

IN THE MATTER OF  
AMERICAN CYANAMID COMPANY  
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED  
VIOLATION OF SECTION 7 OF THE CLAYTON ACT, AS AMENDED

*Docket C-2381. Complaint, April 16, 1973—Decision, April 16, 1973.*

Consent order requiring the nation's 102nd largest industrial corporation located at Wayne, New Jersey, among other things to divest two toiletry product lines acquired from Shulton, Inc., and a plant located at Moosic, Pennsylvania; and imposing a ten year ban on the acquisition of firms which manufacture or distribute more than \$1 million worth of toilet preparations annually.

COMPLAINT

The Federal Trade Commission, having reason to believe that American Cyanamid Company, a corporation, has violated and is now violating the provisions of Section 7 of the Clayton Act, as amended, (U.S.C. Title 15, Section 18) through the acquisition of the stock and assets of Shulton, Inc., a corporation, hereby issues its complaint pursuant to the provisions of Section 11 of the aforesaid Clayton Act (U.S.C. Title 15, Section 21) stating its charges in this respect as follows:

I

DEFINITIONS

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

(a) "Men's fragrance products" means all after shave lotions, colognes, toilet waters and all purpose lotions regularly promoted for use by men which consist mostly of a solution of perfume, alcohol and water in varying amounts.

(b) "Direct sale market" means the domestic sale of men's fragrance products to the end user by use of door-to-door sellers.

(c) "Resale market" means the domestic sale of men's fragrance products to resellers such as, but not limited to, wholesale distributors, mass merchandisers, department stores, food stores, drug stores and specialty stores.

(d) "Total men's fragrance product market" means the domestic sale of men's fragrance products in the direct sale market and in the resale market combined.

II

RESPONDENT

2. Respondent, American Cyanamid Company, sometimes

hereinafter referred to as "Cyanamid," is, and has been, at least since approximately April 15, 1971, a corporation organized, existing and doing business under the laws of the State of Maine, with its office and principal place of business located at Wayne, New Jersey.

3. In calendar 1970, the last full calendar year prior to the subject merger, Cyanamid had net sales of \$1,158,440,000 and was the 102nd largest industrial corporation in the United States. In 1970, year end total assets amounted to \$1,065,923,000, placing respondent 101st in asset valuation in the United States. In 1970, Cyanamid spent approximately \$46 million for research and development.

4. Cyanamid is engaged in four major areas of operation. In 1970, these major segments were chemicals, which accounted for 32 percent of sales, building and consumer products contributing 27 percent, medical products which includes the well known line of Lederle pharmaceuticals and biologicals made up 21 percent of sales, and the agricultural products group which accounted for 20 percent of sales.

5. Cyanamid entered the hair-care products market in 1963 with the acquisition of John H. Breck, Inc., (hereafter "Breck"). In the full calendar year prior to the merger, Breck had total sales of over \$29 million. By 1970 the Breck division's domestic sales had more than doubled.

6. Breck has become one of the leaders in the hair care product market with such successful products as Breck's line of shampoos for dry, normal and oily hair, Breck Satin and Breck Basic hair texturizers, Breck Creme Rinse, Miss Breck hair sprays, and a line of Breck hair color products.

7. Cyanamid has been highly successful in achieving and maintaining brand loyalty toward its Breck hair care product group and other consumer advertised products through the use of extensive advertising and promotion. Total advertising expenditures for 1970 were over \$46 million in the United States. In 1970 over \$11 million was expended to advertise the Breck line.

8. Cyanamid markets its hair care products through its own national sales organization supplemented in some instances by the use of brokers. Cyanamid's sales organization and brokers sold the Breck products to drug chains, drug wholesalers, independent drug stores, grocery chains and wholesalers, department stores, and mass merchandise outlets.

9. In the course and conduct of its business, Cyanamid is, and has been, at least since approximately April 15, 1971, engaged in selling its products to purchasers in various States

of the United States, and has caused such products, when sold, to be transported from its facilities in various States of the United States to such purchasers located in various other States of the United States. In so doing Cyanamid is engaged in "commerce," as "commerce" is defined in the Clayton Act, as amended, and has been continuously so engaged at least since approximately April 15, 1971.

