

Consent order requiring a Glen Burnie, Maryland, retailer of rugs, sewing machines, stereo radios and phonographs, and various other articles of merchandise, among other things to cease using the words "Liquidators,"

Complaint

"Freight," "Forwarding," or words of similar import or meaning in respondent's trade or corporate name; misrepresenting the source, character, or nature of merchandise being offered for sale; misrepresenting the sale price(s) as reduced; failing to maintain adequate records; using misleading or deceptive sales plans; using "bait and switch" selling tactics; advertising merchandise falsely or misleadingly; misrepresenting limited offers or supplies; falsely advertising and misbranding its textile fiber products. Respondent is further required to publish, for one year, in connection with its advertising a notice stating that the respondent has been found by the Federal Trade Commission to have been engaged in "bait and switch" advertising solely to sell products other than those advertised.

Appearances

For the Commission: *Alice Kelleher* and *Everette Thomas*.

For the respondent: *pro se*.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that the party named in the caption above, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, and the rules and regulations promulgated under the Textile Fiber Products Identification 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 follow:

PARAGRAPH 1. Repondent Hammond Begun is an individual and a former partner, trading and doing business as Freight Liquidators at 1616 North Ritchie Highway, Glen Burnie, Maryland.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of rugs, sewing machines, stereo radios and phonographs, and various other articles of merchandise, to the purchasing public.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR 3. In the course and conduct of his business as aforesaid, respondent has caused, and now causes, the dissemination of certain advertisements concerning the aforesaid articles of merchandise, by various means in commerce, as "commerce" is defined in the Federal

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Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of interstate circulation, and by means of radio broadcasts transmitted by radio stations located in the State of Virginia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of respondent's said merchandise.

In the further course and conduct of his business, as aforesaid, respondent has caused, and now causes, his said merchandise to be shipped across state lines between his various retail outlets located in the States of Virginia and Maryland, for sale to purchasers thereof located in the States of Virginia and Maryland, and the District of Columbia. Thus, respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. By means of advertisements inserted in newspapers and disseminated as aforesaid, and by means of advertising circulars disseminated by hand delivery to numerous places of residence in the States of Virginia and Maryland and the District of Columbia, respondent has made various statements and representations of which the following are typical and illustrative, but not all inclusive thereof:

PUBLIC NOTICE

(4 DAYS ONLY!)

LIQUIDATION SALE

BANKRUPTCY STOCK—FACTORY & MILL CLOSEOUTS
ALL NEW MERCHANDISE—FAMOUS BRAND NAMES

\$1,287,350.00 WORTH OF PRE-CUT RUGS AND MILL-END ROLLS, TELEVISIONS, STEREOS AND COMPONENTS & SEWING MACHINES

(HUNDREDS OF ITEMS NOT SHOWN BELOW ARE ALSO ON DISPLAY.)
BE EARLY FOR BEST SELECTION

* * * * *

STEREO

UNCLAIMED FREIGHT

BANKRUPTCY STOCK FACTORY CLOSEOUTS

TRUCK LOAD LIQUIDATION

All New Merchandise
LAST NOTICE FOR THIS WEEKEND
FRIDAY, SATURDAY, SUNDAY & MONDAY

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ONLY \$88

New 1972 (in cartons), 5-piece Stereo Component Units, 40 Watts, AM/FM radio, deluxe 4 spd. BSR turntable, 4-speaker sound system, equipped for 8 track tape player, tape recorder, etc. Only \$88.

Only \$147

New 5-Piece Components 4-speed Deluxe Turn Tbl., 100 watts, AM/FM radio, deluxe 4-spd. turntable w/diamond stylus, 4-speaker air suspension audio system. Equip. for 8-trk. cassette. Orig; \$329. Yours for \$147.

Only \$108

New 1972 (in cartons), famous make, 100 watt tuners w/AM/FM multiplex equipped for 8 track or cassette. Only \$108.

From Only \$88

New console stereo, various sizes & finishes. Lge. assortment /w/AM/FM radio & deluxe 4 spd. changer.

FREIGHT LIQUIDATORS

Deal With The Store Near You * * *

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RUGS

12x9's \$19

WAREHOUSE LIQUIDATION

4 DAYS ONLY!

All 100% nylon, acrilan, polyester pile. Full sizes 9x12, 12x12, 12x15, 12x21, 6x9, also odd sizes and various size ovals. In gold, green, red, blue, and other exciting colors. Shags, plushes, twists and sculptured. Will give a warm look to your apt.

OVALS—FRINGED \$8

WE LIQUIDATE RUGS FOR FAMOUS SOUTHERN MILLS. ALL ARE GUARANTEED PERFECT.

MASTER CHARGE, BANKAMERICARD, TERMS AVAILABLE

FREIGHT LIQUIDATORS WAREHOUSES

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FREIGHT LIQUIDATORS

Deal With The Store Near You * * *

BRAND NEW

SEWING
MACHINES \$63

You may own a 1971 "Touch-N-Stitch" Zig-Zag, new stretch stitch, embroiders, monograms, appliques, makes buttonholes, etc., all without attachments. Ordered for schools, "UNCLAIMED BY THEM." 25-year guarantee and instructions.

* * * * *

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of respondent's salesmen to customers and prospective customers, the respondent has represented, and is now representing, directly or by implication, that:

1. By and through the use of said name "Freight Liquidators," separately or in connection with the foregoing statements and representations or by said statements and representations alone, that he is a liquidator, authorized adjustor or agent engaged in the sale or disposition of bankrupt, salvage, distrained or other distress or transportation company surplus merchandise for the purpose of liquidating, adjusting, paying off or otherwise settling indebtedness or claims.

2. By and through the use of said name "Freight Liquidators," separately or in connection with the foregoing statements and representations or by said statements and representations alone, that merchandise advertised by respondent is bankrupt, salvage, distrained, distress or transportation company surplus merchandise, and therefore has a unique or special disposition.

3. Because of the unique or special disposition of the advertised merchandise, it is being offered at prices below those usually and customarily charged at retail.

4. Purchasers of the advertised merchandise are afforded savings equal to the differences between respondent's advertised prices and those at which the same merchandise is usually and customarily sold at retail.

5. The amount designated as "Orig." was the price at which the merchandise advertised had been sold by respondent in the recent, regular course of his business.

6. Purchasers of the merchandise advertised are afforded savings equal to the differences between the higher and lower prices listed in said statements.

7. Respondent is making a bona fide offer to sell the advertised merchandise at the price and on the terms and conditions stated in the advertisements.

8. Respondent is making a bona fide offer to sell a complete sewing machine without attachments for the advertised price.

9. Certain of respondent's products are unconditionally guaranteed for various periods of time such as twenty-five (25) years.

10. The quantities of merchandise and the time during which such are available for sale are limited.

PAR. 6. In truth and in fact:

1. Respondent is not a liquidator, authorized adjustor or agent engaged in the sale or disposition of bankrupt, salvage, distrained or other distress or transportation company surplus merchandise for the purpose of liquidating, adjusting, paying off or otherwise settling indebtedness or claims. Instead, respondent is in the business of purchasing the advertised merchandise from manufacturers or suppliers and selling it at retail for his own account to the purchasing public.

2. Merchandise advertised by respondent is not bankrupt, salvage, distrained, distress or transportation company surplus merchandise, and therefore does not have a unique or special disposition.

3. The advertised merchandise is not being offered at prices below those usually and customarily charged at retail.

4. Purchasers of the advertised merchandise are not afforded savings equal to the differences between respondent's advertised prices and those at which the same merchandise is usually and customarily sold at retail.

5. Said merchandise had not been customarily and usually sold at retail by respondent in the recent, regular course of his business for the amounts set out in the advertisements as "Orig."

6. Purchasers of the merchandise advertised are not afforded savings equal to the differences between the higher and lower prices listed in said statements.

7. Respondent is not making a bona fide offer to sell the advertised merchandise at the price and on the terms and conditions stated in the advertisements. To the contrary, said offers are made for the purpose of obtaining leads to persons interested in the purchase of merchandise similar to that advertised. Members of the purchasing public who respond to said advertisements are either told by respondent's sales-

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men that the advertised merchandise is not available, or are shown higher priced merchandise of superior quality, which by comparison disparages and demeans the advertised merchandise. By these and other tactics, purchase of the advertised merchandise is discouraged, and respondent, through his salesmen, attempts to sell and frequently does sell the higher priced merchandise.

8. Respondent is not making a bona fide offer to sell a complete sewing machine without attachments for the advertised price. The advertised price is for a sewing machine head and does not include such essentials as a base or stand, without which the head of the machine is useless.

9. Respondent's products are not unconditionally guaranteed for the period of time stated in said advertisements or orally represented by respondent's salesmen. To the contrary, the only guarantee for respondent's products is that which is provided by the manufacturers thereof, and such guarantees are subject to conditions and limitations not disclosed in respondent's representatives' oral representations.

10. The quantities of merchandise and the time during which such are purportedly available for sale are not limited. In fact, this representation is designed to act as the inducement for the practices set forth in Paragraph Six 7, hereof.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of his aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in commerce, with corporations, firms and individuals in the sale and distribution of merchandise of the same general kind and nature as that sold by respondent.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices, and his failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute,

unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violation of the Textile Fiber Products Identification Act and the implementing rules and regulations promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 10. Respondent is now, and for some time last past has been, engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, of textile fiber products including rugs and floor covering and has sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 11. Certain of said textile fiber products were misbranded by respondent within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and of the rules and regulations promulgated thereunder, in that they were falsely and deceptively advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

PAR. 12. Certain of said textile fiber products were falsely and deceptively advertised in that respondent in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and to assist, directly or indirectly, in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the rules and regulations promulgated under said Act.

PAR. 13. Among such textile fiber products, but not limited thereto, were rugs which were falsely and deceptively advertised in the Washington Post, a newspaper published in the District of Columbia, having a wide circulation in the District of Columbia and various other States of the United States, in that said rugs were described by such fiber connoting terms among which, but not limited thereto, was

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"Acrilan," and the true generic name of the fiber contained in such rugs was not set forth.

PAR. 14. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent has falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the rules and regulations promulgated thereunder in the following respects:

1. In disclosing the fiber content information as to floor coverings containing exempted backings, fillings, or paddings, such disclosure was not made in such a manner as to indicate that such fiber content information related only to the face, pile or outer surface of the floor covering and not to the backing, filling or padding, in violation of Rule 11 of the aforesaid rules and regulations.

2. A fiber trademark was used in advertising textile fiber products, without a full disclosure of the fiber content information required by said Act, and the regulations promulgated thereunder, in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid rules and regulations.

3. A fiber trademark was used in advertising textile fiber products, containing only one fiber and such fiber trademark did not appear, at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type, in violation of Rule 41(c) of the aforesaid rules and regulations.

PAR. 15. The acts and practices of respondent as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and rules and regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices, in commerce, and unfair methods of competition, in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed 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 in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hammond Begun is an individual and a former partner, trading and doing business as Freight Liquidators at 1616 North Ritchie Highway, Glen Burnie, Maryland.

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

ORDER

I

It is ordered, That respondent Hammond Begun, individually, and as a former partner, trading and doing business as Freight Liquidators, or under any other trade name or names, and respondent's agents, representatives and employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of rugs, sewing machines, stereo radios and phonographs, or any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Liquidators," "Freight," "Forwarding," or any other word or words of similar import or meaning in or as part of respondent's corporate or trade name or names; or representing, orally or in writing, directly or by implication, that he is a liquidator, authorized adjuster or agent engaged in the sale or disposition of bankrupt, salvage, distrained, distress or transportation company surplus merchandise; or is engaged in liquidating,

adjusting, paying off or otherwise settling indebtedness or claims; or misrepresenting, in any manner, his trade or business status.

2. Representing, directly or indirectly, orally or in writing, that any merchandise offered for sale is bankrupt, salvage, distressed, distress or transportation company surplus merchandise; or misrepresenting, in any manner, the source, character or nature of the merchandise being offered for sale.

3. (a) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondent's stated price and respondent's former price unless such merchandise has been sold or offered for sale in good faith at the former price by respondent for a reasonably substantial period of time in the recent, regular course of his business.

(b) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondent's stated price and a compared price for said merchandise or services in respondent's trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise at the compared price or some higher price.

(c) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondent's stated price and a compared value price for comparable merchandise, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondent has in good faith conducted a market survey or obtained a similar representative sample of prices in his trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality.

4. Failing to maintain and produce for inspection or copying, for a period of three years, adequate records (a) which disclose the facts upon which any savings claims, sale claims and other similar representations as set forth in Paragraph Three of this order are based, and (b) from which the validity of any savings claims, sale claims and similar representations can be determined.

5. Using, in any manner, a sales plan, scheme, or device wherein false, misleading, or deceptive statements or representations are made in order to obtain leads or prospects for the sale of merchandise.

6. Making representations, directly or indirectly, orally or in writing, purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise or services but to obtain leads or prospects for the sale of other merchandise at higher prices.

7. Representing, directly or indirectly, orally or in writing, that any merchandise is offered for sale when such offer is not a bona fide offer to sell such merchandise.

8. Discouraging or disparaging, in any manner, the purchase of any merchandise which is advertised or offered for sale.

9. Failing to maintain and produce for inspection and copying for a period of three years adequate records to document for the entire period during which each advertisement was run and for a period of six weeks after the termination of its publication in press or broadcast media:

- a. the cost of publishing each advertisement including the preparation and dissemination thereof;
- b. the volume of sales made of the advertised product or service at the advertised price; and
- c. a computation of the net profit from the sales of each advertised product or service at the advertised price.

10. Advertising or offering merchandise for sale when the advertised merchandise is inadequate for the purposes for which it is offered.

11. Representing, directly or indirectly, orally or in writing, that any product is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and respondent delivers to each purchaser a written guarantee clearly setting forth all of the terms, conditions and limitations of the guarantee fully equal to the representations, directly or indirectly, orally or in writing, made to each such purchaser, and unless respondent promptly and fully performs all of his obligations and requirements under the terms of each such guarantee.

12. Representing, directly or indirectly, orally or in writing, that the supply of merchandise or the time during which it is

available for sale is limited unless respondent establishes that his supply of any article of merchandise advertised was not sufficient to meet reasonably anticipated demands therefor, and that his supply could not be replenished through his customary sources.

13. Failing to maintain and produce for inspection or copying for a period of three (3) years, adequate records from which compliance with the prohibition of Paragraph Twelve of this order can be determined.

II

It is further ordered, That respondent Hammond Begun, individually and as a former partner, trading and doing business as Freight Liquidators, or under any other trade name or names, and respondent's agents, representatives and employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale, in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products as to the name or amount of the constituent fibers contained therein.

B. Falsely and deceptively advertising textile products by:

1. Making any representations by disclosure or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote or assist, directly or indirectly, in the sale, or offering for sale, of such textile fiber product unless the same information required to be shown on the stamp, tag, label or other means of identification under Sections 4(b) (1) and (2) of the Textile Fiber Products Identification Act is contained in the said

advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Failing to set forth in advertising the fiber content of the floor covering containing exempted backings, fillings or paddings, that such disclosure relates only to the face, pile or outer surface of such textile fiber products and not to the exempted backings, fillings or paddings.

3. Using a fiber trademark in advertising textile fiber products without a full disclosure of the required fiber content information in at least one instance in said advertisement.

4. Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing at least once in the advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type.

It is further ordered, That respondent do forthwith cease and desist from disseminating, or causing the dissemination of any advertisement of merchandise by means of newspapers, or other printed media, television or radio, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, unless respondent clearly and conspicuously discloses in each advertisement the following notice set off from the text of the advertisement by a black border:

The Federal Trade Commission has found that we have engaged in bait & switch advertising solely designed to sell products other than those advertised.

One year from the date this order becomes final or any time thereafter, respondent upon showing that he has discontinued the practices prohibited by this order and that the notice provision is no longer necessary to prevent the continuance of such practices may petition the Commission to waive compliance with this order provision.

It is further ordered, That respondent shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized for the purpose of obtaining leads for the sale of merchandise, or utilized in the advertising, promotion or sale of merchandise.

It is further ordered, That respondent, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondent and each newspaper publishing company, television or radio station, or other advertising media which is

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utilized by the respondent to obtain leads for the sale of merchandise, or to advertise, promote, or sell merchandise, with a copy of the Commission's News Release setting forth the terms of this order.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the offering for sale, sale of any product, or in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

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

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

IN THE MATTER OF
THE KROGER CO.

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