IN THE MATTER OF

CRUSH INTERNATIONAL LIMITED, ET AL., DKT. NO. 8853

DR. PEPPER COMPANY, DKT. NO. 8854

THE SEVEN-UP COMPANY, DKT. NO. 8857

THE ROYAL CROWN COLA COMPANY, DKT. NO. 8858

NORTON SIMON, INC., ET AL., DKT. NO. 8877

FINAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Complaints, July 15, 1971 and March 3, 1972**—Order, Sept. 15, 1981*

This order dismisses without prejudice the complaints issued by the Commission in 1971–1972, against five major soft drink manufacturers charged with attempting to restrict where bottlers may sell, by including "territorial exclusivity" provisions in their licensing agreements. The Commission concluded that since the instant complaints were based on the same legal standards utilized in the matters of Coca-Cola Co. and Pepsico Co. which were subsequently set aside due to changes wrought by the 1980 Soft Drink Interbrand Competition Act, further proceedings would not be in the public interest at this time.

Appearances

For the Commission: *Ronald A. Bloch* and *David I. Wilson.*

For the respondents: *Louis J. Keating, Kirkland & Ellis*, Chicago, Ill., for Crush International, Ltd., *W. D. White, Sr., Rain, Harrell, Emery, Young & Doke*, Dallas, Tex., for Dr. Pepper Co., *Eugene J. Meigher, Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C., for The Seven-Up Co., *James H. Wallace, Jr., Kirkland & Ellis*, Washington, D.C., for The Royal Crown Cola Co., and *Edwin S. Rockefeller, Bierbower & Rockefeller*, Washington, D.C., for Norton Simon, Inc., and Canada Dry Corp.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties named in the caption hereof, each of which separately is made and sometimes hereinafter referred to as respondent(s), or respectively as Crush International Limited, Beverages Internation-

* Crush International Limited, et al., Dr. Pepper Co., The Seven-Up Co., and The Royal Crown Cola Co.

** Norton Simon, Inc., et al.

al Inc. or Crush International Inc., have violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. For the purposes of this complaint, the following definitions shall apply:

(a) *Bottler* - any individual, partnership, corporation, association or other business or legal entity which purchases respondents' concentrate for use in the manufacture and sale, primarily at wholesale, of respondents' pre-mix or post-mix syrups or soft drink products, or who purchases respondents' pre-mix or post-mix syrups or soft drink products for resale, primarily at wholesale;

(b) *Central warehousing* - a method of distribution in which soft drink products are received at a storage facility and either resold or delivered to retail outlets or wholesalers;

(c) *Concentrate* - the basic soft drink ingredient sold to bottlers by respondents, which is combined with water and other ingredients for packaging in bottles or cans for sale and distribution as soft drink products, or is used to make post-mix and pre-mix syrups; [2]

(d) *Consignment* - a form of distribution in which the consignor retains title, dominion, bears all risks of loss and delivers his products to the consignee who is indistinguishable from a salesman or agent;

(e) *Place of business* - the location of any facilities available to a bottler without regard to customers or geographic area for production or service in the conduct of business operations, to include but not limited to business headquarters, branch sales offices, warehouses and garages, but specifically excluding the plant at which a bottler combines concentrate with water, and possibly other ingredients, for the packaging of soft drink products;

(f) *Post-mix syrup* - soft drink concentrate which is used in fountain dispensing or vending equipment and is usually sold by bottlers in steel tanks. A typical post-mix system draws one ounce of syrup from a five-gallon tank and mixes it at the point of sale with five ounces of carbonated water to produce 600 six-ounce finished soft drink servings per tank;

(g) *Pre-mix syrup* - although essentially the same syrup as post-mix, a pre-mix system differs from a post-mix system in that it draws from a five-gallon tank a serving of soft drink products containing both syrup and carbonated water to produce 100 six-ounce finished soft drink servings per tank; and

(h) *Soft drink products* - nonalcoholic beverages and colas, carbonated and uncarbonated, flavored and nonflavored, sold in bottles and cans, or through pre-mix and post-mix systems or the like.

PAR. 2. Respondent Crush International Limited is a corporation organized, existing and conducting its business under and pursuant to the laws of the Province of Ontario, Canada. It maintains its office and principal place of business at 1590 O'Connor Drive, Toronto 16, Canada. In the United States, an office is maintained at 2201 Main St., Evanston, Illinois.

Respondent Beverages International Inc., a wholly-owned subsidiary of Crush International Limited, is a corporation organized, existing and conducting its business under and pursuant to the laws of the State of Illinois. It maintains its office and principal place of business at 2201 Main St., Evanston, Illinois. [3]

Respondent Crush International Inc., a wholly-owned subsidiary of Crush International Limited, is a corporation organized, existing and conducting its business under and pursuant to the laws of the State of Delaware. It maintains its office and principal place of business at 2201 Main St., Evanston, Illinois.

PAR. 3. Respondent Crush International Limited is engaged principally in the manufacture and sale of concentrate which it sells to its bottlers who purchase the concentrate under a license to produce and sell soft drink products under such trade names as "Orange Crush," "Gurd's Ginger Ale," "American Dry Ginger Ale," "Hires Root Beer," "Kick-Kola," "Grape Crush," "Lime Crush," "Grapefruit Crush," "Lemon-Lime Crush Cola," "Crush Cream Soda," "Bitter Lemon," "Brio Chinotto," and "India Express."

Plants for the manufacture of concentrate are located in Canada at Toronto and Ottawa, Ontario and Montreal, Quebec, and in the United States at Evanston, Illinois and Trenton, New Jersey. Approximately 300 United States and 30 Canadian bottlers are franchised to sell its Orange Crush and/or Hires Root Beer soft drink products. Bottlers combine the concentrate with water and other ingredients and package the mixture in bottles for resale as soft drink products to retailers.

For the year ending October 30, 1968, Crush International Limited had sales of $33,069,442, and assets of $21,178,277 (Canadian dollars). As to its wholly-owned United States subsidiaries, Beverages International Inc. and Crush International Inc., sales of concentrate and Orange Crush and Hires Root Beer soft drink products were made to over 300 domestic bottlers in 1968. In the

United States, agreements for Orange Crush and Hires Root Beer trademarked concentrate and soft drink products are between the bottler and Crush International Inc. and Beverages International Inc.

Corporate officers of Beverages International Inc. and Crush International Inc., are identical; and Mr. Louis Collins is President of these respondents as well as of respondent Crush International Limited.

PAR. 4. Respondents are engaged in "commerce" within the meaning of the Federal Trade Commission Act (15 U.S.C. 44) in that a continuous flow of interstate and foreign commerce regarding concentrate and soft drink products [4]exists between offices in Evanston, Illinois and Toronto, Ontario, and production facilities in Canada at Toronto and Ottawa, Ontario, and Montreal, Quebec, and in the United States at Evanston, Illinois, and Trenton, New Jersey, and the numerous bottlers located throughout the United States which purchase their products.

PAR. 5. In the course and conduct of their businesses, respondents, except to the extent limited by the acts, practices and methods of competition hereinafter alleged, have been and are now in competition with other corporations, firms, partnerships and persons engaged in the manufacture, processing, distribution and sale of concentrate and soft drink products in commerce.

PAR. 6. Respondents have hindered, frustrated, lessened and eliminated competition in the distribution and sale of pre-mix and post-mix syrups and soft drink products sold under their trade names by restricting bottlers from selling outside of a designated geographical area. This restriction is set forth in the agreements between respondents Beverages International Inc., or Crush International Inc., and their bottlers. A typical agreement between respondents Beverages International Inc., or Crush International Inc., and their bottlers provides that:

> Bottler shall use its best efforts to sell [CRUSH/HIRES] within TERRITORY and not deliver or sell [CRUSH/HIRES] outside of TERRITORY. Bottler shall not knowingly sell [CRUSH/HIRES] within TERRITORY for resale or delivery outside of TERRITORY or sell or deliver [CRUSH/HIRES] to any person after having been notified by COMPANY that such person is reselling or delivering [CRUSH/HIRES] outside TERRITORY.

PAR. 7. The aforesaid agreements used by respondents, Beverages International Inc. and Crush International Inc., the wholly-owned subsidiaries of respondent Crush International Limited, have had, and may continue to have, the following effects:

(a) Competition between and among respondents' bottlers in the distribution and sale of "Hires Root Beer" and "Orange Crush" brands of soft drink products has been eliminated;

(b) Innumerable retailers and other customers have been deprived of the right to purchase "Hires Root Beer" and "Orange Crush" brands of soft drink products from the bottler of their choice at a competitive price; and [5]

(c) Consumers of "Hires Root Beer" and "Orange Crush" brands of soft drink products have been deprived of the opportunity of obtaining such products in an unrestricted market and at competitive prices.

PAR. 8. Respondents' contracts, agreements, acts, practices and methods of competition aforesaid have had, and may continue to have, the effect of lessening competition in the advertising, merchandising, distribution, offering for sale and sale of pre-mix and post-mix syrups and soft drink products; deprive, and may continue to deprive, the public of the benefits of competition in the purchase of soft drink products; and constitute unfair methods of competition and unfair acts or practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Dr. Pepper Company, hereby made and sometimes hereinafter referred to as respondent, or Dr. Pepper, has violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. For the purposes of this complaint, the following definitions shall apply:

(a) *Bottler* - any individual, partnership, corporation, association or other business or legal entity which purchases respondent's concentrate for use in the manufacture and sale, primarily at wholesale, of respondent's pre-mix or post-mix syrups or soft drink products, or who purchases respondent's pre-mix or post-mix syrups or soft drink products for resale, primarily at wholesale;

(b) *Central warehousing* - a method of distribution in which soft drink products are received at a storage facility and either resold or delivered to retail outlets or wholesalers;

(c) *Concentrate* - the basic soft drink ingredient sold to bottlers by

respondent, which is combined with water and other ingredients for packaging in bottles or cans for sale and distribution as soft drink products, or is used to make post-mix and pre-mix syrups;

(d) *Consignment* - a form of distribution in which the consignor retains title, dominion, bears all risks of loss and delivers his products to the consignee who is indistinguishable from a salesman or agent; **[2]**

(e) *Place of business* - the location of any facilities available to a bottler without regard to customers or geographic area for production or service in the conduct of business operations, to include but not limited to business headquarters, branch sales offices, warehouses and garages, but specifically excluding the plant at which a bottler combines concentrate with water, and possibly other ingredients, for the packaging of soft drink products;

(f) *Post-mix syrup* - soft drink concentrate which is used in fountain dispensing or vending equipment and is usually sold by bottlers in steel tanks. A typical post-mix system draws one ounce of syrup from a five-gallon tank and mixes it at the point of sale with five ounces of carbonated water to produce 600 six-ounce finished soft drink servings per tank;

(g) *Pre-mix syrup* - although essentially the same syrup as post-mix, a pre-mix system differs from a post-mix system in that it draws from a five-gallon tank a serving of soft drink products containing both syrup and carbonated water to produce 100 six-ounce finished soft drink servings per tank; and

(h) *Soft drink products* - nonalcoholic beverages and colas, carbonated and uncarbonated, flavored and nonflavored, sold in bottles and cans, or through pre-mix and post-mix systems or the like.

PAR. 2. Respondent is a corporation organized, existing and conducting its business under and pursuant to the laws of the State of Colorado. It maintains its office and principal place of business at 5523 Mockingbird Lane, Box 5986, Dallas, Texas. Respondent had sales of $41,883,072 and assets of $19,479,696 in 1969. In 1968, Dr. Pepper made sales to over 482 bottlers located in every state of the United States.

PAR. 3. Respondent is engaged principally in the manufacture and sale of concentrate which it sells to its over 482 bottlers who purchase the concentrate under a license to produce and sell soft drink products under respondent's trade names such as "Dr. Pepper," "Dietetic Dr. Pepper" and "Salute." Dr. Pepper bottlers combine the concentrate with water and other ingredients and

package the mixture in bottles and cans for resale as soft drink products to retailers. In addition to manufacturing and selling concentrate to its bottlers, Dr. Pepper operates bottling plants in three areas of the United States and sells soft drink products to retailers. [3]

PAR. 4. Respondent is engaged in "commerce" within the meaning of the Federal Trade Commission Act (15 U.S.C. 44) in that a continuous flow of interstate commerce in pre-mix concentrate and soft drink products exists between its headquarters and production facilities located in Dallas, Texas, and the numerous bottlers located throughout the United States which purchase its products.

PAR. 5. In the course and conduct of its business, respondent, except to the extent limited by the acts, practices and methods of competition hereinafter alleged, has been and is now in competition with other corporations, firms, partnerships and persons engaged in the manufacture, processing, distribution and sale of soft drink products in commerce.

PAR. 6. Dr. Pepper has hindered, frustrated, lessened and eliminated competition in the distribution and sale of pre-mix and post-mix syrups and soft drink products sold under its trade names by restricting its bottlers from selling outside of a designated geographical area. This restriction is set forth in the agreements between respondent and its bottlers. A typical agreement between respondent and its bottlers provides that the bottler ". . . at all times agrees not to sell bottled Dr. Pepper outside the said licensed territory and not to sell such product knowingly to any purchaser who intends to place such product for sale outside the said licensed territory . . ."

PAR. 7. The aforesaid agreements used by respondent have had, and may continue to have, the following effects:

(a) Competition between and among respondent's bottlers in the distribution and sale of "Dr. Pepper," "Dietetic Dr. Pepper" and "Salute" brands of soft drink products has been eliminated;

(b) Competition between and among Dr. Pepper's bottling operations and its bottlers in the distribution and sale of Dr Pepper soft drink products at the wholesale level has been eliminated;

(c) Innumerable retailers and other customers have been deprived of the right to purchase "Dr. Pepper," "Dietetic Dr. Pepper" and "Salute" brands of soft drink products from the bottler of their choice at a competitive price; and [4]

(d) Consumers of "Dr. Pepper," "Dietetic Dr. Pepper" and "Salute" brands of soft drink products have been deprived of the

opportunity of obtaining such products in an unrestricted market and at competitive prices.

PAR. 8. Respondent's contracts, agreements, acts, practices and methods of competition aforesaid have had, and may continue to have, the effect of lessening competition in the advertising, merchandising, distribution, offering for sale and sale of pre-mix and post-mix syrups and soft drink products; deprive, and may continue to deprive, the public of the benefits of competition in the purchase of soft drink products; and constitute unfair methods of competition and unfair acts or practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that The Seven-Up Company, hereby made and sometimes hereinafter referred to as respondent, or Seven-Up, has violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. For the purposes of this complaint, the following definitions shall apply:

(a) *Bottler* - any individual, partnership, corporation, association or other business or legal entity which purchases respondent's concentrate for use in the manufacturing and sale primarily at wholesale, of respondent's pre-mix or post-mix syrups or soft drink products or who purchases respondent's pre-mix or post-mix syrups or soft drink products for resale, primarily at wholesale;

(b) *Central Warehousing* - a method of distribution in which soft drink products are received at a storage facility and either resold or delivered to retail outlets or wholesalers;

(c) *Concentrate* - the basic soft drink ingredient sold to bottlers by respondent, which is combined with water and other ingredients for packaging in bottles or cans for sale and distribution as soft drink products, or is used to make post-mix and pre-mix syrups;

(d) *Consignment* - a form of distribution in which the consignor retains title, dominion, bears all risks of loss and delivers his products to the consignee who is indistinguishable from a salesman or agent; **[2]**

(e) *Place of business* - the location of any facilities available to a bottler without regard to customers or geographic area for produc-

tion or service in the conduct of business operations, to include but not limited to business headquarters, branch sales offices, warehouses and garages, but specifically excluding the plant at which a bottler combines concentrate with water, and possibly other ingredients, for the packaging of soft drink products;

(f) *Post-mix syrup* - soft drink concentrate which is used in fountain dispensing or vending equipment and is usually sold by bottlers in steel tanks. A typical post-mix system draws one ounce of syrup from a five-gallon tank and mixes it at the point of sale with six ounces of carbonated water to produce 600 six-ounce finished soft drink servings;

(g) *Pre-mix syrup* - although essentially the same syrup as post-mix, a pre-mix system differs from a post-mix system in that it draws from a five-gallon tank a serving of soft drink products containing both syrup and carbonated water to produce 100 six-ounce finished soft drink servings; and

(h) *Soft drink products* - nonalcoholic beverages and colas, carbonated and uncarbonated, flavored and nonflavored, sold in bottles and cans, or through pre-mix and post-mix systems or the like.

PAR. 2. Respondent is a corporation organized, existing and conducting its business under and pursuant to the laws of the State of Missouri. It maintains its office and principal place of business at 121 South Meramec, St. Louis, Missouri. Respondent had sales of $83,255,014 and assets of $38,894,206 in 1969. In 1968, Seven-Up made sales to over 470 domestic bottlers located in every State of the United States.

PAR. 3. Respondent is engaged principally in the manufacture and sale of concentrate which it sells to its over 470 bottlers who purchase the concentrate under a license to produce and sell soft drink products under respondent's trade names such as "7-Up," "Diet 7-Up," "LIKE" and "Howdy." Seven-Up bottlers combine the concentrate with water and other ingredients and package the mixture in bottles and cans for resale as soft drink products to retailers.

PAR. 4. Respondent is engaged in "commerce" within the meaning of the Federal Trade Commission Act (15 U.S.C. 44) in that a continuous flow of interstate [3]commerce in concentrate and soft drink products exists between its headquarters and production facilities located in St. Louis, Missouri, and the numerous bottlers located throughout the United States which purchase its products.

PAR. 5. In the course and conduct of its business, respondent,

except to the extent limited by the acts, practices and methods of competition hereinafter alleged, has been and is now in competition with other corporations, firms, partnerships and persons engaged in the manufacture, processing, distribution and sale of soft drink products in commerce.

PAR. 6. Seven-Up has hindered, frustrated, lessened and eliminated competition in the distribution and sale of pre-mix concentrates and soft drink products sold under its trade names by restricting its bottlers from selling outside of a designated geographical area. This restriction is set forth in the agreements between respondent and its bottlers.

A typical agreement between respondent and its bottlers provides that the ". . . Bottler shall not directly or indirectly sell or distribute 7-Up in any territory other than hereinbefore described."

PAR. 7. The aforesaid agreements used by respondent have had, and may continue to have, the following effects:

(a) Competition between and among respondent's bottlers in the distribution and sale of "7-Up," "Diet 7-Up," "LIKE" and "Howdy" brands of soft drink products has been eliminated;

(b) Innumerable retailers and other customers have been deprived of the right to purchase "7-Up," "Diet 7-Up," "LIKE," and "Howdy" brands of soft drink products from the bottler of their choice at a competitive price; and

(c) Consumers of "7-Up," "Diet 7-Up," "LIKE" and "Howdy" brands of soft drink products have been deprived of the opportunity of obtaining such products in an unrestricted market and at competitive prices. [4]

PAR. 8. Respondent's contracts, agreements, acts, practices and methods of competition aforesaid have had, and may continue to have, the effect of lessening competition in the advertising, merchandising, distribution, offering for sale and sale of pre-mix concentrates and soft drink products; deprive, and may continue to deprive, the public of the benefits of competition in the purchase of soft drink products; and constitute unfair methods of competition and unfair acts or practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Royal Crown Cola Company, hereby made and sometimes hereinafter referred to as respondent, or Royal Crown, has violated the

provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. For the purposes of this complaint, the following definitions shall apply:

(a) *Bottler* - any individual, partnership, corporation, association or other business or legal entity which purchases respondent's concentrate for use in the manufacture and sale, primarily at wholesale, of respondent's pre-mix or post-mix syrups or soft drink products, or who purchases respondent's pre-mix or post-mix syrups or soft drink products for resale, primarily at wholesale;

(b) *Central warehousing* - a method of distribution in which soft drink products are received at a storage facility and either resold or delivered to retail outlets or wholesalers;

(c) *Concentrate* - the basic soft drink ingredient sold to bottlers by respondent, usually as a syrup, and which is combined with water and other ingredients for packaging in bottles or cans for sale and distribution as soft drink products, or is used to make post-mix and pre-mix syrups;

(d) *Consignment* - a form of distribution in which the consignor retains title, dominion, bears all risks of loss and delivers his products to the consignee who is indistinguishable from a salesman or agent; **[2]**

(e) *Place of business* - the location of any facilities available to a bottler without regard to customers or geographic area for production or service in the conduct of business operations, to include but not limited to business headquarters, branch sales offices, warehouses and garages, but specifically excluding the plant at which a bottler combines concentrate with water, and possibly other ingredients, for the packaging of soft drink products;

(f) *Post-mix syrup* - soft drink concentrate which is used in fountain dispensing or vending equipment and is usually sold by bottlers in steel tanks. A typical post-mix system draws one ounce of syrup from a tank, usually having about a five-gallon capacity and mixes it at the point of sale with five ounces of carbonated water to produce approximately 600 six-ounce finished soft drink servings per tank;

(g) *Pre-mix syrup* - although essentially the same syrup as post-mix, a pre-mix system differs from a post-mix system in that it draws from a tank, usually having about a five-gallon capacity, a finished serving of soft drink product containing both syrup and carbonated

water, "pre-mixed," to produce 100 six-ounce soft drink servings per tank; and

(h) *Soft drink products* - nonalcoholic beverages and colas, carbonated and uncarbonated, flavored and nonflavored, sold in bottles and cans, or through pre-mix and post-mix systems or the like.

PAR. 2. Respondent is a corporation organized, existing and conducting its business under and pursuant to the laws of the State of Delaware. It maintains its office and principal place of business at 1000 10th Ave., Box 1440, Columbus, Georgia. Respondent had sales of $80,059,394 and assets of $23,873,489 in 1969. In 1968, Royal Crown Cola made sales to over 333 domestic bottlers located in every state of the United States.

PAR. 3. Respondent is engaged principally in the manufacture and sale of concentrate which it sells to its over 333 bottlers who purchase the concentrate under a license to produce and sell soft drink products under respondent's trade names such as "Royal Crown," "Diet Rite," "Nehi," "Par-T-Pak," "Kick," "Lift" and "Gatorade." Royal Crown bottlers combine the concentrate with water and other ingredients and package the mixture in bottles and cans for resale as soft drink products to retailers. In addition, to manufacturing and selling concentrate to its bottlers, it operates bottling plants in seven areas of the United States and sells soft drink products to retailers. [3]

PAR. 4. Respondent is engaged in "commerce" within the meaning of the Federal Trade Commission Act (15 U.S.C. 44) in that a continuous flow of interstate commerce in concentrate and soft drink products exists between its headquarters and production facilities located in Columbus, Georgia, and the numerous bottlers located throughout the United States which purchase its products.

PAR. 5. In the course and conduct of its business, respondent, except to the extent limited by the acts, practices and methods of competition hereinafter alleged, has been and is now in competition with other corporations, firms, partnerships and persons engaged in the manufacture, processing, distribution and sale of concentrate and soft drink products in commerce.

PAR. 6. Royal Crown has hindered, frustrated, lessened and eliminated competition in the distribution and sale of pre-mix and post-mix syrups and soft drink products sold under its trade names by restricting its bottlers from selling outside of a designated geographical area. This restriction is set forth in the agreements between respondent and its franchised bottlers. A typical agreement

between respondent and its bottlers provides that "The license of the bottler to sell Royal Crown beverages and to use the company's Royal Crown trademark is limited to the described territory, and the bottler shall not sell Royal Crown beverages to any person for resale without the limits of said territory."

PAR. 7. The aforesaid agreements used by respondent have had, and may continue to have, the following effects:

(a) Competition between and among respondent's bottlers in the distribution and sale of "Royal Crown," "Diet Rite," "Nehi," "Par-T-Pak," "Kick," "Lift" and "Gatorade" brands of soft drink products has been eliminated;

(b) Competition between and among Royal Crown's bottling operations and its bottlers in the distribution and sale of Royal Crown soft drink products at the wholesale level has been eliminated;

(c) Innumerable retailers and other customers have been deprived of the right to purchase "Royal Crown," "Diet Rite," "Nehi," "Par-T-Pak," "Kick," "Lift" and "Gatorade" brands of soft drink products from the bottler of their choice at a competitive price; and [4]

(d) Consumers of "Royal Crown," "Diet Rite," "Nehi," "Par-T-Pak," "Kick," "Lift" and "Gatorade" brands of soft drink products have been deprived of the opportunity of obtaining such products in an unrestricted market and at competitive prices.

PAR. 8. Respondent's contracts, agreements, acts, practices and methods of competition aforesaid have had, and may continue to have, the effect of lessening competition in the advertising, merchandising, distribution, offering for sale and sale of pre-mix and post-mix syrups and soft drink products, deprive, and may continue to deprive, the public of the benefits of competition in the purchase of pre-mix, post-mix and soft drink products; and constitute unfair methods of competition and unfair acts or practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that Norton Simon, Inc. and its wholly-owned subsidiary, Canada Dry Corporation, each hereby made and sometimes hereinafter referred to as respondent(s), or as Norton Simon or Canada Dry, have violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and it appearing to the Commission that a proceeding by