, or apparel accessories including but not limited to handbags, belts, gloves, scarves, hats and jewelry.

## I

*It is ordered,* That respondents Interco Incorporated, Londontown Corporation and Queen Casuals, Inc., corporations, their successors and assigns, and respondents' 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:

1. Establishing, exacting assurances to comply with, continuing or enforcing any combination, agreement, understanding or arrangement to fix, establish, control, maintain or enforce, directly or

indirectly, any resale price at which any product is to be sold or advertised by any reseller or prospective reseller.

2. Requiring or coercing any reseller or prospective reseller to establish, maintain, issue, adopt or adhere to any resale price or sale period.

3. For a period of three (3) years from the date of service of this order, orally suggesting or recommending any resale price or sale period to any reseller or prospective reseller. The advertising to consumers of actual resale prices by any retail outlet or lease department owned or operated by any respondent shall not be deemed a violation of this paragraph.

4. For a period of three (3) years from the date of service of this order, communicating in writing any resale price or sale period to any reseller or prospective reseller. The advertising to consumers of actual resale prices by any retail outlet or lease department owned or operated by any respondent shall not be deemed a violation of this paragraph. After this three (3) year period, it shall be clearly stated on the pages of any list, book, advertising, promotional material or other document where any suggested resale price or sale period appears:

THE [RESALE PRICES OR SALE PERIODS] QUOTED HEREIN ARE SUGGESTED ONLY. YOU ARE FREE TO DETERMINE YOUR OWN [RESALE PRICES OR SALE PERIODS].

A respondent shall not, however, suggest resale prices on any tag, ticket or other marking affixed or to be affixed to any product shipped to a reseller.

5. Requiring or soliciting, directly or indirectly, any reseller, prospective reseller, person or firm to report the identity of any reseller who deviates from any resale price or sale period.

6. Communicating with any reseller or prospective reseller concerning its deviation or alleged deviation from any resale price or sale period.

7. Suggesting or requiring that any reseller or prospective reseller refrain from or discontinue advertising any product at a certain resale price.

8. Representing that any action may or will be taken against any reseller if it deviates from any resale price or sale period.

9. Threatening to withhold or withholding advertising allowances or any other assistance, payment, service or consideration from any reseller, or limiting or restricting the eligibility of any reseller to receive such benefits because said reseller advertises or sells at a certain resale price.

10. Making any payment or granting any other consideration or benefit to a reseller because another reseller has sold at a certain resale price.

11. Hindering or precluding the lawful use by a reseller of any brand name of any respondent in conjunction with the sale or advertising of any product at any price.

12. Terminating, suspending, delaying shipments to or taking or threatening any action against any reseller because the reseller has, or was alleged to have, sold or advertised any product at a certain resale price, or because the reseller may engage in any such activity in the future. Provided that each of the respondents retains the right to terminate any reseller for lawful business reasons not inconsistent with this paragraph or any other paragraph of this order.

13. Attempting to secure any promise or assurance from any reseller or prospective reseller regarding the price at which such reseller or prospective reseller will or may advertise or sell any product; or requesting or requiring any reseller or prospective reseller to obtain approval from any respondent for any price at which such reseller or prospective reseller may or will advertise or sell any product.

## II

*It is further ordered,* That respondents, their successors and assigns, and respondents' 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 footwear product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act and the Clayton Act, shall forthwith cease and desist from:

1. Entering into, maintaining, preserving or enforcing by refusal to sell, termination or threat thereof or otherwise, any agreement, understanding or arrangement which precludes or prevents a reseller or prospective reseller from stocking or selling a footwear product supplied by anyone other than a respondent or from independently determining the volume of a footwear product to be purchased from such other suppliers.

2. Requiring, coercing or inducing any reseller to cancel orders for or not purchase any footwear product supplied by anyone other than a respondent.

3. Making or contracting to make to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any services or facilities furnished by or through

such customer in connection with the handling, sale or offering for sale of footwear products unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the sale or distribution of such products.

4. Discriminating in favor of any purchaser against any other competing purchaser or purchasers of any footwear product bought for resale by contracting to furnish or furnishing or by contributing to the furnishing of any services or facilities connected with the handling, sale or offering for sale of such products so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

*It is further ordered,* That nothing in Part II of this order shall be construed to prevent any respondent from asserting all rights and defenses legally available to a respondent under Section 2 of the amended Clayton Act.

*It is further ordered,* That in any enforcement action brought to enforce the provisions of Part II of this order, respondents shall assume the burden of proving all such defenses.

### III

*It is further ordered,* That respondents shall:

1. Within sixty (60) days after the date of service of this order, mail under separate cover a copy of either this order or the Federal Trade Commission's news release in this matter to every present reseller of the Florsheim, Devon or College-Town divisions of Interco Incorporated or of the Londontown Corporation or Queen Casuals, Inc. subsidiaries of Interco Incorporated. An affidavit of mailing shall be sworn to by an official of respondents verifying that said mailing was completed.

2. Mail a copy of either this order or the Federal Trade Commission's news release in this matter to every reseller that purchases any product from the Florsheim, Devon or College-Town divisions of Interco Incorporated or from the Londontown Corporation or Queen Casuals, Inc. subsidiaries of Interco Incorporated within five (5) years after the date of service of this order. The mailing required by this paragraph shall occur within thirty (30) days after the first purchase by said reseller.

3. Within thirty (30) days after the date of service of this order distribute a copy of this order to each of their operating divisions and subsidiaries in the United States and to each of their officers, and to sales personnel, sales agents and sales representatives of the Florsheim, Devon and College-Town divisions of Interco Incorporated and of the Londontown Corporation and Queen Casuals, Inc.

subsidiaries of Interco Incorporated engaged in the sale of products to resellers and secure from each entity or person a signed statement acknowledging receipt of said order.

4. Upon written request received within six (6) months from the date of service of this order, reinstate any reseller terminated by a respondent since January 1, 1974 for failing to maintain a certain resale price or sale period, provided that such reseller meets the credit requirements applied by respondents in the retention of resellers.

5. Notify the Commission at least thirty (30) days prior to any proposed change in any 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.

6. For a period of five (5) years from the date of service of this order maintain complete business records which fully disclose the manner and form of respondents' compliance with the order, including but not limited to any records referring or relating in whole or in part to:

(a) any communication between any respondent and any reseller or prospective reseller relating to the price at which any reseller or prospective reseller is selling, proposes to sell, is advertising or proposes to advertise any product;

(b) the termination or suspension of any reseller for any reason;

(c) the refusal to deal with any prospective reseller for any reason;

or

(d) any request for reinstatement pursuant to Part III Paragraph (4) of this order.

The records required by this paragraph shall be made available to Commission staff upon reasonable notice.

7. File with the Commission within sixty (60) days and within one hundred and eighty (180) days after service of this order reports, in writing, setting forth in detail the manner and form in which they have complied with this order.

Final Order on Remand

92 F.T.C.

IN THE MATTER OF

KRAFTCO CORPORATION, ET AL.

FINAL ORDER ON REMAND, OPINION, ETC., IN REGARD TO  
ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND  
CLAYTON ACTS*Docket 9035. Complaint,<sup>1</sup> June 17, 1975 — Decision, Oct. 4, 1978*

This order on remand from the Second Circuit Court of Appeals is identical to that issued by the Commission on January 11, 1977, 42 FR 10979, corrected at 13820, 89 F.T.C. 46, and requires the SCM Corporation, a New York City producer of margarine, edible oils and barbecue sauce, among other things, to cease seating on its board of directors, any individual who is simultaneously serving on the board of the Kraftco Corporation, or any other competitive company.

## ORDER ON REMAND

## FINAL ORDER

This matter has been heard by the Commission upon remand from the Second Circuit Court of Appeals. The Commission, for the reasons stated in the accompanying opinion, has determined that an order to cease and desist should be entered. Therefore,

*It is ordered*, That the following order to cease and desist be, and it hereby is, entered:

## ORDER

The following definitions shall apply in this order:

“Subsidiary” of SCM means any corporation, 50 percent or more of the voting stock of which is owned or controlled, directly or indirectly, by SCM.

“Parent” of SCM means any corporation which owns or controls, directly or indirectly, 50 percent or more of the voting stock of SCM.

“Sister” of SCM means any subsidiary of a parent of SCM.

1. *It is ordered*, That respondent SCM Corporation and its successors and assigns shall forthwith cease and desist from having, and in the future shall not have, on their board of directors any individual who either:

(a) serves at the same time as a director of Kraftco Corporation, its successors or assigns (so long as Kraftco and SCM Corporation compete in the production or sale of any product or service), or

<sup>1</sup> For complaint, see 88 F.T.C. 362.

serves at the same time as a director of any other corporation (other than a subsidiary, parent, or sister of SCM) which competes with SCM Corporation in the production or sale of any product or service; or

(b) fails to submit to SCM Corporation any statement required by Paragraph Two of this order to be obtained by SCM.

2. *It is further ordered*, That within thirty (30) days of the effective date of this order, and prior to each election of directors or prior to the solicitation of proxies for such election, whichever is earlier, SCM Corporation shall obtain a written statement from each member of its board of directors (except directors whose terms expire at the next election and who are not standing for re-election) and from each nominee for a directorship (who is not then a director) showing:

(a) the name and home mailing address of each director or nominee; and

(b) the name and principal office mailing address of, and a listing of each product or service produced or sold by, each corporation which the director or nominee then serves as a director, or has been nominated to serve as a director at the time of the statement.

The requirements of this paragraph shall not apply to elections of directors occurring after five years from the effective date of this order, nor shall directors or nominees be required to list products or services of subsidiaries, sisters, or parents of SCM Corporation.

Nothing in this paragraph shall be construed to relieve respondent of its obligation under paragraph 1(a) hereto due to any error or omission contained in any written statement received pursuant to this paragraph.

3. *It is further ordered*, That within forty-five (45) days of the effective date of this order and annually for a period of ten (10) years thereafter, SCM Corporation shall file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order. Copies of the statements obtained pursuant to Paragraph Two of this order shall be submitted to the Commission as part of the reports of compliance required by this paragraph during the first five (5) years. Nothing in this paragraph shall relieve SCM Corporation of its obligation to comply with Paragraphs One and Four of this order once it is no longer required to submit reports of compliance to the Commission.

4. *It is further ordered*, That SCM Corporation shall notify the Commission at least thirty (30) days prior to any change in the corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of

subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

#### OPINION OF THE COMMISSION

By DIXON, *Commissioner*

This matter is before the Commission upon remand from the Second Circuit Court of Appeals. The Court affirmed the Commission's earlier determination that respondent SCM has violated Section 8 of the Clayton Act (15 U.S.C. 18) by virtue of its maintenance of a common director, Richard C. Bond, with a competitor, Kraftco Corporation. *SCM Corporation v. Federal Trade Commission*, 565 F. 2d 807 (2d Cir. 1977). However, the Court remanded the matter to the Commission for further consideration as to whether there exists some cognizable danger of recurrent violation, a finding that the Court deemed a necessary predicate to any imposition by the Commission of an order to cease and desist. On remand, both sides have filed briefs and reply briefs on this question.

In its original decision in this matter, the Commission, as had the administrative law judge, noted several factors that it believed warranted entry of an order in this case. Among these were the fact that the violation in question had been longstanding in nature, involved more than \$80 million in sales by SCM, and was terminated only following issuance of a complaint by the Commission. *See* 89 F.T.C. 46, 65 (1977). Having made these observations, however, we then went on to state (in addressing SCM's arguments that no order should enter) that

SCM's position here would necessitate that having shown a violation, complaint counsel then demonstrate by affirmative evidence the likelihood of future additional violations. To the contrary, we think the violation is itself the best evidence of the possibility of future such occurrences, and that *the burden rests with respondent to demonstrate that violations will not recur before consideration may be given to omitting an order.* . . . (89 F.T.C. at 66, emphasis added.)

The underlined wording met with the disapproval of the Court of Appeals, which was concerned that the Commission may have applied an incorrect standard and shifted the burden of proof in determining the need for an order.

Our phraseology was plainly infelicitous. What we intended by our words to convey was that record evidence concerning the nature of the violation and the circumstances surrounding it demonstrated to us the need for an order. In the face of such evidence, it was incumbent upon respondent to rebut, if it could, complaint counsel's showing that an order should enter.

Having once again reviewed the evidence and carefully considered the submissions of the parties, we adhere to our earlier conclusion that an order is necessary. We find that there is plainly a cognizable danger of recurrent violation of Section 8 of the Clayton Act in this case. Our conclusion is based upon the facts that the law violation which occurred persisted for a period of 7 years, involved markets in which SCM and its interlocked competitor made over \$300 million in sales (of which \$80 million were SCM's), and was halted only after intervention by the Commission (in this instance, after issuance of the complaint). In our view, these considerations show that SCM acted without adequate attention to its obligations under the law. Having acted in this fashion in the past, and given that it continues to do business and elect directors, we believe there is cognizable danger that SCM will again neglect to prevent the election and service of an interlocking director absent an order to deter it. See *SEC v. Commonwealth Chem. Securities, Inc.*, 574 F.2d 90, 100 (2d Cir. 1978).

In its briefs before the Commission, SCM contends that the grounds cited by complaint counsel, and upon which the Commission relies in finding a danger of recurrent violation, do not constitute "affirmative evidence" in support of the conclusion reached. We disagree.<sup>1</sup> As the Court of Appeals properly reminded us, the mere occurrence of a law violation, however trivial, technical, short-lived, and speedily corrected may not, in and of itself, dictate the need for remedial action. The Commission's holding in its earlier opinion could fairly have been read to say otherwise. We do believe, however, that with corporations as with individuals, past conduct is probative of future behavior. A driver who carelessly runs over a pedestrian is deemed in need of deterrence lest he repeat his act, even though the only significant proof that he is likely to be careless in the future is the fact that he was careless in the past. The same is true of a careless corporation. That a company would elect to its Board of Directors a member who simultaneously directs a competitor in a market in which the two companies share over \$300 million of sales, and that it could retain the director for seven years without detecting, or in any event moving to terminate the interlock, implies to us a degree of disregard for the law's requirements that demands remedy, at least so long as the corporation remains in business and continues to hire directors. If there are genuinely extenuating

<sup>1</sup> We note that the Court of Appeals specifically rejected SCM's assertion that the record is insufficient as a matter of law to support the issuance of an order, 565 F.2d at 813.

circumstances, the corporation is peculiarly well suited to suggest what they are.<sup>2</sup> Absent such rebuttal, the inference of cognizable danger of recurrent violation must stand.

For its part, SCM has failed to cite any evidence that might tend to overcome the showing made by complaint counsel. Indeed, what SCM has presented adds to our concern that it may again violate the law in the future. In particular, SCM has promised only to refrain from returning Mr. Bond to its board so long as he directs Kraftco or any other competitor of SCM. SCM has not promised to refrain from other interlocks with either Kraftco or any other competitor of SCM, nor has it indicated that it now has or has ever had *any* procedures whatsoever (let alone adequate procedures) for ensuring that it does not violate Section 8 in its choice of directors.<sup>3</sup>

We are also unpersuaded by SCM's suggestion that the allegedly peculiar nature of Section 8 violations (which harm the public only insofar as they create the potential for anticompetitive abuse), the alleged impossibility of hiding such violations, and their alleged infrequency militate against imposition of an order. It cannot be subject to serious dispute, we believe, that the efforts of federal antitrust agencies to ensure adherence to the antitrust laws depend heavily for their success upon corresponding efforts by the private sector to avoid such violations. It is much more costly for the Federal Trade Commission to determine whether any of SCM's directors simultaneously directs a competitor of SCM than it would be for SCM (which presumably knows who its competitors are) to make the same determination. Unless it is able to create strong monetary incentives for companies which have demonstrated disregard for the law's requirements to maintain such regard in the future, this agency and any other law enforcement agency is relegated to the role of publicly-subsidized house counsel, capable only of spotting violations (to the extent the resources to do so exist) but unable to do more than exhort the violator to mend its ways. We find no precedent to suggest that violations of Section 8 are to be regarded less seriously than any other, or that this agency's ability to enter an order to prevent their recurrence should be subjected to a different standard from that applicable to any other violation of law.

Our conclusions are, we believe, consistent with the mandate of the Court of Appeals, as well as with the teaching of numerous prior

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<sup>2</sup> An example of such extenuating circumstances in an interlock case might be that the corporation in fact maintained rigorous procedures for avoiding interlocks, but such procedures proved inadequate to detect the interlock as the result of circumstances beyond the corporation's reasonable control.

<sup>3</sup> We do not mean to suggest that promises made after a Commission investigation has begun are sufficient to obviate the need for an order, *SCM Corp. v. FTC supra*, 565 F.2d at 812, but in this case the limited nature of the promise that was made is further grounds for concern.

decisions which hold that the Commission is empowered to enter an order to cease and desist in circumstances in which the violator has discontinued the illegal conduct and volunteered not to repeat it. *E.g., Fedders Corp. v. FTC*, 529 F. 2d 1398, 1403 (2d Cir.), *cert. denied*, 429 U.S. 818 (1976); *William H. Rorer, Inc. v. FTC*, 374 F.2d 622, 625-26 (2d Cir. 1967); *Coro, Inc. v. FTC*, 338 F.2d 149, 153 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965); *Hershey Chocolate Corp. v. FTC*, 121 F.2d 968, 971 (3d Cir. 1941); *Perma-Maid Co. v. FTC*, 121 F.2d 282, 284-85 (6th Cir. 1941); *Sears, Roebuck & Co. v. FTC*, 258 F. 307, 310 (7th Cir. 1919); *FTC v. Wallace*, 25 F.2d 733, 738 (8th Cir. 1935).

The order we have entered is identical to the one previously issued. The terms of that order were reviewed by the Commission in the original proceeding, and upon appeal the Court of Appeals expressed no objection, assuming that any order should be deemed appropriate.

Complaint

92 F.T.C.

IN THE MATTER OF

## MARATHON OIL COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT*Docket C-2931. Complaint, Oct. 18, 1978 — Decision, Oct. 18, 1978*

This consent order, among other things, requires a Findlay, Ohio producer and retailer of petroleum products to cease instituting, or authorizing the institution of debt collection suits in forums other than those in which consumer resided or signed the credit contract. The firm is further required to terminate suits pending in distant counties; vacate resulting default judgments; and provide consumers and credit reporting agencies with notice of such suit terminations.

*Appearances*For the Commission: *Eddie W. Correia.*For the respondent: *William J. Lowrey, Findlay, Ohio.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that certain acts and practices engaged in by respondent Marathon Oil Company violated Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues this complaint:

PARAGRAPH 1. Marathon Oil Company is an Ohio corporation with its principal office located at 539 South Main St., Findlay, Ohio.

PAR. 2. Respondent produces petroleum products and distributes them to consumers for retail purchase.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes the sale, ships and distributes its merchandise to purchasers located in various States of the United States. Therefore, respondent maintains a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of its business, respondent extended credit to holders of its credit card for the purpose of facilitating consumers' purchases of respondents' merchandise.

PAR. 5. In the course and conduct of attempting to collect allegedly delinquent retail credit accounts, respondent instituted collection suits in the name of respondent against consumers in counties other than where the consumers resided or signed the contract sued upon.

PAR. 6. The above acts and practices were all to the prejudice and

injury of the public and constituted unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

#### DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, 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 pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Marathon Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 539 South Main St., in the City of Findlay, State of Ohio.

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

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

"Suits in a distant forum" shall mean retail credit collection suits, other than suits to enforce an interest in real property securing the consumer's obligation, instituted in a judicial district or similar legal entity other than the one in which the consumer signed the contract sued upon or resides at the commencement of the action.

## II

*It is ordered,* That proposed respondent, Marathon Oil Company, a corporation, and its successors, assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection of retail credit accounts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from instituting, or authorizing the institution of, suits in a distant forum.

## III

*It is further ordered,* That as to any suit in a distant forum instituted by or on behalf of proposed respondent pending on the day this order is served or instituted subsequent to the day on which this order becomes final, such suit shall be terminated and any default judgment entered thereunder vacated forthwith. For such suits instituted prior to the date on which this order is served, "pending" shall mean any suits not reduced to judgment. In all such cases, clear notice shall be provided to the defendants to these actions, to each "consumer reporting agency," as such term is defined in the Fair Credit Reporting Act (15 U.S.C. 603) which proposed respondent knows or has reason to know recorded the suit or judgment in its files, and to any other person or organization upon request of the defendant.

## IV

*It is further ordered,* That proposed respondent shall forthwith deliver a copy of this order to each of its subsidiaries and operating divisions dealing with consumer credit and to each agency with whom proposed respondent currently places its retail credit accounts for collection, and to any other agency prior to referral of proposed respondent's retail credit accounts for collection. Proposed respondent shall obtain and preserve for two (2) years after it terminates its business relationship with any agency with regard to the collection of retail credit accounts, a signed and dated statement from each

agency acknowledging receipt of the order and willingness to comply with it.

## V

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

*It is further ordered.* That proposed respondent shall, within sixty (60) days and at the end of six (6) months after service upon it of this order served upon it, file with the Commission a report, in writing, signed by proposed respondent setting forth in detail the manner and form of its compliance with this order.

Complaint

92 F.T.C.

IN THE MATTER OF  
NATIONAL INDEMNITY COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING  
ACTS

*Docket C-2932. Complaint, Oct. 18, 1978 — Decision, Oct. 18, 1978*

This consent order, among other things, requires an Omaha, Nebraska insurance company and its subsidiaries to cease failing to provide insurance applicants with required disclosures regarding preparation of investigative consumer reports and the nature and scope of such investigations.

*Appearances*

For the Commission: *Rena Steinzor.*

For the respondents: *William D. Lyons, Omaha, Neb.*

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that National Indemnity Company, a corporation, and its subsidiaries: Cornhusker Casualty Company, Home and Automobile Insurance Company, Lakeland Fire and Casualty Company, Texas United Insurance Company, Insurance Company of Iowa and Kansas Fire and Casualty Company, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, 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 Indemnity Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its principal office and place of business located at 3024 Harney St., Omaha, Nebraska.

Respondent Cornhusker Casualty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its principal office and place of business located at 105 North 31st Ave., Omaha, Nebraska.

Respondent Home and Automobile Insurance Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 101 South Wacker Drive, Chicago, Illinois.

Respondent Lakeland Fire and Casualty Company is a corporation organized, existing and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 6700 France Ave. South, Minneapolis, Minnesota.

Respondent Texas United Insurance Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 4415 Piedras Drive West, San Antonio, Texas.

Respondent Insurance Company of Iowa is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa with its principal office and place of business located at Box 130, Des Moines, Iowa.

Respondent Kansas Fire and Casualty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas with its principal office and place of business located at 400 Kansas Ave., Suite 211, Topeka, Kansas.

Respondent National Indemnity Company has the authority to control the acts and practices of its subsidiaries, as described herein.

PAR. 2. Respondent National Indemnity Company is now and for some time in the past has been engaged in the underwriting and sale to the public of property and liability insurance in forty-five of the fifty states. Each of the other respondents is now and for some time in the past has been engaged in the underwriting and sale to the public of property and liability insurance primarily in the state in which it is incorporated.

PAR. 3. In the ordinary course and conduct of their business, as aforesaid, respondents regularly procure or cause to be prepared "investigative consumer reports" from "consumer reporting agencies" as these terms are defined in Section 603(e) and 603(f), respectively, of the Fair Credit Reporting Act, 15 USC 1681a(e) and (f) (1970).

PAR. 4. When respondent National Indemnity Company first issues an insurance policy to an individual, Form NI-1583 labeled "Important Notice" is either attached to the face of the policy or mailed under separate cover immediately upon binding of coverage. This notice is typical and illustrative of the notices used under the same circumstances by the other respondents named herein. No report is actually ordered until the time of issue of the policy. Form NI-1583 reads:

#### IMPORTANT NOTICE

Dear Policyholder:

Thank you for considering the National Indemnity Company as your insurance

carrier. As part of our underwriting procedure, a routine inquiry may be made to obtain applicable information concerning character, general reputation, personal characteristics, and mode of living. Upon written request, additional information as to the nature and scope of the report, if one is made, will be provided.

This notice is provided in all cases unless the type of policy involved definitely will not require an investigative consumer report.

Respondents send no other notice informing the applicant that an investigative report may be prepared and stating his right to inquire further into the nature and scope of such a report, although wording identical to that of Form NI-1583 is contained in the application itself.

PAR. 5. By and through the use of the practices described in Paragraph Four, above, respondents have failed to inform consumers that: (1) an "investigative consumer report" may be prepared in connection with their applications for insurance; (2) the information contained in the report may be obtained through personal interviews with neighbors, friends or others with whom the consumer is acquainted; and (3) upon written request, a complete and accurate disclosure of the nature and scope of the investigative report will be provided. Therefore, respondent has violated the provisions of Section 606(a) of the Fair Credit Reporting Act.

PAR. 6. Once the applicant has received the Notice contained in Form NI-1583 and has written to respondent indicating a desire to receive "additional information as to the nature and scope of the report," respondent National Indemnity Company issues a follow-up form, numbered NI-1584. This notice is typical and illustrative of the notices used under the same circumstances by the other respondents named herein. This form reads:

This is in response to your request for additional information about an inquiry or report which may have been made in connection with your application for insurance.

- No report was requested in connection with your application.
- A report was requested. These reports are routine procedures which include such general identification information as residence verification, marital status, and number of children. As applicable, employment, occupation, general health (sic), habits, reputation and mode of living information may be included.

When insurance coverage for automobile(s), other personal property or real property is involved, applicable information may include a physical description of the property, its condition and uses, and any losses incurred. For automobile insurance, additional information concerning drivers and any physical impairments, losses or violations they may have suffered is also applicable.

NATIONAL INDEMNITY COMPANY

The above disclosure is provided in response to all consumer

requests for disclosure of the nature and scope of the investigation completed.

Respondents typically send no other letter to consumers who request additional information concerning investigative consumer reports which were procured or prepared about them.

PAR. 7. By and through the use of the practices described in Paragraph Six above, respondents have failed to inform the consumer of the name and address of the consumer reporting agency which prepared the investigatory report; the type of questions asked; and the number and type of persons interviewed. Therefore, respondents have violated the provisions of Section 606(b) of the Fair Credit Reporting Act.

PAR. 8. By its aforesaid failure to comply with Sections 606(a) and 606(b) of the Fair Credit Reporting Act, and pursuant to Section 621(a) thereof, respondent has thereby engaged in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Fair Credit Reporting Act and the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedures prescribed in Section 2.34(b) of its

Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent National Indemnity Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 3024 Harney St., Omaha, Nebraska.

Respondent Cornhusker Casualty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its principal office and place of business located at 105 North 31st Ave., Omaha, Nebraska.

Respondent Home and Automobile Insurance Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 101 South Wacker Drive, Chicago, Illinois.

Respondent Lakeland Fire and Casualty Company is a corporation organized, existing and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 6700 France Ave. South, Minneapolis, Minnesota.

Respondent Texas United Insurance Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 4415 Piedras Drive West, San Antonio, Texas.

Respondent Insurance Company of Iowa is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa with its principal office and place of business located at Box 130, Des Moines, Iowa.

Respondent Kansas Fire and Casualty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas with its principal office and place of business located at 400 Kansas Ave., Suite 211, Topeka, Kansas.

Respondent National Indemnity Company has the authority to control the acts and practices of its subsidiaries, as described herein.

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

#### ORDER

*It is ordered,* That respondents, National Indemnity Company, a corporation, and its subsidiaries: Cornhusker Casualty Company, Home and Automobile Insurance Company, Lakeland Fire and Casualty Company, Texas United Insurance Company, Insurance Company of Iowa and Kansas Fire and Casualty Company, their

successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with either the request for or the receipt or consideration of any "investigative consumer report," as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(e) (1970)), do forthwith cease and desist from:

(1) Failing, whenever respondents procure or cause to be prepared an investigative consumer report, to clearly and accurately disclose to the consumer that:

(A) an "investigative consumer report" may be made in connection with the application, including information regarding the consumer's character, general reputation, personal characteristics or mode of living;

(B) the information contained in the report will be obtained through personal interviews with neighbors, friends, or associates of the consumer or with others with whom the consumer is acquainted or who may have knowledge concerning any such items of information; and,

(C) the consumer has the right to request, within a reasonable period of time, a complete and accurate disclosure of the nature and scope of the investigative report, and that upon such request respondents shall make such disclosure in writing mailed or otherwise delivered to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or the investigative report was first requested, whichever is later.

(2) Failing, whenever an applicant requests additional information concerning an investigative consumer report to furnish the consumer with a complete and accurate disclosure of the nature and scope of the investigation requested including:

(A) the name and address of the consumer reporting agency which prepared the investigative report; and,

(B) a detailed written summary of the areas investigated and the types of questions asked which includes a description of all the information covered by the interview forms typically used to prepare the investigative consumer report. In lieu of a written summary, respondents may satisfy the requirements of this subsection by providing the consumer with a blank copy of any standardized form used to transmit information from the consumer reporting agency to the user, to the extent to which these forms itemize with specificity the questions to be asked and the areas to be investigated; and,

(C) if the investigative consumer report has been completed at the time the consumer makes his request, the number and type of

persons interviewed, if known, or, if not known, the usual number and type of persons interviewed. If the report has not been completed at the time of the request, the minimum number and type of persons normally interviewed in connection with such a report.

*It is further ordered,* That respondents shall preserve evidence of compliance with the requirements imposed under this order for a period of not less than 2 years after the date each required disclosure is made. Respondents shall upon request permit the Commission through its daily authorized representatives to inspect such records.

*It is further ordered,* That respondents shall deliver a copy of this order to cease and desist to all present and future employees engaged in reviewing or evaluating consumer reports or other third party information in connection with applications for insurance to be used for personal, family or household purposes.

*It is further ordered,* That respondents 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 the order.

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

IN THE MATTER OF  
COVENTRY BUILDERS, INC., ET AL.

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

*Docket 9042. Complaint<sup>1</sup> July 15, 1975 — Decision, Oct. 23, 1978*

This consent order, among other things, requires a Shaker Heights, Ohio home improvements firm to cease, in connection with the extension of credit, failing to provide consumers with those materials and disclosures required by Federal Reserve System regulations.

*Appearances*

For the Commission: *Aaron H. Bulloff, Allan M. Huss and Sharon J. Devine.*

For the respondents: *Leonard P. Gilbert, Cleveland, Ohio, Stanley M. Fischer and David A. Schaefer, Guren, Merritt, Sogg & Cohen, Cleveland, Ohio.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Truth in Lending Act and the regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Coventry Builders, Inc., a corporation, and Louis Galiano, Sr., individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and of the implementing regulation promulgated under the Truth in Lending 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 Coventry Builders, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1824 Coventry Road, Cleveland Heights, Ohio.

Respondent Louis Galiano, Sr. is an individual and is the president of respondent corporation. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts

<sup>1</sup> Reported as amended by the ALJ's order of March 5, 1976.

and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale, delivery, and installation of residential home improvements including, but not limited to, siding materials, storm windows, plumbing fixtures, and cabinetry, to the public at retail.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents have arranged, and continue to arrange, for the extension of consumer credit, or offer to extend or arrange for the extension of such consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business and in connection with their credit sales, as "credit sale" is defined in Section 226.2(n) of Regulation Z, have been, and continue to be, engaged in the extension of credit, as the term "credit" is defined in Section 226.2(1) of Regulation Z.

Respondents many times have caused, and are now causing, their customers to execute a document entitled "Offer of Purchase," hereinafter sometimes referred to as "the sales contract," and one or more promissory notes for the purchase and installation of home improvements to the residence of the customer.

Respondents provide certain consumer credit cost information as part of this sales contract. Respondents provide no other consumer credit cost disclosures to their customers.

PAR. 5. Respondents many times, in the ordinary course of their business, negotiate to third parties the sales contracts or other instruments of indebtedness executed in connection with credit purchases.

PAR. 6. By and through the use of the sales contract, respondents:

(1) Have in certain instances failed to disclose the annual percentage rate, as required by Section 226.8(b)(2) of Regulation Z, computed with an accuracy at least to the nearest one quarter of one percent, as prescribed by Section 226.5(b) of Regulation Z.

(2) Have in certain instances failed to preserve evidence of compliance with the requirements of Regulation Z for a period of not less than two years after the date each disclosure was required to be made, as required by Section 226.6(i) of Regulation Z.

(3) Have in certain instances failed to make the disclosures

prescribed by Section 226.8 of Regulation Z before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.

(4) Have in certain instances failed to furnish customers with a duplicate of the instrument or a statement by which the disclosures prescribed by Section 226.8 of Regulation Z are made, and on which the creditor is identified, as required by Section 226.8(a) of Regulation Z.

(5) Have in certain instances failed to disclose the amount or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

(6) Have in certain instances failed to provide a description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8(b)(5) of Regulation Z.

(7) Have in certain instances failed to give clear identification of the property to which the security interest relates, as required by Section 226.8(b)(5) of Regulation Z.

(8) Have failed to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c)(3) of Regulation Z.

(9) Have failed to disclose the sum of the unpaid balance of cash price and all other charges included in the amount financed but which are not part of the finance charge, and to describe that sum using the term "unpaid balance," as required by Section 226.8(c)(5) of Regulation Z.

PAR. 7. By and through the use and acceptance of the sales contract, and by virtue of the work performed on a customer's residence, respondents have retained or acquired, or will retain or acquire, a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, in real property which is used or is expected to be used as the principal residence of the customer. Respondents' retention or acquisition of such security interest in said real property gives their customers who are extended consumer credit, as "consumer credit" is defined in Section 226.2(k) of Regulation Z, the right to rescind the transaction until midnight of the third business day following the date of consummation of the transaction or the date of delivery of all disclosures required by Regulation Z, whichever is later, pursuant to Section 226.9(a) of Regulation Z.

PAR. 8. In connection with the aforesaid consumer credit transactions, as set forth in Paragraph Seven, respondents, in certain instances:

(1) Have failed to give notice to the customer of his right to rescind the credit transaction by furnishing him with the "notice to customers required by federal law," described in Section 226.9(b) of Regulation Z, as required by Section 226.9(b) of Regulation Z.

(2) Have failed to delay performance of any of the following actions until after the rescission period has expired, and they have reasonably satisfied themselves that the customer has not exercised his right of rescission, as required by Section 229.9(c) of Regulation Z:

- a. The disbursement of monies other than in escrow;
- b. The making of any physical changes in the property of the customer;
- c. The performance of any work or service for the customer; or
- d. The making of any deliveries to the residence of the customer if the creditor has retained or will retain or will acquire a security interest other than one arising by operation of law.

PAR. 9. Respondents have stated, utilized, or placed information or explanations not required by Regulation Z in the various versions of their sales contracts, in a manner which misleads or confuses the customer or contradicts, obscures, or detracts attention from the information required to be disclosed by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

PAR. 10. By the aforesaid actions, respondents have failed to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Truth in Lending Act, 15 U.S.C. 1601, *et seq.*, respondents' aforesaid failures to comply with Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act (15 U.S.C. 41, *et seq.*).

#### DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the Truth in Lending Act, and the implementing regulation promulgated thereunder, and the respondents having been served with a copy of that complaint, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint as issued herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an

admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25 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, 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 Coventry Builders, Inc. is a corporation formerly organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business formerly located at 13015 Larchmere, in the City of Shaker Heights, State of Ohio.

Respondent Louis Galiano, Sr. was an officer of said corporation. He formulated, directed, and controlled the policies, acts, and practices of said corporation. His address is 231 - 174th St., North Miami Beach, Florida.

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

#### ORDER

##### I

*It is ordered,* That respondents Coventry Builders, Inc., a corporation, its successors and assigns, and its officers, and Louis Galiano, Sr., individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the extension of consumer credit or advertisements to aid, promote, or assist, directly or indirectly, in the extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act (15 U.S.C. 1601, *et seq.*), do forthwith cease and desist from:

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

(2) Failing to retain evidence of compliance with the requirements of Regulation Z for a period of not less than two (2) years after the date each disclosure was required to be made, as required by Section

226.6(i) of Regulation Z. Evidence of compliance shall include, but not be limited to, copies of all disclosure statements and rescission statements required by Regulation Z, which pertain to contracts ultimately rescinded, modified, renegotiated, or otherwise not accepted either by respondents or by the consumer.

(3) Failing to furnish customers with the disclosures prescribed by Section 226.8 of Regulation Z before the transaction is consummated, as required by Section 226.8(a) of Regulation Z.

(4) Failing to furnish customers with a duplicate of the instrument or a statement by which the disclosures prescribed by Section 226.8 of Regulation Z are made, and on which the creditor is identified, as required by Section 226.8(a) of Regulation Z.

(5) Failing to disclose the amount or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments, as required by Section 226.8(b)(4) of Regulation Z.

(6) Failing to disclose a description or identification of the type of security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by Section 226.8(b)(5) of Regulation Z.

(7) Failing to clearly identify the property to which the security interest relates, as required by Section 226.8(b)(5) of Regulation Z.

(8) Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by Section 226.8(c)(3) of Regulation Z.

(9) Failing to disclose the sum of the unpaid balance of cash price and all other charges included in the amount financed but which are not part of the finance charge, and to describe that sum using the term "unpaid balance," as required by Section 226.8(c)(5) of Regulation Z.

(10) Supplying any information, explanation, or contract clause not required to be disclosed by Regulation Z in a manner which misleads or confuses the customer or contradicts, obscures, or detracts attention from the information required to be disclosed by Regulation Z, in violation of Section 226.6(c) of Regulation Z.

(11) Failing to provide consumers having the right to rescind a transaction pursuant to Section 226.9 of Regulation Z with two copies of the "Notice to the Consumer Required by Federal Law," in the manner and form required by Section 226.9(b) of Regulation Z.

(12) Failing to delay performance until after the period of time allowed for rescission by the consumer has expired and respondents herein have reasonably satisfied themselves that the customer has not exercised his right of rescission, as required by Section 226.9(c) of

Regulation Z. In this regard, respondents shall not perform, or cause or permit to be performed, during the rescission period, any of the following actions:

- (a) The disbursement of monies other than in escrow;
- (b) The making of any physical changes in the property of the customer;
- (c) The performance of any work or service for the customer; or
- (d) The making of any deliveries to the residence of the customer if the creditor has retained or will retain or will acquire a security interest other than one arising by operation of law.

(13) Failing, in any consumer credit transaction or advertisement, to make all disclosures determined in accordance with Section 226.4 and Section 226.5 of Regulation Z at the time and in the manner, form, and amount required by Sections 226.6, 226.7, 226.8, 226.9, and 226.10 of Regulation Z.

*It is further ordered,* That respondents deliver a copy of this order to all present and future sales and office personnel whose services are engaged by respondents, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

*It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, voluntary bankruptcy, assignment, the creation or dissolution of subsidiaries, which may affect compliance obligations arising out of this order, or any other change in the corporation which may affect compliance obligations arising out of this order.

*It is further ordered,* That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business or employment in which he is engaged, as well as a description of his duties and responsibilities.

*It is further ordered,* That respondents shall, within sixty (60) days after the effective date of this order, file with the Commission a report setting forth the manner in which they have complied with the provisions of this order, and any future compliance reports in the form and manner which the Commission may order.

Complaint

92 F.T.C.

## IN THE MATTER OF

## MOORE &amp; ASSOCIATES, INC., ET AL., TRADING AS UNI-CHECK, ETC.

## CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING ACTS

*Docket C-2933. Complaint, Oct. 24, 1978 — Decision, Oct. 24, 1978*

This consent order, among other things, requires a Honolulu, Hawaii firm engaged in providing various businesses with consumer credit information and other services, to cease furnishing reports containing obsolete, inaccurate, or disputed information; providing such reports for improper purposes; or otherwise failing to comply with statutory requirements.

*Appearances*For the Commission: *Harold G. Sodergren.*For the respondent: *Peter G. Wheelon, Honolulu, Hawaii.*

## COMPLAINT

## I

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Fair Credit Reporting Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Moore & Associates, Inc., a corporation, doing business as Uni-Check, and Rentcheck, and R. Donald Moore, individually and as an officer of said corporation, hereinafter referred to as "respondents," have violated the provisions of said Acts, 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 Moore & Associates, Inc. is a Hawaii corporation, with its principal office at 677 Ala Moana Boulevard, Suite 211, Honolulu, Hawaii.

Respondent R. Donald Moore is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

## II

PAR. 2. A. Respondents, in the ordinary course and conduct of their

business under the tradename "Uni-Check," guarantee personal checks presented by consumers to merchants and banks. A subscriber to the service telephones respondents' computerized record system, provides a consumer's identifying number (e.g., driver's license number, credit card number), and receives a coded response indicating, among other things, whether respondents will guarantee the consumer's check which has been tendered to the subscriber.

B. Respondents, in the ordinary course and conduct of their business under the tradename "Rentcheck," guarantee landlords against financial loss resulting from non-payment of rent, malicious damage, or breach of lease. A subscriber to the service, prior to occupancy of the dwelling by a prospective tenant, follows the procedure described above in conjunction with the Uni-Check service, and receives a coded response indicating, among other things, whether respondents will guarantee the landlord against financial loss caused by the prospective tenant.

C. Respondents, in the ordinary course and conduct of their business, in conjunction with their Rentcheck service, provide landlords not desiring a guarantee against financial loss pursuant to a "Non-Guarantee Plan," with adverse information relating to a prospective tenant, where respondents have adverse information on file. The landlord follows the procedure described above in conjunction with the Uni-Check service, and receives a coded response. If the response indicates adverse information is on file, the landlord obtains detailed information regarding the prospective tenant from respondents in a subsequent communication.

D. Respondents, in the ordinary course and conduct of their business, provide banks with information regarding consumers making application for checking accounts. The bank follows the procedure described above in conjunction with the Uni-Check service, and receives a coded response. If the response indicates adverse information is on file, the bank obtains detailed information regarding the applicant from respondents in a subsequent communication.

PAR. 3. The data regarding consumers which is utilized by respondents in supplying the above information to subscribers is contained in a single computer data base, and consists of information relating to dishonored checks, cancellation of credit cards, termination of checking accounts, non-payment of rent, damage to property, breach of lease, and other information.

A. The communication by respondents to a subscriber, in connection with the Uni-Check service described in Paragraph 2A, that respondents will not guarantee a consumer's check, is the

communication of information which bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living. Therefore, said communication is a consumer report, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

B. The communication by respondents to a subscriber, in connection with the Rentcheck service described in Paragraph 2B, that respondents will not guarantee that a prospective tenant will not cause the landlord financial loss, is the communication of information which bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living. Therefore, said communication is a consumer report, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

C. The communication by respondents to a subscriber, in connection with the Rentcheck "Non-Guarantee Plan" described in Paragraph 2C, that respondents possess adverse information regarding a prospective tenant, or the communication of such adverse information, is the communication of information which bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living. Therefore, said communication is a consumer report, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

D. The communication by respondents to a subscriber in connection with persons making application for the bank checking account service described in Paragraph 2D, that respondents possess adverse information regarding a prospective account holder, or the communication of such adverse information, is the communication of information which bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living. Therefore, said communication is a consumer report, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

PAR. 4. Respondents are, and have been, for monetary fees, regularly engaged in the practice of assembling information on consumers for the purpose of communicating such information to third parties, as described in Paragraphs Two and Three above, and regularly use, and for some time last past have regularly used, a means of facility of interstate commerce for the purpose of preparing and/or furnishing such communications. Therefore, respondents are a consumer reporting agency as "consumer reporting agency" is defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 5. In the course and conduct of their business of communicating information to third parties, as described in Paragraphs Two, Three, and Four, above, respondents have:

A. Failed to maintain reasonable procedures designed to prevent, in accordance with Section 605 of the Fair Credit Reporting Act, the inclusion in consumer reports of certain items of obsolete information, as required by Section 607(a) of the Fair Credit Reporting Act.

B. Failed, as to subscribers to respondents' services, to establish procedures requiring said subscribers to certify the purposes for which the information on consumers is sought, and to certify that the information will be used for no other purpose. Therefore, respondents failed to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes specified under Section 604 of the Fair Credit Reporting Act, as required by Section 607(a) of the Fair Credit Reporting Act.

C. Failed, when the completeness or accuracy of any item of information contained in the consumer's file is disputed by the consumer, to clearly note in any subsequent consumer report containing the information in question, that it is disputed by the consumer, and to provide either the consumer's statement or a clear and accurate codification or summary thereof, as required by Section 611(c) of the Fair Credit Reporting Act.

Therefore, respondents have violated, and are violating, Sections 607(a) and 611(c) of the Fair Credit Reporting Act.

### III

PAR. 6. Respondents, in the ordinary course and conduct of their business, provide by telephone to subscribing hotels in the State of Hawaii, the uncoded identity of a person who has been reported by another subscribing hotel to have failed to pay a hotel charge. Such communication is made by respondents to a subscribing hotel prior to the subscribing hotel's need for such information, premised upon a request by such person for services at the subscribing hotel to which such person's identity is communicated.

PAR. 7. The communication of the identity of persons who have failed to pay a hotel charge to other hotels in the aforesaid manner is the communication of information which bears on said person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living. Therefore, said communication is a consumer report, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

PAR. 8. Respondents are, and have been, for monetary fees,

regularly engaged in the practice of assembling such information on consumers for the purpose of communicating such information to third parties, as described in Paragraphs Six and Seven above, and regularly use a means or facility of interstate commerce for the purpose of preparing and/or furnishing such information. Therefore, respondents are a consumer reporting agency as "consumer reporting agency" is defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 9. At the time respondents furnish each of the consumer reports described in Paragraphs Six, Seven, and Eight, above, respondents do not have reason to believe that each person to whom the consumer report is furnished has a legitimate business need for the information in such report in connection with a business transaction involving the consumer reported upon, nor do respondents have reason to believe that each recipient otherwise intends to use the information contained in such report for a purpose set forth in Section 604 of the Fair Credit Reporting Act. Further, the furnishing of such consumer report is neither in response to a court order nor in accordance with the written instructions of the consumer to whom the report relates.

Therefore, respondents, in the ordinary course and conduct of their business, as aforesaid, furnish consumer reports to persons, as "person" is defined in Section 603(b) of the Fair Credit Reporting Act, who do not have a legitimate business need or other permissible purpose to receive the consumer reports furnished to them, as required by Section 604(3) of the Act.

Therefore, by furnishing consumer reports in the manner described above, respondents have violated, and are violating, Section 604 of the Fair Credit Reporting Act.

PAR. 10. By and through the acts and practices described in Paragraphs Six, Seven, Eight, and Nine, above, respondents have failed to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed under Section 604 of the Fair Credit Reporting Act, and have furnished consumer reports to persons under circumstances in which there are reasonable grounds for believing that such reports will not be used for a purpose listed in Section 604 of such Act.

Therefore, respondents have violated and are violating, Section 607(a) of the Fair Credit Reporting Act.

#### IV

PAR. 11. The acts and practices set forth in Paragraphs Two through Ten, above, were and are in violation of the Fair Credit

Reporting Act, and, pursuant to Section 621(a) of that Act, said acts and practices constitute unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Moore & Associates, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii, with its office and principal place of business located at 677 Ala Moana Boulevard, Suite 211, Honolulu, Hawaii.

Respondent R. Donald Moore is an officer of said corporation. He formulates, directs, and controls the policies, acts and practices of said corporation, and his personal office and place of business is located at the above-stated address.

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

## ORDER

*It is ordered.* That respondents Moore & Associates, Inc., a corporation, d/b/a Uni-Check, Rentcheck, or under any other name, its successors and assigns, and its officers, and R. Donald Moore, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with collecting, preparing, assembling and/or furnishing of consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act (Pub. Law 91-508, 15 U.S.C. 1601, *et seq.*), shall forthwith cease and desist from:

1. Failing to maintain reasonable procedures designed to prevent, in accordance with Section 605 of the Fair Credit Reporting Act, the inclusion in consumer reports of obsolete information, as required by Section 607(a) of the Fair Credit Reporting Act.

2. Furnishing any consumer report to any person, unless such report is furnished:

a. In response to the order of a court having jurisdiction to issue such order; or

b. In accordance with the written instructions of the consumer to whom the report relates; or

c. To a person whom respondents then have reason to believe intends, at the time the information is furnished, to use the information:

(1) In connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(2) For employment purposes; or

(3) In connection with the underwriting of insurance involving the consumer; or

(4) In connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(5) In connection with a business transaction involving the consumer.

*Provided, however,* a consumer report may be furnished prior to a time when respondents have reason to believe a person intends to use the information for a purpose enumerated in subsection c, above, if the identity of the consumer(s) to whom the information relates is not disclosed on such consumer report and cannot be determined

without the use of a unique identifier, such as a social security number, driver's license number, or bank account number. The identifier used must be provided by the consumer at the time of the transaction with the user. Communication of information pursuant to this proviso does not relieve respondents of responsibility to comply with all order requirements of the order in connection with such transaction.

3. Failing to maintain reasonable procedures necessary to limit the furnishing of consumer reports to the purposes listed under Section 604 of the Act, as provided by Section 607 of the Act.

4. Failing to require prospective users of consumer reports to certify the purposes for which the information in such reports is sought, and that it will be used for no other purpose, in accordance with Section 607(a) of the Fair Credit Reporting Act.

5. Furnishing consumer reports to any user or prospective user of such reports who does not first provide the identification and the certification of purpose for which information in such reports is sought, as required by Section 607(a) of the Fair Credit Reporting Act.

6. Failing, when the completeness or accuracy of any item of information contained in the consumer's file is disputed by the consumer, to clearly note, in any subsequent report containing the information in question, that it is disputed by the consumer, and to provide either the consumer's statement or a clear and accurate codification or summary thereof, as required by Section 611(c) of the Fair Credit Reporting Act.

7. Failing to comply with all requirements relating to consumer reporting agencies contained in Sections 604, 605, 607, 609, 610, 611, 612, 613, and 614 of the Fair Credit Reporting Act.

*It is further ordered,* That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the preparation and/or furnishing of consumer reports, and that respondents secure a signed statement acknowledging receipt of said order from all such personnel.

*It is further ordered,* That the corporate respondent 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 the order.

*It is further ordered,* That each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new

business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities involve consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act (Pub. Law 91-508, 15 U.S.C. 1601, *et seq.*), or of his affiliation with a new business or employment in which his own duties and responsibilities involve consumer reports. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

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

IN THE MATTER OF  
BEDE AIRCRAFT, INC., ET AL.

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

*Docket C-2934. Complaint, Oct. 26, 1978 — Decision, Oct. 26, 1978*

This consent order, among other things, requires a Washington, D.C. manufacturer and marketer of aircraft and related products, and its subsidiaries, to provide and administer as prescribed an approximately \$9,000,000 redress fund for consumers who purchased or made deposits on its products. The firm is required to cease misrepresenting the availability, performance, reliability, and safety of its aircraft; or using any other unfair or deceptive act or practice in the advertising and sale of its products. Additionally, until such time that existing obligations are satisfied, the order requires that all of the firm's stock be placed in the hands of an approved trustee who would oversee its operations, and invoke the provisions of the federal Bankruptcy Act if necessary.

*Appearances*

For the Commission: *Kenneth R. Bennington.*

For the respondents: *Dale Curtis Hogue* and *William R. Bernard, Hogue, Crothers & Bernard, 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 Bede Aircraft, Inc., a corporation, Bede General Corporation, a corporation; Bede Wing, Inc., a corporation; James R. Bede, individually and as an officer, director and stockholder of said corporations; hereinafter referred to as respondents, have violated 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 the enumerated paragraphs below.

Allegations of respondents' present acts and practices include respondents' past acts and practices. Allegations in the present tense include the past tense. Allegations of respondents' representations or statements include those made directly or by implication, those made in sales contracts, advertising, promotional materials and sales communications, and representations made orally, visually, or in writing.

For purposes of the allegations enumerated herein, the following definitions apply:

The phrase "advance payment or deposit" means a payment or deposit tendered to respondents in connection with the order or sale of any product, under circumstances in which shipment to the buyer will not take place on the same day on which such payment or deposit is tendered;

"BD-5 homebuilt aircraft" means any aircraft materially within the design parameters of the single-seat, single-engine aircraft commonly referred to by respondents as the "BD-5," which is advertised for sale or sold for full or partial assembly from a kit or from parts, materials or plans supplied wholly or partially by respondents;

"BD-5D aircraft" means any aircraft materially within the general design parameters of the single-seat, single-engine aircraft commonly referred to by respondents as the "BD-5," which is advertised for sale or sold as a production aircraft (as the word "production" is defined herein);

"BD-7 aircraft" means any aircraft materially within the general design parameters of the two to four place, low-wing aircraft commonly referred to by respondents as the "BD-7;"

"FAA" means the Federal Aviation Administration, an agency of the United States Government;

"production" means, in describing any product, that such product is commercially manufactured or fabricated in significant numbers for ultimate distribution or sale in the usual course of business, as opposed to being manufactured or fabricated in small numbers as a model or prototype, or for limited distribution or use not in the usual course of trade;

"proper refund request" means a written notification reasonably calculated to put the refundor on notice that the refundee wishes to exercise a present or future right to a refund. In the latter instance, the refund request becomes "proper" when the right to refund actually vests;

"ship, shipping or shipment" refer to the act by which merchandise is physically placed by respondents in possession of the carrier, or if there is no carrier, in possession of the buyer or his agent; or in the case of aircraft, transfer of the FAA title certificate;

"specialized tools, machines or processes" means tools or machines which a homebuilder of average ability and resources would not reasonably be expected to own, or in the case of processes, those which such homebuilder would not be reasonably expected to be capable of personally performing.

PARAGRAPH 1. Respondent Bede Aircraft, Inc. is a corporation organized, existing and doing business under and by virtue of the

laws of the State of Kansas, with an office located at 1128 Sixteenth St., N.W., Washington, D. C.

Respondent Bede General Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with an office located at 1128 Sixteenth St., N.W., Washington, D. C.

Respondent Bede Wing, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with an office located at 1128 Sixteenth St., N.W., Washington, D.C.

Respondent James R. Bede is sole stockholder and an officer and director of respondents Bede Aircraft, Inc., and Bede General Corporation. Respondent Bede is a stockholder, officer and director of respondent Bede Wing, Inc.

Respondent James R. Bede formulates, directs and controls the acts and practices of respondents Bede Aircraft, Inc., Bede General Corporation, and Bede Wing, Inc. The business address of respondent Bede is 1128 Sixteenth St., N.W., Washington, D.C.

Respondents have cooperated and acted together to bring about the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time have been, engaged in the business of advertising, offering for sale and selling homebuilt aircraft kits, production aircraft, and aircraft parts plans, materials and accessories. Respondents' aforesaid business is carried on both directly and indirectly, and through the use of licensees or franchisees.

Respondents furnish the means and instrumentalities for a sales program whereby members of the general public, by means of advertisements placed in media of general circulation, promotional brochures and other media, and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign contracts, make deposits for future deliveries, or otherwise obligate themselves for the purchase of various of respondents' products.

In the manner aforesaid, respondents dominate, control, furnish the means, instrumentalities, services and facilities for, and condone, approve, and accept the pecuniary and other benefits following from the acts and practices hereinafter set forth of respondents' employees, franchisees and licensees. By and through the use of the acts, practices, statements and representations set forth herein, respondents place in the hands of others the means and instrumentalities by and through which such others mislead and deceive the public in the manner and as to the things herein alleged.

PAR. 3. Respondents' volume of business is substantial and their

acts and practices as hereinafter set forth are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business, and all times mentioned herein, respondents have been and now are in substantial competition in or affecting commerce, with corporations, firms and individuals in the sale of aircraft, aircraft kits and aircraft parts, plans, materials and accessories.

#### COUNT ONE

Alleging certain violations of Section 5 of the Federal Trade Commission Act. The allegations of Paragraphs One through Four hereof are incorporated by reference in Count One as if fully set forth verbatim.

PAR. 5. In the further course and conduct of their business, respondents have prepared financial statements, including balance sheets, income statements and other documents purporting to reflect material aspects of respondents' financial status; respondents have transmitted such financial statements to third parties, representing to such third parties that such statements accurately and truthfully reflect respondents' financial status as of the time to which such statements purport to relate.

Respondents have failed to prepare such financial statements in accordance with generally accepted accounting standards, and have failed to disclose such failure in a clear and conspicuous manner. Respondents have misrepresented the truthfulness and accuracy of such financial statements under circumstances in which respondents knew or should have known that such documents portrayed respondents' financial status and ability to fulfill its consumer obligations in a significantly more positive manner than was in fact the case.

By so failing to prepare financial statements in accord with generally accepted accounting standards, by nondisclosure of such failure and by so misrepresenting the truthfulness and accuracy of such statements, respondents have engaged in unfair and deceptive acts or practices.

PAR. 6. In the further course and conduct of their business, respondents have represented that Bede Aircraft, Inc. is a solvent, ongoing enterprise, capable of fulfilling its obligations and duties, and that the corporation maintains a solid financial basis and every prospect for a continued viable, active business existence.

In truth and in fact, Bede Aircraft, Inc. has, during much of its corporate existence, been insolvent as "insolvent" is defined in the

Bankruptcy Act, 11 USCA 1; Bede Aircraft, Inc., has also from time to time committed acts of bankruptcy, as such acts are defined in the Bankruptcy Act, 11 USCA 21. Respondent Bede Aircraft, Inc. has been in a precarious financial position during much of its corporate existence, unable to pay its debts as they come due, and has engaged in business under circumstances raising reasonable doubts about the corporation's ability to discharge its consumer obligations and duties, and to continue a viable, active business existence.

Respondents have misrepresented material facts with respect to the solvency and business health of Bede Aircraft, Inc.; respondents have also failed to disclose relevant and material facts with respect to the solvency of Bede Aircraft, Inc. in the course and conduct of business with customers, who, had they been aware of such facts, may have substantially altered or abated their dealings with respondents. By so misrepresenting material facts, and by so failing to disclose relevant and material facts, respondents have engaged in unfair and deceptive acts or practices.

PAR. 7. In the further course and conduct of their business under the circumstances set forth in Paragraph Six, respondents have failed to avail themselves of the various remedial procedures of the Bankruptcy Act, including reorganization, rehabilitation, or liquidation. By so failing to avail themselves of such remedial devices, respondents have prejudiced the ability of their customers, to receive the benefits of contracts and agreements with respondents, or in the alternative, to receive restitution of amounts paid or deposited with respondents.

By so failing to avail themselves of the remedial devices of the Bankruptcy Act and by so prejudicing the rights of their customers, respondents have engaged in unfair acts or practices.

PAR. 8. During the course and conduct of their business, respondents represented that Bede General Corporation actually existed as a business entity legally authorized to do business as a corporation. Respondents further represented that Bede General Corporation was an entity separate from respondents' other business operations, with all of the tangible and intangible attributes of an active, viable, corporation.

In truth and in fact, during much of the period concerned in this complaint Bede General Corporation did not legally exist as a corporate entity; respondents failed to comply with the laws of any jurisdiction entitled to authorize corporate existence, and further failed to supply Bede General Corporation with business and financial attributes other than those constituting an illusory corporate existence. Respondents further failed to disclose such facts

to customers who, had they been aware of such facts may have substantially altered or abated their dealings with respondents.

By so failing to supply Bede General Corporation with the legal attributes of incorporation as well as the attributes implied by respondents' representations, and by further failing to disclose material facts with respect to such circumstances, respondents have engaged in unfair and deceptive acts or practices.

#### COUNT TWO

Alleging violations of Section 5 of the Federal Trade Commission Act, with respect to the BD-5 homebuilt aircraft. The allegations of Paragraphs One through Four hereof are incorporated by reference in Count Two as if fully set forth verbatim.

PAR. 9. In the further course and conduct of their business, respondents have represented that they have actually available for sale, ready to ship, complete kits for the assembly of the BD-5 homebuilt aircraft.

In truth and in fact, respondents do not have available for immediate shipment complete BD-5 homebuilt aircraft kits, nor do such complete kits exist. Significant elements, including key parts, assembly plans and instructions, and engine and drive system subassemblies, have not been fully developed or procured, and are not available to respondents for shipment to buyers of the BD-5 homebuilt aircraft kit. Therefore, the acts and practices described in Paragraph Nine are deceptive.

PAR. 10. In the further course and conduct of their business, respondents have represented that upon remittance of the proper contract amount for the purchase of the BD-5 homebuilt aircraft kit, respondents will begin and complete delivery of various kit installments according to a predetermined schedule calculated to provide the homebuilder with necessary parts, plans and materials in a logical sequence and at reasonable intervals.

In truth and in fact, at all times concerned herein, respondents could not complete delivery of necessary kit elements in a logical sequence or at reasonable intervals, since significant elements have been unavailable to respondents and the date of availability of such elements is not known to respondents with reasonable certainty. Therefore, the acts and practices described in Paragraph Ten are deceptive.

PAR. 11. In the further course and conduct of their business, respondents have represented that BD-5 homebuilt aircraft kits contain production engines and drive systems which are capable of

certain affirmatively stated criteria with respect to performance, reliability and safety.

In truth and in fact, engine and drive system subassemblies have not been developed or produced, beyond the prototype or experimental stage. Accordingly, no production engines or drive systems exist which meet respondents' representations with respect to performance, reliability and safety. Respondents have failed to disclose that representations with respect to performance, reliability and safety are based upon design inferences and expectations, rather than upon data derived from the actual use and testing of production engines and drive systems. Therefore, the acts and practices described in Paragraph Eleven are unfair and deceptive.

PAR. 12. In the further course and conduct of their business, respondents have represented that no more than 800 work hours are required for the homebuilder to fully assemble the BD-5 homebuilt aircraft.

In truth and in fact, homebuilders of average ability have found that substantially more than 800 work hours are necessary to assemble the BD-5 homebuilt aircraft. Respondents lacked a reasonable basis for such representations and have failed to remedy or correct such representations as evidence has accumulated tending to show that respondents' estimates and representations were significantly below the results of actual homebuilder experience. Therefore, the acts and practices described in Paragraph Twelve are unfair and deceptive.

PAR. 13. In the further course and conduct of their business, respondents have represented that the homebuilder will need only simple hand tools for assembly of the BD-5 homebuilt aircraft kit.

In truth and in fact, with respect to certain subassemblies, specialized tools, machines or processes are necessary to complete the aircraft kit according to respondents' specifications and plans. Respondents have failed to disclose that the homebuilder must acquire specialized equipment, or resort to a third party such as a commercial welding or machine shop for completion of certain kit assembly operations. Therefore, the acts and practices described in Paragraph Thirteen are unfair and deceptive.

PAR. 14. In the further course and conduct of their business, respondents have represented that money deposited or paid for some or all subassemblies of the BD-5 homebuilt aircraft would, to the extent that further research and development was necessary to perfect such subassemblies, actually be used directly or indirectly for such purposes.

In truth and in fact, significant amounts of money deposited or

paid by buyers for some or all subassemblies of the BD-5 homebuilt aircraft has been diverted by respondents to research and development with respect to other of respondents' products, as well as other uses, not related to development of the BD-5 homebuilt aircraft, under circumstances in which further research and development was necessary in order to perfect certain subassemblies of BD-5 homebuilt aircraft. Therefore, the acts and practices described in Paragraph Fourteen are deceptive.

PAR. 15. In the further course and conduct of their business, respondents have represented that the BD-5 homebuilt aircraft may be easily and safely flown by an inexperienced pilot.

In truth and in fact, respondents' representations with respect to pilot skill and experience are based on design inference and expectations rather than upon actual flight experience sufficient to evaluate requisite pilot proficiency. Respondents lack a reasonable basis for representations with respect to such requisite pilot skill and experience, and have failed to disclose that the representations made are not based upon actual flight experience sufficient to evaluate requisite pilot proficiency. Therefore, the acts and practices described in Paragraph Fifteen are unfair and deceptive.

PAR. 16. The aforesaid false, misleading and deceptive representations made by respondents, have the tendency or capacity to mislead substantial number of consumers, and to induce said consumers to purchase substantial quantities of products from respondents and respondents' licensees or franchisees based upon such tendency or capacity to mislead.

PAR. 17. In the further course and conduct of their business, respondents have entered into agreements, or otherwise obligated themselves to refund payments and deposits received from customers; respondents have concurrently agreed or otherwise obligated themselves to promptly issue such refunds.

Respondents have consistently failed to issue properly requested refunds. Respondents have engaged in numerous practices designed to deceive customers as to the customer's actual right to a refund, the circumstances under which refunds will be made, and the date on which a refund will be made. Respondents have further engaged in practices designed to coerce customers into acquiescing to refund delay. Respondents have received numerous legitimate refund requests which have gone unsatisfied for in excess of three years.

By so obligating themselves to issue properly requested refunds in a prompt manner and then failing to issue such refunds, and by engaging in the above-enumerated practices designed to resist and

delay issuance of properly requested refunds, respondents have engaged in unfair acts and practices.

PAR. 18. In the further course and conduct of their business, respondents have had the use and benefit of, and have retained substantial amounts of money received as advance payments and deposits as a result of the unfair and deceptive acts as set forth in Count Two, herein.

Respondents have failed to pay interest upon money received as a result of such unfair acts and practices.

By so retaining money received, and by so failing to pay interest, respondents have engaged in unfair acts and practices.

PAR. 19. The acts and practices as herein alleged, are to the prejudice and injury of the public and respondents' competitors, and constitute unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

### COUNT THREE

Alleging violations of Section 5 of the Federal Trade Commission Act, with respect to the BD-5D aircraft. The allegations of Paragraphs One through Four hereof are incorporated by reference in Count Three as if set forth verbatim.

PAR. 20. In the further course and conduct of their business, respondents have represented that the BD-5D aircraft will be manufactured, assembled, and ready for delivery as of a specified future date. Accordingly, respondents represented that there existed, at the time such representations were made, a reasonable basis for such representations.

In truth and in fact, respondents lack a reasonable basis for representations made with respect to a specific date on which the BD-5D aircraft will be manufactured, assembled and ready for delivery. Respondents lack sufficient knowledge or expertise to predict, *inter alia*, the time necessary for procurement of requisite FAA airframe certification and engine certification, and the time necessary to fully develop, test, perfect and produce an engine capable of meeting respondents' representations with respect to performance, reliability and safety. Therefore, the acts and practices described in Paragraph Twenty are unfair and deceptive.

PAR. 21. In the further course and conduct of their business, respondents have represented that engines and drive systems exist which are capable of certain specifically stated criteria with respect to performance, reliability and safety.

In truth and in fact, engine and drive system assemblies have not

been developed or produced beyond the prototype or experimental stage. Accordingly, no production engines or drive systems exist, meeting respondents' representations with respect to performance, reliability and safety. Respondents have failed to disclose that representations with respect to performance, reliability and safety are based on design inferences and expectations, rather than upon data derived through use and testing of production engines and drive systems. Therefore, the acts and practices described in Paragraph Twenty-One are unfair and deceptive.

PAR. 22. In the further course and conduct of their business, respondents have represented that the BD-5D aircraft can be easily and safely flown by an inexperienced pilot.

In truth and in fact, respondents have failed to disclose that representations with respect to pilot skill and experience are based on inference and expectations rather than upon actual flight experience sufficient to evaluate requisite pilot proficiency. Respondents lack a reasonable basis for representations with respect to such pilot skill and experience, and have failed to disclose that the representations made are not based upon actual flight experience sufficient to evaluate requisite pilot proficiency. Therefore, the acts and practices described in Paragraph Twenty-Two are unfair and deceptive.

PAR. 23. In the further course and conduct of their business, respondents have represented that money deposited or paid for the BD-5D aircraft would be used, directly or indirectly, for further research and development necessary to perfect certain subassemblies of such aircraft.

In truth and in fact, significant amounts of money deposited or paid by buyers of the BD-5D aircraft has been diverted by respondents to research and development with respect to other of respondents products, as well as other uses, not related to development of the BD-5D aircraft, under circumstances in which substantial research and development of the BD-5D aircraft was necessary before production of such aircraft could begin. Therefore, the acts and practices described in Paragraph Twenty-Three are deceptive.

PAR. 24. In the further course and conduct of their business, respondents have represented that the BD-5D aircraft has been certified or otherwise approved by the FAA.

In truth and in fact, BD-5D aircraft has never been certified or otherwise approved by the FAA. Therefore, the acts and practices described in in Paragraph Twenty-Four are deceptive.

PAR. 25. These aforesaid false, misleading and deceptive representations which have been made by respondents, have the tendency or

capacity to mislead a substantial number of consumers, and to induce said consumers to purchase substantial quantities of products from respondents and respondents' licensees or franchisees based upon tendency or capacity to mislead.

PAR. 26. In the further course and conduct of their business, respondents have promised, otherwise obligated themselves to refund deposits or payments made by respondents' customers on the BD-5D aircraft, if actual production of such aircraft is not commenced by a date specified in the purchase contract, orally, or otherwise; respondents have concurrently agreed or otherwise obligated themselves to promptly issue refunds should production not commence on the specified date.

Respondents have consistently failed to issue properly requested refunds. Respondents have engaged in numerous practices designed to deceive customers as to the customer's actual right to a refund, the circumstances under which refunds will be made, and the date on which the refund will be made. Respondents have further engaged in practices designed to coerce customers into acquiescing to refund delay. Respondents have received numerous legitimate refund requests which have gone unsatisfied for in excess of three years.

By so obligating themselves to issue refunds and then failing to issue such refunds in a prompt manner and by engaging in the above-enumerated practices designed to delay and resist issuance of properly requested refunds, respondents have engaged in unfair acts and practices.

PAR. 27. In the further course and conduct of their business, respondents have had the use and benefit of substantial amounts of money received as advance payments and deposits, and retained, as a result of the unfair and deceptive acts as set forth in Count Three, herein.

Respondents have failed to pay interest upon money received as a result of such unfair acts and practices.

By so retaining money received, and by so failing to pay interest, respondents have engaged in unfair acts and practices.

PAR. 28. The aforementioned acts and practices, as herein alleged, are all to the prejudice and injury of the public and respondents' competitors, and constitute unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

## DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Bede Aircraft, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with a principal office located at 1128 Sixteenth St., N.W., Washington, D.C.

Respondent Bede General Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with a principal office located at 1128 Sixteenth St., N.W., Washington, D.C.

Respondent Bede Wing, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with a principal office located at 1128 Sixteenth St., N.W., Washington, D.C.

Respondent James R. Bede is sole stockholder and an officer and director of respondents Bede Aircraft, Inc. and Bede General