### III

#### THE ACQUIRED CORPORATION

10. Prior to and until approximately April 15, 1971, Shulton, Inc., sometimes hereinafter referred to as "Shulton," was a corporation organized, existing and doing business under the laws of the State of New Jersey with its office and principal place of business located at Clifton, New Jersey.

11. Shulton was engaged principally in the manufacture and sale of a broad range of men's fragrance products, and other men's toiletries, women's cosmetics, toiletries and perfumes, hospital and medical supplies, and aromatic and electronic chemicals.

12. In 1970, Shulton had net sales of \$104,024,000. Assets in 1970 amounted to approximately \$89,286,000. In 1970 domestic sales of cosmetics and toiletries were approximately \$60,152,000. Product research and development for 1970 was approximately \$1,100,000.

13. Shulton, in 1970, was a leading company manufacturing and selling men's fragrance products. Shulton had over \$17 million in sales of such products.

14. Shulton has used extensive advertising to achieve and maintain brand allegiance toward its men's fragrance products. In 1970, Shulton spent over \$6 million for advertising in the United States. For 1970, national media advertising expenditures for Shulton's men's fragrance products, were approximately \$2.5 million, with approximately \$1.7 million devoted to network and spot television advertising.

15. Shulton marketed its men's fragrance products through its own national sales organization of approximately 140 salesmen, supplemented in some instances by the use of brokers. Shulton's sales organization sold on a direct basis to department stores, drug chains, drug retailers, drug wholesalers, grocery wholesalers, mass merchandise outlets, supermarkets and a variety of specialty outlets.

16. In the course and conduct of its business prior to approximately April 15, 1971, Shulton sold its products to purchasers

located in various States of the United States and caused such products, when sold, to be transported from its facilities in New Jersey, Pennsylvania and Tennessee to such purchasers located in various other States of the United States. In so doing Shulton was engaged in "commerce," as "commerce" is defined in the Clayton Act, as amended.

## IV

## THE MERGER

17. On or about April 15, 1971, by virtue of a Plan of Merger and Agreement and Plan of Reorganization dated February 8, 1971, Cyanamid acquired all the stock and assets of Shulton via an exchange of stock, pursuant to which holders of Shulton's common stock received 96/100th of a share of Cyanamid common stock for each share of Shulton's common stock and holders of Shulton's preferred stock received three shares of Cyanamid common stock for each share of Shulton's preferred stock.

18. The value of the consideration received by Shulton stockholders amounted to approximately \$106,498,200.

## V

## THE NATURE OF TRADE AND COMMERCE

19. In factory dollars, industry sales in the total men's fragrance product market in 1970 were approximately \$173 million. Industry sales in the resale market for 1970 were approximately \$126 million and in the direct sale market were approximately \$47 million.

20. Shulton markets and sells its men's fragrance products in the resale market, where it was the leading company with more than 14 percent of the resale market. In the total men's fragrance product market Shulton's sales accounted for over 10 percent of the market.

21. The sales of the top four and eight largest firms in 1970, accounted for approximately 50 percent and 75 percent, respectively, of the resale market. In the total men's fragrance product market, the sales of the top four and eight largest firms accounted for approximately 54 percent and 76 percent, respectively, in 1970.

22. Men's fragrance products as with other men's and women's toiletries are generally pre-sold to the consumer through extensive advertising and promotion. These products are also sold through distribution channels similar to those through which women's toiletries are sold.

23. A firm which possesses significant capabilities in marketing, manufacturing and advertising a line of women's toiletries has the capability of internally entering the men's toiletry field.

## VI

## ADVERSE COMPETITIVE EFFECTS

24. The effect of the acquisition by Cyanamid of the stock and assets of Shulton may be substantially to lessen competition or to tend to create a monopoly in the total men's fragrance product market, or in the resale market in the United States as a whole in the following ways, among others:

(a) Shulton has been eliminated as an independent competitive factor.

(b) Cyanamid has been permanently eliminated as a potential entrant through internal expansion.

(c) The position of a substantial competitive factor has been enhanced to the detriment of actual and potential competition.

(d) The combination of Cyanamid and Shulton tends unduly to increase barriers to entry and to deprive smaller companies of a fair opportunity to compete.

## VII

## THE NATURE OF THE VIOLATION

25. The acquisition by American Cyanamid Company of the stock and assets of Shulton, Inc., together with the effects thereof as hereinbefore alleged, constitutes a violation of Section 7 of the Clayton Act (U.S.C. Title 15, Section 18), as amended.

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 7 of the Clayton Act, as amended; and

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

has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent American Cyanamid Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maine, with its office and principal place of business located at Wayne, New Jersey.

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

#### ORDER

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

1. *Toilet preparations* - shall mean those products listed in Standard Industrial Classification (SIC) Product Code Nos. 28441, 28442, 28443 and 28445 as described on pages 28D-16 and 28D-17 of the 1967 Census of Manufacturers, Volume II - Industry Statistics, Part 2, Major Group 25-33, as prepared by the Bureau of Census, U. S. Department of Commerce.

2. *Burley product line* - shall mean those after shave lotions, colognes, bronzers, body talcums, stick and aerosol deodorants, shave creams and shower soaps manufactured and distributed by Shulton, Inc. which bear the Burley trademark.

3. *Man-Power product line* - shall mean those deodorants, antiperspirants and shave creams manufactured and distributed by Shulton, Inc. which bear the Man-Power trademark.

#### I

*It is ordered*, That respondent, American Cyanamid Company, its officers, directors, agents, representatives, employees, and its successors and assigns shall, within eighteen (18) months from the effective date of this order, divest itself absolutely and in good faith, of all assets, properties, rights and privileges

and interests of whatever nature, tangible and intangible, comprising both the Burley and Man-Power product lines of men's toiletries, including but not limited to all inventories, formulations, patents, trade names, trademarks, contract rights and good will, and also including a plant located in Moosic, Pennsylvania, together with equipment to be installed therein by respondent as is required to manufacture the Burley and Man-Power product lines of men's toiletries, to a buyer approved by the Federal Trade Commission: *Provided, however*, That if a buyer willing to purchase both the Burley and Man-Power product lines of men's toiletries is otherwise acceptable to the Federal Trade Commission, but does not wish to purchase the aforesaid plant located in Moosic, Pennsylvania, or, desiring to purchase said plant, does not wish any or all equipment to be installed therein as is required to manufacture the Burley and Man-Power product lines of men's toiletries, the Federal Trade Commission may in its sole discretion require the divestiture and approve the sale of the plant in its present condition to some other acceptable purchaser or, if the buyer willing to purchase both the Burley and Man-Power product lines of men's toiletries also desires to purchase said plant, approve the installation of equipment therein to the extent desired by such purchaser; *And provided further*, That respondent shall not be required to divest itself of the names Shulton and Old Spice, the Old Spice fragrances, the Old Spice ship designs and rights to the shape of the containers used for Old Spice men's toiletry products; *And provided further*, That any purchaser of the Burley and Man-Power product lines of men's toiletries shall agree that, after a reasonable period of time after the date of purchase to provide for the sale of inventory produced prior to purchase, it will discontinue the use of the names Shulton and Old Spice, the Old Spice ship designs and containers of the shape used for Old Spice men's toiletry products, *And provided further*, That if divestiture has not been effected within said eighteen-month period, the Federal Trade Commission shall grant to respondent the right to petition the Commission before issuing further order or orders which may be deemed appropriate.

## II

*It is further ordered*, That, if respondent is unable to sell or dispose of the assets, required to be divested by Part I of this order, for cash, nothing in this order shall be deemed to prohibit respondent from retaining, accepting and enforcing in good faith

any security interest therein, not to exceed five years in duration, for the sole purpose of securing to respondent full payment of the price, with interest, at which said assets are sold; *Provided, however,* That if after good faith divestiture pursuant to this order, any buyer fails to perform his obligations and respondent regains ownership or control of any of said assets by enforcement of any security interest therein, respondent shall redinvest said assets within eighteen (18) months in the same manner as provided for herein.

## III

*It is further ordered,* That pending divestiture respondent shall use its best efforts to advertise, merchandise, promote, distribute and sell the Burley and Man-Power product lines and shall continue to expend money to promote and advertise said product lines in substantially the same amount and rate as that which it has expended to promote and advertise said product lines in 1972. Further, respondent shall not make any changes in the assets of the Burley and Man-Power products lines which may impair the capacity of a buyer to merchandise and promote the Burley and Man-Power product lines as viable product lines in the men's toiletry industry.

## IV

*It is further ordered,* That the divestiture required by Paragraph I of this order shall be effected, directly or indirectly, to anyone who, subsequent to such divestiture, is an officer, director, employee, or agent of, or otherwise under the control or influence of respondent, or who owns or controls, directly or indirectly, more than one (1) per cent of the outstanding stock of respondent.

## V

*It is further ordered,* That for a period of ten (10) years from the date of this order, respondent shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital, and assets (other than products purchased in the ordinary course of business including, but not limited to, machinery, equipment and supplies) of any corporation, partnership or natural person (1) which is engaged in the manufacture and distribution of toilet preparations in the United States, or (2) which is engaged in the distribution of its own brands

of toilet preparations in the United States that are manufactured by others, or (3) which is engaged in the manufacture in the United States of toilet preparations for distribution by others in the United States; *Provided, however,* That the provisions of this Paragraph V shall not apply to the acquisition of stock, share capital and assets of any corporation, partnership and person whose sales of toilet preparations in the United States did not exceed an average of \$1 million per year in the three years preceding the acquisition.

## VI

*It is further ordered,* That respondent shall, within sixty (60) days after the effective date of this order, and every six (6) months thereafter, until respondent has fully complied with Paragraph I of this order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent intends to comply, is complying, or has complied with Paragraph I of this order. All compliance reports shall include, in addition to such other information and documentation as may hereafter be required, to show compliance with this order, a summary of all contacts and negotiations with prospective buyers concerning purchase of the specified assets and properties, the identity of all such parties, and copies of all written communications to and from such parties.

With respect to Paragraph V of this order, respondent shall, on the first anniversary date of the date of this order and on each anniversary date thereafter to and including the tenth anniversary date of this order, submit a report, in writing, listing all acquisitions or mergers made by it in the three (3) categories described in said Paragraph V, the date of each such acquisition or merger, the products involved and such additional information relating thereto as may from time to time be required.

## VII

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

## Complaint

## IN THE MATTER OF

## CREATIVE ACCENTS, ET AL.

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

*Docket C-2382. Complaint, April 17, 1973—Decision, April 17, 1973.*

Consent order requiring a South El Monte, California, manufacturer and seller of carpets and rugs, among other things to cease manufacturing for sale, selling, importing, or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Creative Accents, a corporation, and Kenneth Hensler, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, 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 Creative Accents is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Respondent Kenneth Hensler is an officer of the said corporate respondent. He formulates, directs and controls the acts, practices and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs with their office and principal place of business located at 10840 Central Avenue, S. El Monte, California.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacturing for sale, sale and offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in com-

merce, products, as the terms "commerce" and "product," are defined in the Flammable Fabrics Act, as amended, which products fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were "Pom Pom" style wool rugs subject to Department of Commerce Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1-70).

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, and the Flammable Fabrics Act, as amended; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint,

makes the following jurisdictional findings, and enters the following order:

1. Respondent Creative Accents, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Respondent Kenneth Hensler is an officer of the said corporation. He formulates, directs and controls the acts, practices and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs with the office and principal place of business of respondents located at 10840 Central Avenue, S. El Monte, California.

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

#### ORDER

*It is ordered*, That respondent Creative Accents, a corporation, its successors and assigns, and its officers, and respondent Kenneth Hensler, individually and as an officer of said corporation and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material; or manufacturing for sale, selling, or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related materials fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

*It is further ordered*, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint, of the flammable nature of said products and effect the recall of said products from such customers.

*It is further ordered*, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flamma-

bility under the Flammable Fabrics Act, as amended, or destroy said products.

*It is further ordered,* That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (5) any disposition of said products since January 31, 1972, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or rug.

*It is further ordered,* That respondents 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.

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

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

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

Order

## IN THE MATTER OF

## PEPSICO, INC.

*Docket 8903. Order, April 18, 1973.*

Order rescinding order of April 12, 1973; establishing a new schedule for the conduct of the administrative proceeding; and directing that copies of pertinent papers be filed by the General Counsel with the United States Court of Appeals for the Second Circuit.

ORDER RESCINDING ORDER OF APRIL 12, 1973, AND DIRECTING  
NEW SCHEDULE

On April 12, 1973, the Commission issued an order in this matter directing that all proceedings before the administrative law judge be concluded by July 23, 1973, and, in the event of an appeal to the Commission, that the parties follow a briefing schedule that would permit final action by the Commission by September 10, 1973. Issuance of the aforesaid order was made in accordance with assurances made to the United States Court of Appeals for the Second Circuit by the Commission's legal counsel that if certain requested preliminary relief was granted by the Court under the All Writs Act the Commission would endeavor to enter its final order in this matter by the September 10 date. Cf. *Dean Foods*, 70 F.T.C. 1761 (1966) and *OKC Corp.*, 3 CCH Trade Reg. Rep. ¶ 19,293 (1970) at p. 21,460 [8 S. & D. 1220].

By motion of April 16, 1973, PepsiCo requests the Commission to rescind its order of April 12, 1973, stating there is no need for such a compressed schedule in view of the fact that the Court declined to prevent PepsiCo from assuming control of the company but only subjected it to the provisions of a hold-separate agreement. Such a hold-separate agreement was entered into by the parties on April 16, 1973, and will be filed with the Court. PepsiCo contends that the schedule as set forth in the April 12 order would not permit it sufficient time to prepare for the hearings on the complaint. It states that it can complete its trial preparation no sooner than three months of receipt of complaint counsel's documentary evidence and witness list. Complaint counsel in their response do not oppose the motion and advise that in their view a three-month period is not unreasonable if adhered to.

The Commission's statement to the Court of Appeals that the administrative proceeding would be scheduled for completion by September 10, 1973, was made to assure the court that the

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injunctive relief sought would not impose undue injury upon PepsiCo. PepsiCo has now entered into a hold-separate agreement that is unrestricted in duration and in its motion it clearly waives any insistence that these proceedings be completed by September 10 of this year. In these circumstances, there appears to be no reason to require completion of hearings and the filing of an initial decision by July 23, 1973, and we do not read the court's opinion as mandating a completion date of a final order by September 10, 1973. However, the matter should be heard as expeditiously as is possible consistent with fairness to the parties. Accordingly,

*It is ordered*, That the Commission's order herein of April 12, 1973, be, and it hereby is, rescinded and in its place the following schedule directed:

- (1) complaint counsel are to have designated their witnesses and exhibits by May 1, 1973;
- (2) respondent's counsel are to have completed discovery, designated their witnesses and exhibits by August 1, 1973;
- (3) hearing will commence on August 15, 1973.

The General Counsel is directed to file a copy of this order, together with respondent's motion and complaint counsel's response, with the United States Court of Appeals for the Second Circuit.

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IN THE MATTER OF

ARLEN REALTY & DEVELOPMENT CORP., TRADING AS  
KORVETTES, ET AL.

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

*Docket C-2383. Complaint, April 18, 1973—Decision, April 18, 1973.*

Consent order requiring a New York City operator of 51 department stores in numerous states and its subsidiary located in Baltimore, Maryland, whose charge plate is honored by approximately 4,000 merchants in the D.C. - Baltimore area, among other things to cease issuing credit cards without a prior request or application for them.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act, as amended, and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade