

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 from in which they have complied with this order.

IN THE MATTER OF
SCM CORPORATION

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

Docket C-1756. Complaint, June 29, 1970—Decision, June 29, 1970

Consent order requiring the SCM Corporation, a manufacturer of office equipment, parts and supplies, with headquarters in New York City, to cease cancelling rental agreements for electrostatic copying machines, refusing to lease these machines unless lessee agrees to purchase all supplies from SCM, conditioning sale or lease of machines on agreements to use only SCM electrostatic copying supplies, leasing its Model 55 machines under a plan in which SCM furnishes all supplies to sell repair parts, maladjusting or tampering with SCM copying machines when non-SCM supplies are used, and terminating dealer contracts when the dealer sold SCM's products outside the territory specified in the contract.

COMPLAINT

The Federal Trade Commission having reason to believe that the corporation named in the caption hereof, has violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45), and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

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

1. Direct electrostatic process involves the copying of an image by electrically charging a zinc oxide coated paper and projecting an image on the paper which is retained when toner (ink particles) is applied.

2. Supplies are products which are used in variable proportions in respondent's office copiers and include such items as paper and toner used with electrostatic copying machines.

PAR. 2. Respondent SCM Corporation, hereinafter sometimes referred to as SCM or respondent, is a corporation organized and

doing business under the laws of the State of New York with its general office and place of business located at 299 Park Avenue, New York, New York.

PAR. 3. SCM is a diversified corporation operating domestically and internationally in the manufacture and distribution of products in the following lines of commerce: office equipment; coatings, resins and chemicals; food products; pulp paper and paper products; household appliances and housewares; teleprinter communications equipment and industrial processing equipment. In the year ended June 30, 1968, its sales revenues totaled approximately \$745,000,000.

SCM has been for many years engaged in the manufacture, distribution and sale of office equipment including office copiers (employing among other methods the direct electrostatic process), electronic and mechanical calculators, portable and office typewriters. SCM also manufactures, distributes and sells the supplies and replacement parts for these products. In 1968, the net sales of these products were approximately \$200,000,000.

PAR. 4. SCM causes the products which they manufacture, distribute and sell to be shipped to purchasers located in States other than the States in which such products are manufactured. In the course and conduct of their business, as above described, respondent is now, and has been at all times referred to herein, engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. There is now and has been a constant flow of respondent's products in commerce between and among the several States of the United States and the District of Columbia.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices hereinbelow alleged in this complaint, SCM has been and is in competition with other corporations, partnerships, individuals or firms engaged in the sale and distribution of office equipment.

PAR. 6. Respondent has hindered, frustrated, lessened and eliminated competition in the sale and distribution of office copiers and office typewriters by engaging in the following acts and practices, among others:

A. In connection with the sale and distribution of office copiers:

(a) Cancelling, and threatening to cancel, rental agreements for its electrostatic copying machines when the lessee purchases non-SCM supplies;

(b) Refusing to lease its electrostatic copying machines unless the lessee agrees to purchase all supplies from respondent;

(c) Selling and leasing its electrostatic copying machines on the

condition, agreement, or understanding that the purchaser and/or lessee will not use non-SCM electrostatic copying supplies;

(d) Leasing its Model 55 electrostatic copying machines solely through a "copy service" plan in which all supplies are furnished by respondent;

(e) Refusing to sell repair parts to owners and repairmen who are qualified to make such repairs;

(f) Maintaining a policy of placing restraints upon the alienation of parts and subassemblies produced for it by its suppliers by entering into contracts with said suppliers in which the suppliers agree not to sell products made for SCM to any other party;

(g) Refusing, and threatening to refuse, to honor the guarantees given to purchasers of SCM electrostatic copying machines who intend to purchase or have purchased non-SCM electrostatic supplies;

(h) Refusing, and threatening to refuse, to honor service agreements made between respondent and purchasers of its electrostatic copying machines who have purchased non-SCM electrostatic supplies;

(i) Falsely disparaging or making false or misleading representations to purchasers and prospective purchasers of SCM machines concerning the effectiveness and/or quality of non-SCM supplies;

(j) Maladjusting or tampering with owned and/or leased SCM electrostatic copying machines when non-SCM copying supplies are used;

(k) Making impracticable the purchase of non-SCM electrostatic paper by providing toner at no cost to purchasers of SCM electrostatic paper but charging inflated prices for toner when non-SCM paper is used;

(l) Terminating, and threatening to terminate, dealer contracts when the dealer attempted to sell, or, in fact, sold respondent's products outside of the territory specified in the dealer's contract;

(m) Terminating, and threatening to terminate, dealer contracts when the dealer attempted to sell, or, in fact, sold respondent's products to SCM's competitors in the sale of supplies for SCM's electrostatic copying machines.

B. In connection with the sale and distribution of office copiers and office typewriters:

(a) Entering into contracts with its dealers whereby the dealer agrees that it will not make or attempt to make any sales of respondent's products outside of a territory specified in the dealer's contract

PAR. 7. These aforesaid acts, practices, agreements, understand-

ings, combinations, conspiracies, and planned courses of action are to the prejudice of the public; have hindered, lessened, restrained, restricted, and eliminated competition in commerce, in the purchase, distribution, offering for sale and resale of office copiers, supplies and replacement parts, and office typewriters; and therefore constitute violations of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, 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 set forth in such complaint, and waivers and 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 respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon provisionally accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having received and duly considered comments from interested members of the public, 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 SCM Corporation, is a corporation organized and doing business under the laws of the State of New York, with its executive office and place of business located at 299 Park Avenue, in the city of New York, State of New York.

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.

In approving the final order, the Commission has given consideration to the comments made by interested parties and concludes that:

1. All things considered here the public interest does not require inclusion of a clause in which respondent admits to the allegations of the complaint. The agreement entered into conforms with Section 2.33, which specifically permits the inclusion of a clause in consent settlements stating that the agreement does not constitute an admission that the law has been violated as alleged in the complaint. The Commission is aware, of course, that the inclusions in consent settlements of such a clause would encourage and be of aid in private actions as a means of enforcing the law. Insistence by the Commission upon the inclusion of an admission that the law has been violated in consent settlements, however, must be weighed against the prospects of lengthy litigation of uncertain outcome. In the instant proceeding the Commission believes that the public should not be deprived of the benefits of the expeditious settlement of the matter, which might not be possible if an admission of the allegations in the complaint were required. The Commission also notes that a number of private actions have been completed or are pending involving the acts and practices of SCM in the office copier industry. *Advance Business Systems & Supply Co. v. SCM Corp.*, 415 F. 2d 55 (4th Cir. 1969), *cert. den.*, 397 U.S. 920 (1970); *In re Multi-District Civil Antitrust Litigation Involving Photocopy Paper*, 305 F. Supp. 60 (1969).

2. A remedial provision which would require SCM to make customer lists public appears unnecessary in an industry in which the identity of such customers is readily ascertainable as a result of constant canvassing of potential customers by companies engaged in the sale of office copier supplies.

3. Requiring SCM to notify its customers that they are free to purchase copier supplies from non-SCM sources and that such sources have acceptable supplies is unnecessary in this matter. The Commission does not believe that the public interest requires such notification in light of the obligations to which SCM will be subjected under the Commission's compliance procedure.

4. It is not believed necessary to modify Paragraph three of the order so as to require SCM to offer its copiers on a rental basis in which supplies are not provided (rental basis) when it offers copiers on a copy service basis, *i.e.*, a rental basis in which supplies are provided with the copiers. Paragraph three of the order requires SCM to offer its copiers on a rental basis when it offers its copiers on a copy service basis, if the copiers are unavailable on a reasonable

lease basis from third party lessors. The purpose of this provision is to prohibit SCM from foreclosing competition in the sale of supplies by only marketing its copiers on a copy service basis. This purpose is achieved by this provision even though SCM is not necessarily the one who offers to rent copiers on a rental basis.

In addition, the public interest is not served by changing Paragraph three to require SCM to set the terms for its copy service agreements in such a manner that the terms are not economically more advantageous to a potential user than the terms of a rental agreement in which supplies are not provided. Paragraph three requires SCM to make available its copiers on a reasonable rental basis when it offers its copiers on a copy service basis and criteria are set forth for determining reasonableness. Although the economically advantageous approach suggests a mathematical exactness, in fact, in the final analysis, it is no different than the reasonableness approach which is contemplated in Paragraph three.

5. Deleting the portion of Paragraph four which permits SCM to terminate service agreements and warranties when it can demonstrate that particular supplies of a manufacturer have substantially impaired the effective operation of its copiers or repeatedly damaged such copiers is inappropriate. Well established precedent supports the proposition that a manufacturer can protect its equipment from being harmed by competitors' supplies by not permitting such supplies to be used with its equipment.

ORDER

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

(a) Supplies are products which are used in variable proportions in respondent's office copiers and include such items as paper and toner used with electrostatic copying machines.

(b) A lease will be distinguished from a rental agreement in the following manner: a lease involves as lessor a third party which is not a subsidiary or affiliate of respondent and a rental agreement involves as lessor respondent or a subsidiary or affiliate thereof.

(c) Reasonable price, reasonable lease basis or reasonable rental basis shall be determined with reference to criteria which shall include, but not be limited to, one or more of the following: customer or market acceptance; comparability to similar copiers of other manufacturers freely sold, leased or rented; cost of manufacture and sale; and other market or competitive conditions.

I

It is ordered, That respondent, SCM Corporation, a corporation, and its officers, agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with the sale or distribution of office copiers and supplies in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Cancelling or threatening to cancel any lease or rental agreement for its office copiers because the lessee or rentor has purchased and/or used non-SCM supplies, except under the conditions set forth in Paragraph 4 relating to the substantial impairment of the effective operation of respondent's copiers or repeated damage to such copiers;

2. Refusing to lease, rent or sell its office copiers unless the lessee, rentor or purchaser agrees to purchase SCM supplies; or leasing, renting or selling its copiers on the condition, agreement or understanding that the lessee, rentor or purchaser agrees to purchase SCM supplies; except that respondent may lease, rent or sell copiers on such condition, agreement or understanding if the separate availability requirements set forth in Paragraph 3 are met;

3. Entering into, adhering to, or maintaining any contract or agreement in which the user pays a fee based on the usage of office copiers and receives therewith the copier, supplies and service (hereinafter termed "copy service"), unless at the time copy service is offered to any potential user there is also made available to such users or potential users similar copiers for sale at a reasonable price and unless such copiers are also made available to such users or potential users on a reasonable rental basis not including supplies if it is not available on a reasonable lease basis, with such users or potential users being informed of the availability of such copiers on such a reasonable rental basis if they are not available on a reasonable lease basis;

4. Terminating or threatening to terminate guarantees and/or service agreements made between respondent and purchasers of its office copiers who have contemplated purchasing or who have purchased non-SCM supplies: *Provided, however,* If respondent can demonstrate that particular supplies of a manufacturer have substantially impaired the effective operation of its copiers or repeatedly damaged its copiers, respondent may then advise and announce to users of the particular supplies that continued use

may damage or substantially impair the effective operation of its copiers and that the guarantees or service agreements will be forfeited. For a period of five years copies of all such advices or announcements must be sent to the Commission. In the event of any forfeiture described in this paragraph, in those localities where respondent continues to perform service pursuant to guarantees or agreements with others, it will offer to provide service at its regular time and material rates;

5. Refusing to sell office copier repair parts, so long as such parts are made available to respondent's dealers, to owners of SCM copiers for use in their copiers or to independent repairmen who regularly engage in the repair, maintenance and service of SCM copiers;

6. Misrepresenting the effectiveness or quality of non-SCM supplies when respondent gives executive or supervisory approval to such misrepresentation or has knowledge or constructive knowledge of such misrepresentation;

7. Maladjusting or tampering with SCM office copiers for the purpose of demonstrating the ineffectiveness or poor quality of non-SCM supplies when respondent gives executive or supervisory approval to such maladjusting or tampering or has knowledge or constructive knowledge of such maladjusting or tampering.

II

It is further ordered, That respondent, SCM Corporation, a corporation, and its officers, agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with the sale or distribution of office copiers and office typewriters in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, adhering to or maintaining any contract, combination or understanding with any dealer of office copiers or office typewriters to limit, allocate or restrict the territory in which, or the person or class of persons to whom, such dealer may sell such equipment, or to restrict the location of the dealer's place of business, or provide for an allocation of fees between such dealer and other dealers: *Provided*, That nothing in this order shall prohibit respondent from:

A. Designating geographical areas within which a dealer may agree to devote his best efforts to the sale of such equipment (hereafter "area of primary responsibility") as a

condition of becoming a dealer or maintaining a dealership: *Provided*, That such dealers are told that said area is not exclusive and does not place a territorial restriction upon the sale of such equipment;

B. Requiring any dealer to undertake obligations of installation, guarantee and continuing service, maintenance and customer relations (hereinafter "sales-related services") in connection with the use of any such equipment sold, leased or rented in the dealer's area of primary responsibility or with respect to any equipment sold by the dealer to any person, as a condition of becoming a dealer or maintaining a dealership;

C. Suggesting to a dealer the amount of payment of fees for sales-related services, and providing a method therefor, where a dealer sells outside of his area of primary responsibility and such sales-related services must be performed by another dealer; or establishing such fees as a condition of becoming a dealer or maintaining a dealership when a dealer sells equipment for installation in a geographical area in which respondent performs such sales-related services or when respondent sells equipment for installation in a dealer's area of primary responsibility.

2. Cancelling or terminating or threatening to cancel or terminate any dealer, or in any way penalizing any dealer, because of the person or classes of persons to whom such dealer sells, or the territory within which such dealer has sold or attempted to sell office copiers or office typewriters or the location of the dealer's place of business.

III

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this order, serve upon all of its office copier and office typewriter dealers, a letter by certified mail, signed by a responsible official binding the respondent, and on official SCM Corporation, Smith-Corona Marchant Division stationery, which shall include the following statement in its first paragraph: "The Federal Trade Commission has entered an order which, among other things, prohibits SCM Corporation from limiting, allocating or restricting the territory or the class of persons to whom our office copier or office typewriter dealers may sell, as more fully set forth in the relevant provisions of the Order which are enclosed." The rele-

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vant provisions of this order which shall be enclosed in such letters to dealers are Sections II and III thereof.

IV

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

V

It is further ordered, That respondent notify the Commission at least 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.

Commissioner Elman not concurring.

IN THE MATTER OF

LEWIS RUSOFF, INC., ET AL.