

IN THE MATTER OF
MAREMONT CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND THE FEDERAL TRADE
COMMISSION ACT

Docket 8763. Complaint, July 1, 1968—Decision, Jan. 26, 1971

Consent order requiring a major manufacturer and distributor of automotive parts with headquarters in Chicago, Ill., to divest itself of 28 warehouse distributors not located in California by selling them to a minimum of four different purchasers, to sell its 153 automotive parts jobber stores to at least three separate purchasers, respondent must not acquire any processor or wholesaler of automobile parts without Commission approval for the next 10 years, and not to engage in any systematic reciprocal buying and selling agreements with other manufacturer-wholesalers of automotive parts, accessories or equipment.

COMPLAINT

The Federal Trade Commission has reason to believe that Maremont Corporation, an Illinois corporation has acquired all or part of the stock or assets of Accurate Parts Manufacturing Co.; Grizzly Manufacturing Co.; Muskegon Camshaft Company; Universal Friction Materials Co.; The Gabriel Company; Leland Corporation; Monroe Products Company; 2401 South Michigan, Inc.; Winslow

Engineering and Manufacturing Co.; Replacement Unit Co. an Ohio corporation; Replacement Unit Company, a Missouri corporation; Replacement Unit Company, a California corporation; Exchange Parts Company of Fort Worth; Automotive Utilities, Inc.; Auto Parts Exchange Co.; Rebuilt Parts, Inc.; United Automotive Products, Inc.; General Armature & Manufacturing Co.; Chanslor & Lyon Co., Inc.; Joseph F. Meyer Co.; Smith Auto Parts Co.; Independent Jobbers Warehouse; Onandaga Supply Co., Inc.; Chapin-Owen Co., Inc.; Chapin-Owen Batavia Corp.; Automotive Supply Company; Motive Parts Company of Pennsylvania, Inc.; Dyke Charnet, Inc.; General Trading Company; GN Finance Company; The Gibson Company, Inc.; Atlas Manufacturing Co., Inc.; Service-Items, Inc.; Motor City Automotive, Inc.; Apex Battery Manufacturing Co.; Champion Exchange Products, Inc.; Sidles Company; Midlands Automotive Warehouse, Inc.; Parts Warehousing Corporation; and Triangle Automotive Parts, Inc.; in violation of Section 7 of the Clayton Act, as amended, (U.S.C., Title 15, Section 18) and/or of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), and therefore issues this complaint, stating its charges in that respect as follows:

I. DEFINITIONS

1. For the purpose of this complaint, the following definitions shall apply;

(a) Automotive parts whether new or rebuilt are components or assemblies used in the manufacture or repair of motor vehicles. The words "automotive parts," "accessories" and "equipment" are used with the same meaning as in Industry 5013 of the Standard Industrial Classification System.

(b) Rebuilt automotive parts are parts which have been remanufactured for re-use, excluding those parts which are custom remanufactured on a unit-by-unit basis.

(c) "Maremont's manufacturing acquisitions," as used in this complaint, refer to its acquisitions of the stock or assets of Accurate Parts Manufacturing Co.; Grizzly Manufacturing Co.; Universal Friction Materials Co.; Muskegon Camshaft Company; Leland Corporation; Monroe Products Company; 2401 South Michigan, Inc.; The Gabriel Company, and Winslow Engineering and Manufacturing Co.

(d) "Maremont's rebuilding acquisitions," as used in this complaint, refer to its acquisitions of the stock or assets of Replacement Unit Co., an Ohio corporation; Replacement Unit Co., a Missouri corporation; Replacement Unit Co., a California corporation; Ex-

change Parts Company of Fort Worth; Automotive Utilities, Inc.; Auto Parts Exchange Co.; Rebuilt Parts, Inc.; United Automotive Products, Inc.; and General Armature and Manufacturing Co.

(e) "Maremont's distribution acquisitions," as used in this complaint, refer to its acquisition of the stock or assets of Chanslor & Lyon Co., Inc.; Joseph F. Meyer Co.; Smith Auto Parts Co.; Independent Jobbers Warehouse; Onandaga Supply Co., Inc.; Chapin-Owen Co., Inc.; Chapin-Owen Batavia Corp.; Automotive Supply Company; Motive Parts Company of Pennsylvania, Inc.; Dyke-Charnet, Inc.; General Trading Company; GN Finance Company; The Gibson Company, Inc.; Atlas Manufacturing Co., Inc.; Motor City Automotive, Inc.; Apex Battery Manufacturing Co.; Champion Exchange Products, Inc.; Sidles Company; Midlands Automotive Warehouse, Inc.; Parts Warehousing Corporation; and Triangle Automotive Parts, Inc.

(f) Warehouse distributors are wholesalers automotive parts, accessories and equipment selling primarily to jobbers and other wholesalers.

(g) Jobbers are wholesalers of automotive parts, accessories and equipment who do not sell primarily to other jobbers or wholesalers.

II. MAREMONT CORPORATION

2. Respondent Maremont Corporation (Maremont) is a corporation organized and existing under the laws of the State of Illinois with its principal office and place of business located at 168 Michigan Avenue, Chicago, Illinois.

3. In 1966, Maremont had sales of \$155.3 million and assets of \$75.3 million. In that year it was the 418th largest industrial corporation in the nation. Maremont is the nation's largest rebuilder of functional automotive parts, one of its two largest producers of replacement automotive shock absorbers and one of its three largest producers of replacement automotive exhaust system parts. Maremont now also owns and operates one of the nation's two or three largest chains of warehouse distributors of replacement automotive parts, accessories and equipment, which has added another \$100 million to its 1966 sales.

III. MAREMONT ACQUISITION PROGRAM

A. Automotive Parts Manufacturers

4. In 1939, Maremont, then the nation's leading manufacturer of replacement leaf springs, entered automotive muffler manufacturing

by acquiring the assets of Gem Manufacturing Company of Pittsburgh, Pennsylvania, and Burgess Industries of Madison, Wisconsin. In 1944, it entered exhaust and tail pipe manufacturing by acquiring certain assets of American Welding Manufacturing Company. Maremont's position in the replacement exhaust system business was further bolstered by its 1953 acquisitions of certain assets of Aluminum Industries, Inc., and Pratt Industries Inc., of Frankfort, New York. By the late 1950's Maremont had become the third largest member of the existing oligopoly that dominates the U.S. market for replacement automotive exhaust system parts. In 1960 Maremont acquired control of Saco-Lowell Shops, a corporation which manufactured a small number of mufflers and universal joints in addition to textile machinery and ordnance material. Saco-Lowell's total sales were \$27.5 million for the year ending November 30, 1959, and were \$41.7 million for the year 1960. By the terms of an anti-trust consent decree in *U.S. v. Maremont Automotive Products, Inc., and Saco-Lowell Shops*, Civil No. 60-0-1897 (N.D. Ill. 1960), Maremont was prohibited for a period of five years from making further acquisitions of any manufacturer or distributor (excepting retail) of automotive mufflers without the approval of the Court. On February 3, 1965, Maremont completed its exhaust parts line with the acquisition of Marwil Products Company, a corporation organized and existing under the laws of the State of Michigan with its principal place of business at 19275 Woodston, Detroit, Michigan. Marwil Products Company manufactured clamps and hangers for exhaust systems and had annual sales of \$1.2 million for the year 1964.

5. In 1953 Maremont entered the automotive clutch market with the acquisition of Accurate Parts Manufacturing Co. of Cleveland, Ohio, and Accurate's affiliates, Replacement Unit Co., an Ohio corporation, Replacement Unit Co., A Missouri corporation and Replacement Unit Co., a California corporation, rebuilders of clutches under the brand name of "ReNu" and suppliers to other rebuilders. At the time of their acquisition by Maremont these firms together constituted the nation's second largest replacement clutch supplier, with annual sales of about \$4.6 million.

6. In 1953, Maremont entered the friction materials market with the acquisition of Grizzly Manufacturing Co. of Paulding, Ohio. Subsequent acquisitions by Maremont have provided a substantial captive market for Grizzly's brake linings, and it has also remained an important factor in the open market, selling \$2.2 million in brake linings in 1966. By virtue of this acquisition, Maremont also acquired a clutch facing supplier for its automotive clutch manufac-

turing and rebuilding operations. In 1962 Maremont also acquired Universal Friction Materials Co. of Kendallville, Indiana.

7. On November 16, 1959, through a subsidiary Maremont acquired Muskegon Camshaft Company, a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1747 Seventeenth Street, Muskegon, Michigan. Muskegon manufactured automotive camshafts and had annual sales of \$414 thousand for the six months ending September 30, 1959. Muskegon's camshafts by the end of 1964 were the nation's largest selling line of camshafts in the automotive aftermarket.

8. On November 23, 1959, Maremont acquired Leland Corporation, Monroe Products Company and 2401 South Michigan, Inc., corporations organized and existing under the laws of the State of Illinois, with their principal places of business in Chicago, Illinois. Leland Corporation and Monroe Products Company sold heavy duty automotive parts, *viz.*, brake, axle and landing gear parts, wheel bearings, grease seals and parts and suspension system parts and had combined annual sales of \$1.5 million for the fiscal year ending November 30, 1959.

9. On September 14, 1962, Maremont acquired 50 percent of the stock of the Gabriel Company (hereafter "Gabriel") a corporation organized and existing under the laws of the State of Ohio, with its principal place of business located at 1148 Euclid Avenue, Cleveland, Ohio. In 1962, Gabriel was one of the nation's two leading producers of automotive shock absorbers other than the vehicle makers. Other products manufactured by Gabriel at the time of the acquisition included microwave antennae, rocket propellants, ejection systems, and bomb racks. Total annual sales for the year ending December 31, 1961, were \$30 million, of which 73 percent was accounted for by the sale of automotive parts and accessories, principally shock absorbers sold in the aftermarket. Its remaining stock was acquired by Maremont in 1963. Subsequently, Gabriel's assets were sold to Maremont, and Gabriel was dissolved. At the time of this acquisition Maremont, because of its position as a leading maker and marketer of under-chassis parts, was one of the most likely potential entrants into the highly concentrated shock absorber market.

10. On February 7, 1964, Maremont acquired Winslow Engineering & Manufacturing Co., a corporation organized and existing under the laws of the State of California with its principal place of business at 1093 Charter Street, Redwood City, San Mateo, California, and plants in California and Kentucky. Winslow, a manufacturer of

automotive oil filters, with important patent rights, had annual sales of \$2.4 million for the year ending June 30, 1963.

B. Parts Rebuilders

11. In 1962, Maremont expanded its rebuilding operations beyond the Accurate ReNu clutch building business acquired in 1953 (See Paragraph 5 above) by acquiring several important full-line regional rebuilders. The first of these was Exchange Parts Company of Fort Worth (hereafter "EPCO"), a corporation organized and existing under the laws of the State of Texas with its principal place of business located at 2500 West Vickery, Fort Worth, Texas. EPCO, one of the three leading rebuilders in the Southwest, had annual sales of \$3.5 million in the year 1961. At the time of the acquisition, on May 24, 1962, EPCO rebuilt such parts as clutch plates, brake shoes, carburetors, fuel pumps, generators, starters, solenoids, armatures, distributors, and clutch assemblies. Its trade area included Texas, Oklahoma, Arkansas and Louisiana.

12. On June 25, 1962, Maremont acquired Automotive Utilities, Inc., a corporation organized and existing under the laws of the State of Illinois with its principal place of business at 2222 South Racine, Chicago, Illinois. Automotive Utilities was one of the nation's leading rebuilder of carburetors, with annual sales of \$2 million for the year ending April 30, 1962. Its trade area included the Mid-Central States, Pennsylvania and Texas.

13. On September 7, 1962, Maremont acquired Auto Parts Exchange Co. (hereafter "APECO"), a corporation organized and existing under the laws of the State of California with its principal place of business located at 825 Lawson, city of Industry, California. APECO, with its affiliate Rebuilt Parts, Inc., a California corporation also acquired by Maremont (on October 9, 1962) remanufactured automotive parts. They had combined sales of \$3.5 million for the period from September 1961 through August 1962. APECO rebuilt the following automotive parts: clutch plates/assemblies, brake shoes, power brakes, fuel pumps, water pumps, starter drives, starters, solenoids, armatures, distributors, generators and voltage regulators. It was one of the two outstanding full-line rebuilders of automotive parts on the West Coast. Its trade area included California, Arizona and Nevada.

14. On October 31, 1962, Maremont acquired United Automotive Products Inc., a corporation organized and existing under the laws of the State of Oregon, with its principal place of business located at

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2625 North West Industrial, Portland, Oregon. United rebuilt the following automotive products: clutch plates, brake shoes, water pumps, generators, starters, armatures, and clutch assemblies. It had sales of \$488 thousands for the year ending May 31, 1962. Its trade area included Oregon, Washington, Idaho and Alaska.

15. On December 4, 1962, Maremont acquired General Armature and Manufacturing Co., a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business located at Water Street, Lock Haven, Pennsylvania. General Armature was a leading rebuilder and marketer of electric automotive products in the New England and Mid-Atlantic States area. It also operated armature rewinding plants, now abandoned, in Kansas and Georgia. It had annual sales of \$2.7 million for the fiscal year ending November 30, 1962. At the time of the acquisition, General Armature remanufactured generators, starters, starter drives, solenoids, voltage regulators, and armatures.

16. With the making of the acquisitions alleged in Paragraphs 11-15, Maremont completed its drive to become one of the Nation's largest suppliers, other than vehicle makers, of a relatively complete automotive replacement line. In so doing, it had also become the Nation's largest functional parts rebuilder and the only one operating on a nationwide basis. It established a goal of winning 10 percent of the nationwide market for rebuilt automotive parts.

C. Warehouse Distributors

17. In 1966, Maremont embarked on a program to acquire ownership of a nationwide chain of leading automotive warehouse distributors with some 55 to 60 warehouses.

18. On December 12, 1966, pursuant to a contract dated May 13, 1966, Maremont acquired 80 percent of the stock of Chanslor & Lyon Co., Inc. (hereafter C&L), a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 380 Valley Drive, Crocker Park, Brisbane, California. At this same time it acquired rights to obtain the remaining 20 percent of C&L's stock at a future date. C&L at the time of its acquisition was one of the two outstanding chains of warehouse distributors of automotive parts, accessories and equipment in California, Washington, and Oregon. By virtue of its 1961 acquisition of Archenhold Automobile Supply Co. C&L was also a large warehouse distributor in West Texas. C&L had net sales in the year 1966 of \$28.8 million. Much of C&L's trade was with jobbers whom it had financed.

19. On May 27, 1966, subsequent to execution of Maremont's contract to acquire C&L, through C&L Maremont acquired the Joseph F. Meyer Co., a corporation organized and existing under the laws of the State of Texas with its principal place of business located at 4701 Calhoun, Houston, Texas. Meyer operated as a warehouse distributor of automotive parts in the Houston, Texas area, including part of Louisiana. It has annual sales of \$1.5 million in the year 1965.

20. On July 31, 1966, subsequent to the execution of Maremont's contract to acquire C&L, through C&L it acquired the stock of Smith Auto Parts Co., a corporation organized and existing under the laws of the State of Oregon with its principal place of business located at 1740 West Flanders, Portland, Oregon. Smith was a chain jobber of automotive parts operating in the State of Oregon with some sales in Washington. It had sales in the year 1965 of \$1.5 million.

21. On November 18, 1966, subsequent to the execution of Maremont's contract to acquire C&L, through C&L's wholly owned subsidiary, Ballou & Wright Inc., Maremont indirectly acquired the assets of Independent Jobbers Warehouse ("IJW") a corporation organized and existing under the laws of the State of Colorado with its principal place of business located at 2650 West 3rd Avenue, Denver, Colorado. IJW was a warehouse distributor of automotive parts in Colorado. It was a leading supplier of automotive parts into Wyoming and also made some sales into Kansas and Nebraska. It had annual sales of about \$1.8 million for the year ending August 31, 1965. In connection with its IJW acquisition, Maremont's subsidiaries also acquired rights to the patronage of many Wyoming jobbers who had recently been set up in business by IJW's ownership.

22. On June 26, 1967, Parts Supply, Inc. (formerly Armature Rewind Company, Inc.), a wholly owned subsidiary of Maremont Corporation, acquired certain assets, *viz.* the automotive divisions, of Onandaga Supply Co., Inc., Chapin-Owen Co., Inc., and Chapin-Owen Batavia Corp., affiliated corporations organized and existing under the laws of the State of New York, with their principal places of business located at 334 West Genesee Street, Syracuse, New York (Onandaga) and 205-213 St. Paul Street, Rochester, New York (both Chapin-Owen firms). The automotive divisions of the subject corporations were chain warehouse distributorships serving Syracuse, Rochester, Watertown, Batavia and Elmira, New York and environs, with some sales into Pennsylvania. In 1966 these acquired automotive divisions had combined annual sales of automo-

tive parts of approximately \$5.6 million. Chapin-Owen was the leading warehouse distributor in Rochester and Onandaga Supply was one of the two leading warehouse distributors in Syracuse. Both owned many jobber outlets.

23. On July 13, 1967, Maremont acquired the stock of Automotive Supply Company, a corporation organized and existing under the laws of the State of Pennsylvania with its principal place of business located at 1917 Margaret Avenue, Altoona, Pennsylvania. Automotive Supply, a leading local chain, distributed automotive parts, accessories and equipment in widely separated areas: in Central Pennsylvania (with a subsidiary located in West Virginia) and in Arizona, where it did business as "Complete Auto Supply Co." In the fiscal year ending June 30, 1966, Automotive Supply had annual warehouse distribution sales of \$7.5 million in Pennsylvania and \$4.8 million in Arizona. In both areas it owned many jobber outlets.

24. On July 13, 1967, Maremont through its subsidiary 168 North Michigan Avenue Corporation, a corporation organized and existing under the laws of the State of Illinois, acquired all the stock of General Trading Company and GN Finance Company, corporations organized and existing under the laws of the State of Minnesota with their principal place of business located at 475 North Pryor Avenue, St. Paul, Minnesota. General Trading Company operated the outstanding chain of warehouse distributors serving the automotive parts trade in Minnesota, Wisconsin, Upper Michigan, and the eastern part of the Dakotas. GN Finance Company had recently financed the sale of the jobber outlets of General Trading Company to employees and others. For the year ending April 30, 1967, General Trading Company had net sales of \$10.1 million and GN Finance Company's net equity of investments and advances was \$2.8 million.

25. On or about September 12, 1967, Maremont acquired the stock of The Gibson Company, Inc., and certain assets of its affiliate, Atlas Manufacturing Co., Inc., corporations organized and existing under the laws of the State of Indiana with their principal places of business located at 433-439 North Capitol Avenue, Indianapolis, Indiana. These companies together constituted one of the two outstanding chains of auto parts distributors in Indiana, with sales in Ohio, Illinois, and Kentucky. Their warehouse distribution sales amounted to \$8.1 million for the fiscal year ending February 25, 1967. Some of their jobber outlets were owned by them. In connection with this acquisition Maremont also acquired one-fourth interest in Service-Items, Inc., a Missouri corporation, which supplies ware-

house distributors nationwide with hand tools and supplies used by automotive service establishments.

26. On or about September 20, 1967, Maremont acquired the stock of Motive Parts Company of Pennsylvania, Inc., and Dyke-Charnet, Inc., corporations organized and existing under the laws of the State of Pennsylvania with their principal places of business located in Pittsburgh, Pennsylvania, at 6379-99 Penn Avenue (East Liberty). These firms had automotive distribution sales of \$3.2 million in 1966 and together constituted one of four significant distributorships in the Pittsburgh area, including a small part of eastern Ohio. They had owned many jobber outlets.

27. On January 10, 1968, Maremont acquired all of the stock of Motor City Automotive, Inc., a corporation organized and existing under the laws of the State of Michigan with its principal place of business located at 4800 Stecker, Dearborn, Michigan. Motor City was one of the two largest automotive warehouse distributorships operating in southern Michigan. In 1966 it had net sales of \$4.8 million.

28. On or about February 7, 1968, Maremont acquired the stock of Apex Battery Manufacturing Co. and its affiliate, Champion Exchange Products, Inc., both corporations organized and existing under the laws of the State of Illinois with their principal places of business located at 3433 West Madison Street, Chicago, Illinois. With combined 1966 sales of \$5 million for new and rebuilt parts, these firms constituted one of the three leading automotive warehouse distributorships in the Chicago metropolitan area. Its sales reached into Wisconsin, Indiana and Iowa.

29. On March 19, 1968, Maremont acquired the assets of the automotive parts divisions of Midlands Automotive Warehouse, Inc., and its affiliate, Sidles Company, both of Omaha, Nebraska (hereafter collectively "Midlands/Sidles"). Midlands/Sidles was the largest chain of warehouse distributors and auto parts jobbers in Nebraska. It also had substantial market positions in Western Iowa and in Western Kansas, Colorado and Wyoming. Midlands'/Sidles' warehouse distribution sales of automotive parts, accessories and equipment in 1966 approximated \$16 million and in 1967 \$20 million.

29.1 On or about May 23, 1968, Maremont acquired all of the stock of Parts Warehousing Corporation and its affiliate, Triangle Automotive Parts, Inc., both being corporations organized and existing under the laws of the State of Ohio, with principal places of business at 2900 Superior Avenue, Cleveland, Ohio. Parts Warehousing was one of the few large warehouse distributors in the Cleveland

area, with sales of about \$2.1 million in 1967. Triangle, a chain of jobber outlets, had 1967 sales of about \$1.2 million.

30. Maremont has now acquired 41 warehouses throughout most of the United States except the Atlantic Seaboard and the Southeast. It may be negotiating additional similar acquisitions in order to complete its plan for a nationwide chain of captive warehouse distributors. It can be expected to continue its acquisition plans unless ordered to cease and desist therefrom.

31. At the time of each and every acquisition of stock and/or assets referred to in Paragraphs 5-30 above, Maremont and each and every corporation whose stock or assets was acquired, directly or indirectly, by Maremont were engaged in commerce within the meaning of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18) and also of Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45).

IV. TRADE AND COMMERCE

32. There are two major markets for automotive parts: the original equipment market and the replacement market. There are extremely important differences in their characteristics. The original equipment market (hereafter sometimes "OEM") consists of motor vehicle makers who buy parts for installation in new vehicles. Sales into the OEM are typically negotiated and are to specification. In contrast to the OEM, where parts producers deal with a few, very large, well-informed buyers who generally possess the ability to make such parts themselves, a producer selling into the replacement market (hereafter sometimes "aftermarket") deals with a large number of relatively small customers, who possess varying degrees of information about the product and who rarely have the potential to engage in the manufacture of such parts. To sell automotive parts successfully in the aftermarket a producer must possess a sales organization capable of reaching many buyers in the relevant market areas, frequently the entire nation. In the aftermarket a successful supplier of a particular product must market a fairly complete line of that product for all vehicle makes and models whereas a supplier to the OEM may negotiate to produce only one or more particular parts for a particular model.

33. The manufacture of domestic automotive parts by all producers for replacement purposes was of a magnitude of \$3.8 billion in 1966. Approximately 100 producers of automotive parts make substantial sales of parts into the aftermarket. Although the manufacturers of motor vehicles have long supplied their own dealers a

full-line of parts for their own make vehicles, other suppliers of replacement automotive parts, until a few years ago, typically produced only one or two basic product lines. Recently, however, a few of the largest producers of automotive parts have by mergers extended their product mix to as many as a third or more of all automotive parts. In most submarkets for replacement products the percentage of the market held by the top four firms is high: 70 percent in the replacement exhaust parts market and 90 percent in the replacement shock absorber market, for example.

34. Certain automotive parts can be replaced by parts rebuilt by specialized rebuilders rather than by new parts. Since the rebuilder can utilize many of the components of the old unit and since he can set up his operation on virtually the same basis for reassembly as a new producer, for many products the rebuilder can offer a rebuilt unit equivalent to a new unit at a lower price than that paid for the new unit. In many instances, new and rebuilt products are in direct competition. Among those parts most commonly rebuilt and the approximate extent to which since rebuilt parts have taken over the replacement markets in question are brake shoes (88 percent), starters (94 percent), generators and alternators (98 percent), clutches (85 percent), carburetors (70 percent), water pumps (60 percent) and fuel pumps (48 percent).

35. Nationwide there are several hundred automotive parts rebuilders, the larger of whom sell into the wholesale market (through warehouse distributors and/or jobbers). Pure rebuilders are quite small by comparison with leading automotive parts manufacturers like Maremont. Only a handful have achieved annual sales as high as \$10 or \$15 million. Larger rebuilders commonly remanufacture an average of a half dozen parts while smaller rebuilders, who comprise two-thirds of the total population of the rebuilding industry, more often specialize in one or two products or specialize in a group of related products such as ignition parts. Because the nature of the industry requires a double freight charge, *i.e.*, shipping the rebuilt unit to the buyer and getting back the old unit (or "core") so that it can be rebuilt, most rebuilders are limited to shipping within a few hundred miles of their plants. Thus, regional and local markets are peculiarly important to such rebuilders. The growth of rebuilders has exerted a healthy influence on competition in the sale of those automotive parts which can be rebuilt.

36. The very few vehicle makers account for less than half of all replacement sales of automotive parts. They rely on their franchised vehicle dealers as outlets for the greater portion of their parts sales

and the free wholesale market for most of the rest. Other significant parts manufacturers, by contrast, rely most heavily on the free wholesale market and sell virtually nothing directly and only small quantities indirectly through franchised vehicle dealers. Such parts makers do, however, have an outlet for the lesser portion of their production through so-called mass-merchandisers, who buy direct from the manufacturer (a market little touched by the vehicle makers). The free wholesale market in 1963 was composed of about 15,000 jobbers who in turn resold parts to service stations, garages and, occasionally, car dealers.

37. At least two-thirds of roughly \$3 billion 1966 sales to automotive parts jobbers are now made through warehouse distributors, rather than directly from manufacturers or rebuilders to jobbers, as commonly in the past. Warehouse distributors, who have come to constitute a well-defined and significant submarket within the wholesale market for automotive parts, experienced their principal growth since World War II. The proliferation of automotive parts needed to serve increasingly complex motor vehicles had made it difficult for jobbers to meet the motorist's demand for prompt service without excessive inventory cost. Thus, there arose the warehouse distributor, who carries a broader range of products within a product line than could be handled economically by jobbers. He provides inventory control and faster delivery service than could be made directly from distant manufacturers' factories (and usually faster than from regional factory warehouses). He handles a full-line of automotive parts, accessories and equipment, thus consolidating supply sources for the convenience and economy of jobbers. Large, full-line WD's are the most effective marketers.

38. The Nation's warehouse distributors, with total 1966 sales of about \$2.2 billion annually, provide manufacturers with a more effective method of marketing within such warehouse distributors' trade areas, not only for the foregoing and similar economic reasons but because of additional influence which many WD's have on the buying patterns of many of their jobber customers through ownership interests, financing arrangements, and family or other non-legal ties. Because of all these factors, a jobber commonly tends to follow the brand preference of his principal warehouse distributor at least in the absence of an unusually strong brand preference by the jobber or his customers.

39. Recent years have seen some growth of chain warehouse distribution of automotive parts, accessories and equipment, principally by acquisition and principally to take advantage of the greater power yielded by greater size in dealing with suppliers on one hand

and with jobber customers on the other. Aside from Maremont, however, only two other firms have as yet established nationwide warehouse distribution chains. The top four WD chains, including C&L, at the beginning of 1966 controlled about 16 percent of all warehouse distribution sales of automotive parts, accessories and equipment in the United States, up from about 13 percent in 1963.

40. While most manufacturers of automotive parts, accessories and equipment have traditionally made only a few kind of products, wholesalers thereof have traditionally carried a complete line of products to satisfy their customers' needs. However, for various reasons parts wholesalers, including warehouse distributors, have commonly handled only a single brand of many kinds of the many automotive parts they carry. Such a practice operates to foreclose outlets temporarily to all other suppliers than those currently patronized. However, in the absence of outlet ownership or control by a supplier such exclusive dealing nevertheless leaves a wholesaler's custom subject to free and open competition on the traditional bases of price, quality and service. Prior to the start of Maremont's distribution acquisition program, vertical integration between warehouse distributors and manufacturers or rebuilders of replacement automotive parts, accessories or equipment was extremely rare. Among the top four warehouse distributor chains some backward integration had begun but on a much more limited scale than has been introduced by Maremont since mid-1966.

V. COMPETITIVE EFFECTS OF MAREMONT'S DISTRIBUTION ACQUISITIONS

41. Maremont's 1966 acquisition of C&L, with sales of nearly \$30 million, and its subsequent steady expansion of that firm into almost a nationwide distributor, with warehouse distribution sales now over \$100 million as described in Paragraphs 17 through 30, has already increased nationwide concentration among warehouse distributors significantly; from about 16 percent to about 19 percent. In the process C&L's rank within this incipient warehouse distribution oligopsony has already been raised from fourth to second or third place nationwide.

42. Moreover, the present disparate size and power of the greatly expanded C&L chain vis-a-vis its many smaller warehouse distributor competitors throughout most of the United States may afford C&L decisive competitive advantages over such smaller competitors, both in dealing with parts manufacturers and rebuilders and in dealing with parts jobbers. C&L's expansion encourages the similar growth of other such chains by other acquisitions and mergers.

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43. A major anticompetitive effect of Maremont's acquisitions of warehouse distributors is that Maremont may now be expected to foreclose and has often already foreclosed suppliers of competitive products from access to at least 4 percent and eventually probably more of the nation's warehouse accessories and equipment. In particular automotive parts lines manufactured and/or rebuilt by Maremont, its ability to foreclose its competitors from outlets for their products has been increased much more substantially. The captive business acquired by Maremont in each such particular line and its *pro forma* effect on Maremont's market position, product by product, is shown as a percentage of the total aftermarket for each such product in Table I (nationwide sales through all channels of distribution generally and through wholesale channels in particular) and in Table II (wholesale sales in specified regions of the United States). Maremont's newly acquired captive business necessarily represents even more substantial shares of the all-important warehouse distribution markets concerned than is indicated in Tables I and II for the corresponding wholesale markets.

Table I.—Nationwide Market Shares of Maremont and Acquired Warehouse Distributors in Maremont's Major Lines

Product lines	1966 market magnitude	1966 Maremont market share (percent)	1966 acquired firms share ¹ (percent)	Maremont potential share ² (pro forma) (percent)
Non-rebuildable auto parts:				
Exhaust system parts:				
All channels.....	\$130.8MM	11.4	4.0	14.6
Wholesale channels.....	87.5MM	11.9	6.0	16.7
Shock absorbers:				
All channels.....	21.3MM units	23.4	6.6	30.0
Wholesale channels.....	8.8MM units	12.4	15.9	28.3
Oil filters:				
All channels.....	162.9MM units	.3	2.4	2.7
All channels except car dealers.....	130.1MM units	.4	3.0	3.4
Rebuildable auto parts:				
Carburetors:				
All channels.....	2.3MM units	10.6	6.6	16.0
Wholesale channels.....	1.7MM units	8.4	8.7	15.6
Water pumps:				
All channels.....	3.4MM units	8.1	9.8	16.2
Wholesale channels.....	2.7MM units	7.4	12.2	17.5
Fuel pumps:				
All channels.....	6.9MM units	2.9	8.8	11.3
Wholesale channels.....	4.1MM units	3.5	14.9	17.7
Generator, alternators and starters:				
All channels.....	9.2MM units	6.5	2.1	8.1
Wholesale channels.....	6.2MM units	3.5	3.1	5.8
Brakeshoes:				
All channels.....	29.4MM units	3.2	3.7	6.9
Wholesale channels.....	21.6MM units	.9	5.0	5.9
Clutch parts:				
All channels.....	5.0MM jobs	7.2	1.9	8.6
Wholesale channels.....	3.3MM jobs	9.2	2.9	11.3

¹ Excludes C&L purchases of all products at Seattle and Portland except exhaust parts, shock absorbers and oil filters.

² Maremont's pro forma potential market share increase excludes all captive business previously supplied by Maremont while the acquired firm was independent.

Table II.—Wholesale Market Shares of Maremont and Acquired Warehouse Distributors in Six Rebuildable Auto Parts Lines in Four Regions of the United States

Product and region	1966 market magnitude (millions)	1966 Maremont market share (percent)	1966 acquired firms share (percent)	Maremont potential share ² (pro forma) (percent)
Pacific and Rocky Mountain States ¹ :				
Carburetors.....	\$2.1	10.8	16.9	22.7
Water pumps.....	1.9	16.2	27.4	39.8
Fuel pumps.....	1.6	10.0	25.5	32.3
Generators, alternators, starters.....	9.8	6.5	6.1	9.3
Brake shoes.....	9.1	1.3	9.3	10.6
Clutch parts.....	6.0	11.2	5.2	13.9
West South Central States:				
Carburetors.....	1.2	11.7	4.7	16.4
Water pumps.....	1.0	15.2	16.9	32.1
Fuel pumps.....	.9	7.9	9.8	17.7
Generators, alternators, starters.....	5.4	6.9	3.3	10.2
Brake shoes.....	5.0	2.6	2.5	5.1
Clutch parts.....	3.3	8.7	2.7	11.4
North Central States:				
Carburetors.....	3.4	8.5	15.3	21.8
Water pumps.....	3.0	1.6	15.5	14.8
Fuel pumps.....	2.6	.4	24.5	24.8
Generators, alternators, starters.....	15.7	.8	4.3	5.1
Brake shoes.....	14.5	.4	6.0	6.4
Clutch parts.....	9.6	3.2	4.4	6.8
Northeastern States:				
Carburetors.....	2.4	5.1	2.5	7.5
Water pumps.....	2.1	5.4	4.2	9.2
Fuel pumps.....	1.8	1.1	8.1	8.8
Generators, alternators, starters.....	11.0	4.0	1.2	4.6
Brake shoes.....	10.2	.5	4.3	4.9
Clutch parts.....	6.8	16.5	2.2	18.4

¹ Excludes C&L purchases of all products at Seattle and Portland.

² Maremont's pro forma potential market share increase *excludes* all captive business previously supplied by Maremont while the acquired firm was independent.

NOTE: Table II assumes that substantially all shipments from rebuilding plants are made to buyer locations within the same broad geographic region.

44. Maremont's actual and potential foreclosure of substantial segments of nationwide and regional warehouse distributor markets for automotive parts may effect its most substantial lessening of competition by shortly provoking defensive and retaliatory acquisitions of a similar or equally anticompetitive kind. Maremont's competitors will not sit by indefinitely while Maremont continues to foreclose them from substantial markets for their automotive parts. A wave of defensive and retaliatory acquisitions by competitors may engulf the automotive parts industry if Maremont's acquisitions of automotive warehouse distributors continue unabated.

45. There is a substantial probability that direct foreclosure of trade, both by Maremont and by its competitors as they retaliate, will be accentuated by indirect foreclosure as a result of vastly increased opportunities for reciprocal trading. These will be created as automotive parts manufacturers, who typically make only limited lines of automotive parts, acquire distributorships which must buy a

nearly complete line of all automotive parts for resale. Trading off unused patronage in each other's acquired warehouses may magnify greatly the foreclosure of such distribution to manufacturers and rebuilders who cannot or at least do not acquire distributorships and thus have no such trading power.

46. Maremont's *own* acquisitions of distribution and defensive acquisitions and mergers by *competitors* and then by its *competitors' Competitors* will all tend to rigidify the channels of distribution for automotive parts by permanently curtailing the availability of the existing warehouse distribution network through which independent, unintegrated automotive parts manufacturers and rebuilders have competed freely for the trade of automotive parts jobbers. This curtailment of the free warehouse distribution network will necessarily reduce the ability of most independent parts manufacturers—and particularly small firms like rebuilders (who cannot retaliate in kind)—to compete effectively with the large vehicle manufacturers and with the few large automotive parts manufacturers and manufacturing combines who possess their own quasi-private distribution systems. It will discourage new entry into the manufacture and rebuilding of such parts and will stunt the growth of small firms already in the business.

47. Maremont's 1968 acquisition of Midlands/Sidles has resulted in the elimination of direct competition between the latter and the former Independent Jobbers Warehouse, acquired by Maremont in 1966. These were respectively the third and fourth largest warehouse distributors of automotive parts, accessories and equipment in the area of Colorado, Wyoming, Western Nebraska and Western Kansas which is served out of Denver, Colorado. The combined 1966 sales of these two important competitors amounted to about \$4 million dollars or approximately 15 percent of all warehouse distribution sales in said area.

48. Maremont's acquisition of a one-fourth interest in Service-Items, Inc., afforded Maremont significant influence over the operation and control of one of only three nationwide suppliers of a full general service line of accessories and equipment, which commonly make up about 5 percent of an automotive parts jobber's purchases. Jobbers tend to buy service items, which are small and multitudinous, from a single reliable source in order to save bother and expense. To some extent, jobbers even purchase other items where they can buy all their service parts together. Thus, possession of a single service line affords a warehouse distributor a decisive competitive advantage. The only two other nationwide service lines available are

now in the service of the only two other nationwide chains of warehouse distributors. Maremont's ownership of a substantial stock interest in Service-Items, Inc. may in fact result in aligning the last free service line with Maremont's new warehouse distribution chain, seriously reducing or even eliminating its availability to other warehouse distributors and disadvantaging both such competing distributors and the manufacturers and rebuilders—Maremont's competitors—whose automotive parts depend on such distributors to find a sales outlet.

VI. EFFECTS OF MAREMONT'S MANUFACTURING & REBUILDING
ACQUISITIONS

49. A competitor with such disparate size and resources as Maremont possesses commands decisive competitive advantages not available to the multitude of very small firms which populate the automotive parts rebuilding industry. Such advantages include, although not exclusively, the power to acquire and pre-empt for its own products warehouse distribution facilities previously open to Maremont's competitors, including rebuilders. The free availability of such warehouse distribution is essential to the survival and growth of rebuilders, particularly to reach markets located some distance from their rebuilding plants. Maremont's rebuilder acquisitions yielded it a power to lessen competition in rebuildable parts markets referred to in Par. 43 above, which power it has now exercised by undertaking its distribution acquisitions.

50. Maremont's extension of its product line by means of its manufacturing and rebuilding acquisitions has (a) eliminated Maremont as a potential entrant by growth into its acquired firms' product markets, particularly the oligopolistic shock absorber market where Maremont, as a leader in making and marketing under-chassis parts, was among the most likely of all candidates for entry; and (b) yielded Maremont an exceptional competitive advantage over smaller, shorter-line competitors in all its automotive parts markets by combining most of the frequently-replaced automotive parts under one banner, thus synergizing the effectiveness of Maremont's automotive parts marketing effort as well as affording Maremont greater opportunity for so-called full-line forcing.

VII. ECKMAR CORPORATION AND EFFECTS OF CONTROL THEREOF

51. During 1964 and 1965, the three families which control Maremont (Maremont, Wolfson and Comar) acquired effective control of

Phillips Eckhardt Electronic Corporation, an Illinois corporation, changed the name of that corporation to Eckmar Corporation (hereafter "Eckmar"), and installed Arnold H. Maremont, president of Maremont as chairman of the board of Eckmar, James Pelts, son-in-law of Howard E. Wolfson, chairman of the board of Maremont corporation was made president of Eckmar. At the time this Maremont group acquired control of Eckmar, that corporation was engaged in the production and sale of a broad line of Christmas decorations and other non-automotive products. During 1966, Eckmar Corporation acquired the stock or assets of four chains of so-called home and auto stores: American Auto Stores, Inc., of Wilkes-Barre, Pennsylvania; Checker Sales Corporation of Cincinnati, Ohio; Original Tire Company of Cincinnati, Ohio; and Noah's Ark of Rochester, New York, thereby creating a chain of about 65 such home and auto supply stores. These acquisitions have given Maremont additional power to bargain with manufacturers of non-competing product lines to put Maremont products in warehouses or other outlets controlled by such now competitors in return for arrangements to put their products in Eckmar's home and auto stores.

VIII. VIOLATIONS CHARGED

52. Maremont's distribution acquisitions violate Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18), in that they may substantially lessen competition or tend to create a monopoly in the sale of each and every line of manufactured/rebuilt replacement automotive parts produced by Maremont in the entire aftermarket, in the wholesale sector thereof and in the warehouse distribution sector thereof, both nationally and in each geographic region referred to in Table II of Paragraph 43 in the following, among other, ways:

- (a) By foreclosing Maremont's competitors from access to a substantial segment of each such market;
- (b) By prompting similar substantial foreclosure in the same markets by other automotive parts manufacturers who will likely be led to make defensive or retaliatory acquisitions;
- (c) by creating a multitude of opportunities for reciprocal trading in the same markets by automotive parts manufacturers who acquire aftermarket distribution facilities;
- (d) By encouraging the combination of relatively small, single or short line manufacturers and rebuilders of automotive parts into larger, longer-line firms, decisively disadvantaging remaining small, single or short line manufacturers and rebuilders;

(e) By raising barriers to the entry of new manufacturers and rebuilders into each such market; and

(f) by increasing and/or perpetuating seller concentration in each such market.

53. Maremont's distribution acquisitions violate Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18), in that they may substantially lessen competition and tend to create a monopoly in the warehouse distribution of automotive parts, accessories and equipment, nationally and in each geographic region referred to in Table II of Paragraph 43 and locally, wherever Maremont's C&L chain competes, by accumulating in such a large chain of warehouses decisive competitive advantages of disparate buying, selling and other powers less available to smaller, independent warehouse distributors.

54. All of Maremont's distribution acquisitions since C&L violate Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18), in that they may substantially lessen competition and tend to create a monopoly nationally in warehouse distributors' purchases of automotive parts, accessories and equipment, particularly from small manufacturers and rebuilders thereof,

(1) By eliminating actual competition between the original C&L chain and Maremont's later distribution acquisitions and also among the latter in the making of such purchases;

(2) By eliminating each of said acquired firms as an independent buying entity in the market;

(3) By significantly increasing the level of buyer concentration among automotive warehouse distributors; and

(4) By aggravating an incipient trend to oligopsony among automotive warehouse distributors.

55. Maremont's acquisition of the assets of the automotive divisions of Midlands/Sidles violates Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18), in that it may substantially lessen competition and tend to create a monopoly in the warehouse distribution of automotive parts, accessories and equipment in the trade area of Colorado, Wyoming, Western Kansas and Western Nebraska, by:

(a) Eliminating competition between Midlands/Sidles and Maremont's Denver C&L warehouse, formerly Independent Jobbers Warehouse;

(b) Eliminating Midlands/Sidles as an important independent competitor; and

(c) Increasing seller concentration significantly in this market.

56. Maremont's acquisition of 25 percent of the common stock of Service-Items, Inc., violates Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18), in that it may substantially lessen competition and tend to create a monopoly throughout the United States and in all regional and local submarkets thereof in the manufacture and warehouse distribution of each and every line of automotive parts, accessories and supplies made or rebuilt by Maremont by decisively disadvantaging competing manufacturers, rebuilders and warehouse distributors.

57. Maremont's rebuilding acquisitions violate Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18), in that they may substantially lessen competition and tend to create a monopoly in the rebuilding of those automotive parts, accessories and equipment which Maremont rebuilds, nationally and regionally, by injecting into an arena of very small businesses a competitor of size and power greatly disparate to all pure rebuilders, who has, in fact, used that disparate power, *inter alia*, to obtain a decisive competitive advantage through acquisition of distribution facilities not available to such small firms as pure automotive parts rebuilders.

58. Maremont's acquisitions of manufacturers and rebuilders of automotive parts other than mufflers, pipes and miscellaneous exhaust system parts violate Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18), in that they may substantially lessen competition and tend to create a monopoly in the nationwide manufacture/rebuilding and sale of each of those parts manufactured/rebuilt by Maremont other than mufflers, pipes and miscellaneous exhaust system parts, because they have provided Maremont with decisive competitive advantages over short-line automotive parts manufacturers and in individual instances, notably Maremont's acquisition of Gabriel, a leading shock absorber producer, have eliminated one of the most likely potential competitors in the acquired firm's product market.

59. Maremont's plan to continue making distribution acquisitions until it has established a nationwide network of warehouse distributors constitutes an unfair method of competition in commerce and an unfair practice in commerce violative of Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45) because in light of its acquisitions to date each and every additional distribution acquisition may substantially lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

DECISION AND ORDER IN DISPOSITION OF THIS PROCEEDING

The Commission having issued complaint in this docketed matter on July 1, 1968, charging the respondent named therein, Maremont Corporation, an Illinois corporation, with violation of Section 7 of the amended Clayton Act, and said respondent and counsel supporting the complaint having subsequently filed request pursuant to § 2.34(d) of the Commission's Rules to have the matter withdrawn from adjudication, and the Commission having granted such request by its order of December 7, 1970; and

Respondent Maremont Corporation ("Maremont") and counsel supporting the complaint ("Complaint Counsel") having entered into an agreement containing a consent order, which agreement further contains an admission by Maremont for purposes of this proceeding only, of all the jurisdictional facts set forth in the complaint in this proceeding; a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by Maremont of any allegations of fact, other than the jurisdictional facts, or that the law has been violated as set forth in the complaint, as it is to be amended; and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having thereupon accepted the consent agreement and placed such agreement on the public record for a period of thirty (30) days and having considered all comments received, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order in disposition of the proceeding:

1. Respondent Maremont Corporation is a corporation organized and existing under the laws of the State of Illinois, with its principal office located at 168 North Michigan Avenue, Chicago, Illinois.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

The Commission having considered all the facts and circumstances and without adjudication of any issue of fact or law, and in settlement of the proceeding and all issues raised by the complaint, now issues this order, in which the following words shall have the following meanings:

"Respondent" shall mean Maremont Corporation, an Illinois corporation, and shall include all its subsidiaries, affiliates, officers,

directors, agents, employees, and representatives, as well as any and all successors and assigns to any substantial portion of Respondent's automotive business other than any assets divested under this order.

"Divestiture" shall mean a transfer by Respondent of all the assets of a business as a going business in its historic marketing area to one other than Respondent.

"Assets" shall mean the property (whether owned or leased) used by Respondent in carrying on a business of wholesaling automotive parts, accessories and equipment and shall include, but not restrictively, all buildings and grounds, machinery, equipment, supplies, inventory, accounts receivable, trade names and trade marks, franchises, good will, customer lists and employment and other contract rights insofar as assignable.

"Warehouse distributor" or "warehouse" shall refer to any of Respondent's 35 wholesalers of automotive parts, accessories and equipment which are listed by location in Appendix A [p. 245 herein], all of which are represented to be in operation unless therein expressly described as closed.

"Jobber store" or "store" shall refer to any of Respondent's 153 wholesalers of automotive parts, accessories and equipment which are listed by location in Appendix B [p. 246 herein], all of which are represented to be in operation unless therein expressly described as closed.

"1969 dollar sales volume" shall refer to those figures appearing in one certain letter of even date herewith from Respondent to the Commission stating the 1969 dollar sales volume of each of Respondent's 35 warehouses with aggregate 1969 sales of \$81.1 million listed in Appendix A [p. 245 herein] of Respondent's 153 stores with aggregate 1969 sales of \$38.35 million listed in Appendix B [p. 246 herein] which statements are warranted there by Respondent to be true 1969 sales volumes and are accepted by the Commission for all purposes of this order. Such figures are received *in camera* and shall not be released for a four-year period without Commission approval except insofar as they are revealed herein or, in the judgment of the Commission's staff, should be released to particular bona fide prospective divestiture transferees.

"Group" shall mean all warehouse distributors and/or jobber stores divested to a single transferee, whether in one or more separate transactions and whether or not at the same time. "Group" may refer to a single warehouse or store.

"West Coast" refers to the 3 States of California, Oregon and Washington.

I DIVESTITURE OF WAREHOUSES AND STORES

It is ordered, That:

A. Basic Divestiture

Respondent shall as soon as possible and in any event no later than 48 months from the date of service of this order divest itself absolutely and unconditionally, on terms and to transferees approved in advance by the Commission, of all interest, direct or indirect, in all the assets of the following warehouse distributors and jobber stores having aggregate 1969 sales of \$100.37 million:

(1) all of Respondent's 28 warehouse distributors identified in Appendix A as being located elsewhere than in the State of California and having aggregate 1969 sales of \$62.02 million; and

(2) all of Respondent's 153 jobber stores identified in Appendix B and having aggregate 1969 sales of \$38.35 million.

Divestiture of warehouses accounting for no less than 50 percent of the 1969 dollar sales volume of the warehouses to be divested hereunder and of store accounting for no less than 30 percent of the 1969 dollar sales volume of all such stores to be divested hereunder shall be completed within 24 months of the date of service of this order. The warehouses to be divested under this order shall be divested to no less than 4 different transferees, all completely independent of each other. No such divestiture transferee shall acquire, whether by one or more transactions, more than 7 warehouses or more than \$20 million aggregate 1969 sales, except that Respondent may divest all 9 of its West Coast warehouses to a single transferee if it so elects in accordance with Paragraph I-B below. The jobber stores to be divested under this order shall be divested to no less than 3 different transferees, all completely independent of each other. No such divestiture transferee shall acquire, whether by one or more transactions, jobber stores with more than \$13 million aggregate 1969 sales. If all the requirements of this Paragraph are otherwise satisfied, one or more warehouses and one or more jobber stores may be divested to the same transferee; notwithstanding this provision no jobber store shall be divested to a transferee of West Coast warehouses with 1969 sales in excess of \$20 million. All numerical limits fixed by this Paragraph are to be followed strictly and without deviation therefrom.

B. Alternative Divestiture

If but only if, within 24 months after service of this order on Respondent, it elects to divest itself of all 7 California warehouses

identified in Appendix A which it would otherwise be permitted to retain under Paragraph I-A above, and within that period in good faith submits to the Commission a contract or contracts to dispose of all 7 California warehouses wanting only Commission approval to be binding on Respondent, then within 48 months from the date of service of this order Respondent may elect to retain 6 other warehouses which had aggregate 1969 dollar sales volume not exceeding \$16 million and accordingly the aggregate 1969 sales volume of the other 29 warehouses divested or to be divested shall in such case be at least \$65.1 million. All numerical limits fixed by this section are to be followed strictly and without any deviation therefrom.

C. Common Ownership

None of the assets to be divested under this order shall be transferred, directly or indirectly, to anyone who, at the time of such divestiture, is an owner, officer, director, employee or agent or under the control of Respondent. Nor shall any divestiture transferee at the time when any such assets are divested be related to any other divestiture transferee under any provision of this order as parent, subsidiary or affiliate or by virtue of any interlocking ownership, direction or control, nor shall any such transferees then have any common employees, unless all divestiture assets acquired by such related parties in the aggregate could have been acquired by a single transferee without violating any rules laid down in Paragraph I-A or any other provision of this order.

D. Credit Transactions

If any sale by Respondent to effect divestiture of assets under this order is not entirely for cash, Respondent is not prohibited from retaining, accepting or enforcing a bona fide lien, mortgage or deed of trust to secure the payment of any balance due: *Provided, however*, That except with the advance approval of the Commission the Respondent shall neither extend nor guarantee credit to any divestiture transferee for a term of more than five years. It shall be a provision of any financing contract between Respondent and a divestiture transferee that the transferee may at any time prepay all or part of such debt without penalty. If Respondent shall reacquire any divestiture assets by virtue of such lien, mortgage or deed of trust, Respondent shall redinvest itself of all such assets within one year or the remainder of the four-year period provided in Paragraph I-A

herein (whichever is longer) in substantially the same manner as above provided.

E. Conservation of Assets

1. Pending divestiture, the Respondent shall make every reasonable effort to maintain all the warehouses and jobber stores to be divested in good operating condition with such replacements and additions and such effective overall organization as may be necessary to divest them as viable competitive entities: *Provided, however*, That nothing contained herein shall be deemed to require the Respondent to continue to operate any warehouse or jobber store which has become so unprofitable that sound business judgment requires its closing or which warehouse or store is rendered inoperative as a result of force majeure or other event beyond the control of the Respondent. Notwithstanding the foregoing, except for Respondent's warehouses at New Berlin, Wisconsin, and Sioux Falls, South Dakota, no warehouse shall be closed under any circumstances on grounds of alleged unprofitability for a period of two years from the date of service of this order.

2. Whether the operation of a particular warehouse has become so unprofitable during the pendency of divestiture that sound business judgment requires its closing shall be determined on the basis that such operation shall have yielded an aggregate operating loss during the last previous two calendar years, taken together, and no acquirer of the warehouse as a going business on reasonable terms appears to be available. An "operating loss" occurs when the total operating revenues of a warehouse fail to cover its total reasonable operating costs. "Operating costs" shall not include taxes on net income or any provision for the general and administrative overhead of national headquarters. Other general and administrative expense, provision for doubtful accounts and inventory adjustments shall be deemed to be reasonable if they do not exceed by more than one-third either the industry average as a percentage of sales during the most recent available period as shown by ASIA and AWDA reports or Respondent's own nationwide experience for warehouses of similar size. Corrections to year-end statements to reflect differences between actual year-end physical inventory and interim estimated figures shall not be deemed to be "inventory adjustments" for the purposes of this paragraph: *Provided, however*, That such adjustments shall be based on a complete physical verification of inventory of such warehouse regularly performed on an annual basis for each of the preceding three calendar years.

3. The judgment of Respondent that a particular warehouse should be closed shall be communicated in writing to the Commission at least 90 days before the proposed closing, together with a full statement of (1) the reasons for such closing; (2) in case unprofitability is alleged, the warehouse's sales and profitability history; (3) the unavailability of a transferee of the warehouse as a going business including the identity of all parties unsuccessfully approached by Respondent; (4) Respondent's plans, if any, for the disposition of the warehouse's assets, the consideration to be received therefor and the identity of proposed transferees so far as then known; and (5) such other information, including production of and/or access to original accounting records, as the Commission may require for consideration of the proposed warehouse closing. Any request for supplementary information shall be made in writing within 30 days after receipt of Respondent's original submission.

Unless, within 90 days after receipt by the Commission of information on items (1) through (4) or within 45 days after receipt of any supplementary information requested within 30 days after receipt of the original submission (whichever date is later), the Commission shall notify Respondent in writing that the closing is disapproved, setting forth the reasons therefor, Respondent may then but only then proceed to effectuate such planned closing. The provisions of this paragraph I E-3 to the contrary notwithstanding, no further notice or approval by the Commission, except insofar as required under paragraph I E-5, shall be required if Respondent closes either or both of its warehouses in New Berlin, Wisconsin, and/or Sioux Falls, South Dakota.

4. Whether a jobber store has become unprofitable during the pendency of divestiture so that sound business judgment requires its closing shall rest in the good faith judgment of Respondent: *Provided, however*, That the Commission must be notified in writing of any such proposed closing at least 30 days before it is to be effectuated. Such notice shall include a description of the store or stores to be closed, the reasons for such closing, including a sales and profit history of such store(s), the identity of any proposed purchaser (s) of any assets of said store(s) and the terms of any such transfer(s).

5. It shall be a condition of any closing by Respondent of either a warehouse distributor or a jobber store that:

- (a) No part of the assets of such warehouse or jobber store, other than inventory to be returned to its original manufacturer, shall be transferred (except in the ordinary course of business), either before or after such closing, to anyone other

than Respondent not approved in writing in advance by the Commission.

(b) Respondent shall receive no consideration for such closing other than the direct consideration in case or its equivalent given by a transferee pursuant to Section (a) of this paragraph I E-5.

6. The identity and 1969 dollar sales of any warehouse listed on Appendix A which is closed by Respondent shall thereafter automatically be attributed to Respondent's other warehouse located within 200 miles of said closed warehouse for the purpose of determining (a) whether the number and the aggregate 1969 dollar sales of all warehouses to be retained by Respondent and/or (b) whether the number and aggregate 1969 dollar sales of any group of warehouses to be divested hereunder fall within the requirements of the order. The identity and 1969 sales of a closed warehouse shall not be attributed to more than one warehouse divested in the same group nor more than once in determining the number of warehouses or amount of dollar sales which Respondent may retain or must divest under Paragraphs I-A or I-B. Notwithstanding any of the foregoing, if Respondent elects to close its warehouses at New Berlin, Wisconsin and/or Sioux Falls, South Dakota, the 1969 sales of such warehouses shall be attributed to Respondent's warehouse at St. Paul, Minnesota. For a period of one year from the date of Respondent's election whether to sell or keep the last warehouse located within 200 miles of a closed warehouse, no warehouse retained by Respondent shall sell or service any former customers of the closed warehouse, except a warehouse to which the 1969 sales of the closed warehouse have been attributed pursuant to the foregoing provisions.

II CHAMPION PARTS REBUILDERS, INC.

It is further ordered:

(a) That Paragraph 4.16 of the Note Agreement between Respondent and Champion Parts Rebuilders, Inc., dated April 2, 1969, shall be cancelled effective as of the date of the service of this order: and

(b) That the Common Share Purchase Warrant issued to Respondent by Champion Parts Rebuilders, Inc., on April 2, 1969, shall be cancelled automatically on payment in full of the three notes provided for in said Note Agreement and, in any event, shall be cancelled no later than April 1, 1974; except that this subparagraph (B) shall be null and void if the Respondent, within one (1)

year from the date of service of this order, divests itself irrevocably of ownership of said Warrant for a fixed consideration to a purchaser approved by the Commission. Respondent represents that it now has no actual or potential equity interest in Champion Parts Rebuilders, Inc.

III FUTURE ACQUISITIONS

It is further ordered, That Respondent, for a period of ten (10) years from the date of service of this order, shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital or assets (except merchandise purchased in the usual course of trade for consumption or resale by the respondent) or any warrant, option or other right to acquire any share capital or other equity interest or right to participate in earnings of any concern, corporate or noncorporate, engaged in the manufacture or remanufacture or wholesale distribution of automotive replacement parts, accessories, or equipment anywhere in the United States and shall also cease and desist from entering into any agreement or understanding with any such concern whereby Respondent obtains the market share of such concern, unless and until the Commission in its sole and final discretion, on petition filed by Respondent, specifically permits such acquisition by Respondent.

IV SALES THROUGH OWN WAREHOUSES

It is further ordered, That, during the period of divestiture pursuant to Paragraph 1 herein and for so long thereafter as Respondent continues to own any of the automotive parts warehouses listed in Appendix A, each year a minimum of two-thirds ($\frac{2}{3}$) of such retained warehouses' aggregate dollar purchase requirements for each and every product line, considering each product line separately and including shock absorbers as a line but excluding exhaust system parts, shall be manufactured by and purchased from manufacturers other than Respondent shall not be sold under any of Respondent's own manufacturer brands. Dollar purchase requirements shall include internal transfers valued at Respondent's then current warehouse distributor prices.

V BUYING AND SELLING PRACTICES

It is further ordered, That Respondent shall not engage in any systemic reciprocal buying and selling practices with any company which, itself or through a subsidiary or affiliate, engages in both the manufacturing and wholesaling of automotive parts, accessories or

equipment. This special prohibition shall expire 10 years from the date of service of this order.

VI COMPLIANCE REPORTS

It is further ordered, That Respondent within sixty (60) days from the date of service of this order, and every ninety (90) days thereafter until it has fully complied with the provisions of this order, shall submit in writing to the Commission a report setting forth in detail the manner and form in which it intends to comply, is complying, and/or has complied with this order. All compliance reports shall include, among other things which may from time to time be required, a summary of all contacts and negotiations with all persons who are contacted by or who express to Respondent a possible interest in acquiring ownership of or control over the assets or warrant to be divested under this order, the identity of all such persons, copies of any proposed or executed sales contracts, copies of any internal corporate documents discussing such divestiture, and copies of any proposed plan of divestiture.

APPENDIX A

WAREHOUSES

<i>Arizona:</i>	<i>Minnesota:</i>
Phoenix, 2320 West Sherman	St. Paul, 475 N. Prior Avenue
<i>California:</i>	<i>Nebraska:</i>
Bakersfield, 409 Sumner	Omaha, 7400 Pacific Street
Brisbane, 380 Valley Drive	<i>Ohio:</i>
Fresno, 311 West Amador	Lima, 1221 Stewart Road
Oakland, 7955 Edgewater Drive	Valley View, 5500 Clover Leaf
Sacramento, 151 Commerce Circle	Highway
San Diego, 1341 Commercial	<i>Oregon:</i>
Avenue	Portland, 2805 N.W. 31st Avenue
Vernon, 4321 Exchange Avenue	<i>New York:</i>
<i>Colorado:</i>	Dewitt, Chrysler Lane
Denver, 4747 South Whipple	<i>Pennsylvania:</i>
<i>Illinois:</i>	Harrisburg, 1917 N. Third Street
Chicago, 3024 West 47th Street	Pittsburgh, Campbell's Run Road
<i>Indiana:</i>	Parkway West, Oakdale Exit
Evansville, 2214 Highway 41, North	<i>South Dakota:</i>
Fort Wayne, 4911 Industrial Road	Sioux Falls, 400 West 9th Street
Indianapolis, 439 N. Capitol Avenue	<i>Texas:</i>
South Bend, 805 South Fellows	Abilene, 242 Sycamore
<i>Iowa:</i>	Dallas, 2016 Lucas Drive
Des Moines, 2205 Bell Avenue	Fort Worth, 901 Lake Street
<i>Michigan:</i>	Houston, 4701 Calhoun Street
Dearborn, 4800 Stecker	Odessa, 1306 N. Grant
Grand Rapids, 400 Mart Street	Waco, 1800 Franklin
	Wichita Falls, 113 Henrietta

Decision and Order

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APPENDIX A—Continued

WAREHOUSES—Continued

Washington:

Seattle, 3434 Second Avenue
South

Wisconsin:

New Berlin, 2215 S. 162nd Street

APPENDIX B

JOBBER STORES

Arizona:

Apache Junction, 9622 Apache Trail
Chandler, 151 S. Arizona
Coolidge, 466 West Central
Douglas, 1133 "G" Avenue
Mesa, 56 S. Robson
Nogales, 300 Arroyo Blvd.
304 Arroyo Blvd.
Phoenix, 720 S. 23rd Avenue
4918 North 35th Avenue
1813 E. Indian School Road
530 West Van Buren
Sierra Vista, 689 Fry Boulevard
Tucson, 530 N. Stone Avenue
1133 N. Alvernon Way
1434 S. Sixth Avenue
5028 E. 22nd Street

Indiana:

Anderson, 24 West 6th Street
Evansville, 1015 Main Street
10 S. Weinbach
2424 B North Governor
Fort Wayne, 245 W. Main
4911 Industrial Road
Greensburg, 915 East Main Street
Indianapolis, 432 N. Illinois Street
6019 East 34th Street
2006 S. Shelby
1621 North Tibbs
5352 North Tacoma
Logansport, 635 Burlington
Mishawaka, 119 East Front Street
New Haven, 634 Hartzell Road
Plainfield, 1215 Main Street
South Bend, 1149 S. Main
2214 Western Avenue
320 Dixie Way North
Terre Haute, 207 Hulman
1605 Wabash Avenue

Iowa:

Ames, 402 East Lincolnway
Atlantic 403 Elm Street
Boone, 708 Arden Street
Centerville, Jackson & Haynes
Council Bluffs, 100 S. 16th Street
Des Moines, 2207 Bell Avenue
825 Grand
6110 S.W. 9th Street
Fort Dodge, 3011 Fifth Avenue
South
Garner, 230 State Street
Indianola, 1010 N. Jefferson
Mason City, 714 S. Delaware
Missouri Valley, 206 East Erie
New Hampton, 21 West Main Street
Newton, 1730 First Avenue East
Onawa, 1014 Iowa Avenue
Perry, 1012 Second Street
Red Oak, 211 Coolbaugh Street
Shenandoah, 828 W. Thomas
Spirit Lake, 905 Lake Street

Kansas:

Great Bend, 3010 Tenth Street
Hoisington, 170 West 2nd Street
Kinsley, 508 Marsh
LaCrosse, 601 Main Street
Marysville, 719 Broadway Street
Norton, 102 W. Washington
Oakley, 112 Converse
Phillipsburg, 460 State Street

Minnesota:

Duluth, 416 East Superior
Red Wing, 909 W. Main Street

Nebraska:

Alliance, 324 West 3rd Street
Alma, 606 Main Street
Beatrice, 116 N. 7th Street
Bellevue, 2229 Madison Street
Broken Bow, 228 South 5th Street

APPENDIX B—Continued

JOBBER STORES—Continued

Nebraska—Continued

Chadron, 820 West 3rd Street
 Falls City, 1801 Chase Street
 Fremont, 233 East 5th Street
 Grand Island, 517-523 West 4th
 Hastings, 218 N. Lexington
 Holdrege, 219 Grant Street
 Kearney, 2117 Avenue A
 Lexington, 4th and Jefferson
 Lincoln, 1621 M Street
 4830 Wilshire Blvd.
 McCook, 802 West C Street
 Norfolk, 702 Norfolk Avenue
 North Platte, 518 N. Chestnut
 Omaha, 7410 Pacific Street
 2413 Q Street
 4535 S. 88th Street
 6919 Maple Street
 O'Neill, 121 S. 4th Street
 Plattsmouth, 526 Main Street
 Scottsbluff, 1409 First Avenue
 Superior, 325 Commercial Avenue
 Valentine, 210 South Main
 York, 128 East 8th

New York:

Auburn, 25 Seminary Street
 Batavia, 244 West Main Street
 Elmira, William & 2nd Streets
 Fulton, 570 S. Fourth Street
 Geneva, 611 West Washington
 Street
 Rochester, 2808 Dewey Avenue
 2921 W. Henrietta Road
 471 Ridge Road East
 178 Charlotte Street
 Rome, 278 E. Dominick Street
 Utica, 143 Hotel Street
 Watertown, 249 State Street

Ohio:

Cleveland, 1585 E. 40th
 Lima, 119 N. McDonel
 Route 81, Findlay Road
 2133 Elida Road
 Lyndhurst, 5125 Mayfield
 Maple Heights, 17170 Broadway
 Mentor, 8510 Mentor Avenue
 Painesville, 1440 Mentor Avenue

Pennsylvania:

Altoona, 1917 Margaret Avenue
 Barnesboro, 908 Philadelphia
 Avenue
 Bedford, North Street
 Chambersburg, 18 N. Second Street
 Clearfield, 418 W. Second Avenue
 Ebensburg, 219 W. High Street
 Everett, South Street
 Gettysburg, 535 York Street
 Glenshaw, 970 William Flynn Hwy.
 Harrisburg, 137 N. Tenth Street
 Hollidaysburg, 509-11 Blair Street
 Homestead, 201-03 W. Eighth
 Avenue
 Johnstown, 945 Franklin Street
 1129 Scalp Avenue
 Lewistown, 45 Hale Street
 Lock Haven, 206-212 Bellefonte
 Avenue
 McKeesport, 820 Market Street
 McKees Rocks, 431 Broadway
 Philipsburg, Corner 15th and Pine
 Pittsburgh, 5803 Centre Avenue
 5033 Liberty Avenue
 2305 W. Liberty Avenue
 Rochester, 351 Brighton Avenue
 Selinsgrove, 316 S. Market Street
 Sharon, 39-51 S. Main Street
 Shippensburg, 65 W. Burd Street
 Somerset, 344 W. Main Street
 State College, 616 W. College
 Tyrone, 952-954 Logan Avenue
 Williamsport, 243-51 W. Third
 Street
 York, 190 Arsenal Road

South Dakota:

Brookings, 411 Fourth Street
 Hot Springs, 206 S. Chicago
 Madison, 218 S. Van Eps
 Rapid City, 517 Third Street

West Virginia:

Kingwood, Route 7 East
 Morgantown, 1029 University
 Avenue

Wisconsin:

River Falls, 421 North Main Street

Complaint

78 F.T.C.

IN THE MATTER OF

SAKS FUR COMPANY, INC., ET AL.

CONSENT ORDER, IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS
LABELING ACTS

Docket C-1854. Complaint, Jan. 26, 1971—Decision, Jan. 26, 1971

Consent order requiring a New York City manufacturer and distributor of fur products to cease misbranding and falsely invoicing its furs.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Saks Fur Company, Inc., a corporation, and Arthur Schachner and Edna Schachner, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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 Saks Fur Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Arthur Schachner and Edna Schachner are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent including those hereinafter set forth.

Respondents are manufacturers and distributors of fur products with their office and principal place of business located at 143 West 29th Street, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs