

IN THE MATTER OF

THE ROUSE COMPANY

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

Docket C-2663. Complaint, May 7, 1975—Decision, May 7, 1975

Consent order requiring a Columbia, Md., based regional shopping center developer, among other things to cease controlling the pricing and advertising practices of its tenants.

Appearances

For the Commission: *James D. Tangires and Gary M. Laden.*

For the respondent: *Lewis A. Noonberg, Piper & Marbury,*
Baltimore, Md.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. §41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the corporation named as respondent in the caption hereof, and more particularly designated and described hereinafter, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act as amended, and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint, stating the following:

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

(a) The term "respondent" refers to The Rouse Company, a corporation, its successors and assigns, any corporation, subsidiary,

division or other device, their officers, agents, representatives and employees.

(b) The term "shopping center" refers to a group of retail outlets in the United States of America, planned, developed and managed as a unit in relation to a trade area which the development is intended to serve and providing on-site parking in some definite relationship to the types and sizes of stores in the development.

(c) The term "tenant" refers to any occupant or potential occupant of retail space in a shopping center, whether as lessee or owner of such space.

(d) The term "retailer" refers to a tenant which sells merchandise or services to the public.

(e) The terms "price or prices," "range of prices" and "price range" refer to such descriptive words as "popular priced," "medium priced," "high priced," "better priced," "the sale of merchandise not to exceed \$10," and "the sale of merchandise not less than 99 cents."

PAR. 2. Respondent, The Rouse Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business located at The Rouse Company Headquarters Bldg. in Columbia, Md. The Rouse Company's subsidiaries are engaged in the acquisition, development and ownership of income producing real estate in the United States and Canada. The term "Rouse" used hereinafter includes The Rouse Company and its subsidiaries.

The following Rouse subsidiaries have developed regional shopping centers in the United States:

- (a) Almeda Mall, Inc. - Almeda Mall Houston, Tex.
- (b) Charlottetown, Inc. - Charlottetown Mall Charlotte, N. C.
- (c) Cherry Hill Center, Inc. - Cherry Hill Mall Cherry Hill, N. J.
- (d) Columbia Mall, Inc. - Columbia Mall Columbia, Md.
- (e) Eastfield Mall, Incorporated - Eastfield Mall Springfield, Mass.
- (f) Echelon Mall, Inc. - Echelon Mall Echelon, N. J.
- (g) Exton Square, Inc. - Exton Mall Exton, Pa.
- (h) Franklin Park Mall, Inc. - Franklin Park Mall Toledo, Ohio
- (i) Greengate Mall, Inc. - Greengate Mall Greensburg, Pa.
- (j) Harundale Mall, Inc. - Harundale Mall Glen Burnie, Md.
- (k) Austin Mall, Inc. - Highland Mall Austin, Tex.
- (l) Louisville Shopping Center, Inc. - Louisville Mall Louisville, Ky.
- (m) North Star Mall, Inc. - North Star Mall San Antonio, Tex.
- (n) Northway Mall, Inc. - Northway Mall Pittsburgh, Pa.
- (o) Northwest Mall, Inc. - Northwest Mall Houston, Tex.
- (p) Paramus Park, Inc. - Paramus Park Mall Paramus, N. J.
- (q) Perimeter Mall, Inc. - Perimeter Mall Atlanta, Ga.

(r) Plymouth Meeting Mall, Inc. - Plymouth Meeting Mall Montgomery County, Pa.

(s) Salem Mall, Incorporated - Salem Mall Dayton, Ohio

(t) The Willowbrook Corporation - Willowbrook Mall Wayne, N. J.

(u) Woodbridge Center, Inc. - Woodbridge Mall Woodbridge, N. J.

The property on which the aforesaid regional shopping centers were developed by Rouse is held in fee, leasehold, in fee and leasehold, and in fee by joint venture. For the fiscal year ending May 31, 1973, Rouse had total revenues which exceeded \$57,000,000, of which approximately \$35,000,000 was earned or received from its regional shopping center operations.

Rouse is one of the nation's largest shopping center developers, having built regional shopping centers in at least 12 States. The regional shopping centers developed by Rouse have approximately 15,664,130 square feet of leasable area. Rouse owns approximately 8,260,130 square feet of this leasable area, with the balance of leasable area owned or operated by major tenants in the regional shopping centers. The stores or businesses which lease or occupy space in Rouse's shopping centers offer to sell a variety of consumer goods and services. The annual retail sales to consumers of these various goods and services in Rouse's shopping centers exceeds \$1,000,000,000.

PAR. 3. In the course and conduct of its business, Rouse has, and is now engaged in negotiating and executing agreements, leases, and building agreements with persons located in various States throughout the country with respect to constructing, leasing, and operating retail stores in Rouse shopping centers. In the course and conduct of the negotiation and execution of these agreements, leases, and building agreements, exchanges of information and communications have taken place between Rouse headquarters in Maryland and persons referred to above in various other States. Rouse has disseminated, and caused to be disseminated, certain advertisements and promotional materials concerning occupancy in its shopping centers through the use of various news media in commerce. Correspondence with respect to the approval of tenants for inclusion in Rouse shopping centers passes between various States by use of the United States mail. Tenants in Rouse shopping centers purchase consumer products from suppliers located throughout the United States, advertise these products in newspapers circulated in various States, and resell these products in substantial quantities to consumers, including some who cross State lines to transact business in Rouse shopping centers. By and through the aforesaid course and conduct of its business, Rouse has engaged and is now engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. The movement of population from the central city to the suburbs has precipitated the growth of shopping centers in suburban areas. In 1972, retail sales in shopping centers in the United States were approximately \$123.5 billion and accounted for approximately 44 percent of the total retail sales in the United States. Retail sales for regional shopping centers accounted for 45 percent of the total retail sales in shopping centers. In 1972, over 20 percent of the total retail sales, amounting to approximately \$56 billion, were made in regional shopping centers.

Regionally shopping centers are the most economically significant type of shopping center. They reproduce to a substantial extent the retail facilities once available only in downtown business districts, and are displacing and replacing the central, downtown business districts as primary outlets for retail distribution of goods and services.

PAR. 5. Except to the extent that competition has been hindered, lessened and eliminated as set forth in this complaint, retailers selling goods and services in the respondent's shopping centers are in competition with each other and with other retailers; and Rouse is in substantial competition in commerce with others engaged in the development of shopping centers.

PAR. 6. In the course and conduct of its business, respondent is and has been engaged in unfair methods of competition and unfair acts and practices in commerce in that it has unfairly and unlawfully inserted restrictive provisions in its leasing arrangements, operating agreements, contracts, or understandings entered into with tenants in shopping centers which tend to maintain, control, fix and establish the retail selling prices of goods and services by these tenants. Typical and illustrative of said restrictive provisions, but not all inclusive thereof, are the following:

Tenant will not operate or cause to be operated a discount house or discount business on the leased premises. "Discount house" or "discount business," for the purposes of this lease, shall mean a retail establishment which regularly sells the major portion of its merchandise off-price or at prices below normal usual retail prices, or advertises or holds itself out to the public as a discount house or as one regularly selling off-price.

The leased premises shall be used by Tenant solely for the purpose of costume jewelry and watches not to exceed \$10 in price.

The leased premises shall be used by Tenant solely for the purpose of conducting therein the business of sale, at retail, of medium to better priced costume jewelry (not less than 99 cents for any one item), women's handbags and light accessories.

PAR. 7. The aforesaid lease provisions, operating agreements, contracts, or understandings between the respondent and its tenants set forth in Paragraph Six have had and continue to have the tendency to restrain trade and commerce. Included among the effects of such restraints are the following:

- (a) fixing, controlling and maintaining retail prices;

(b) eliminating, hindering, and discouraging discount advertising, discount pricing, and discount selling;

(c) denying the right to determine the prices or range of prices at which tenants may sell their goods and services in shopping centers;

(d) denying the public the benefit of price competition.

The aforesaid lease provisions, operating agreements, contracts, or understandings, respondent's acts, practices and method of competition in connection therewith, and the adverse competitive effects resulting therefrom constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

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 complaint which the Washington, D.C. Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney 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 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 sixty (60) 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 The Rouse Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at The Rouse Company Headquarters Bldg. in Columbia, Md.

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

A. *It is ordered*, That respondent The Rouse Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, joint venture or other device, do forthwith cease and desist from making, carrying out, or enforcing, directly or indirectly, an agreement or provision of an agreement which:

1. specifies that any retailer in any of respondent's shopping centers shall or shall not sell merchandise or services at any particular price or within any range of prices;

2. specifies that any retailer in any of respondent's shopping centers shall not be a discounter or sell merchandise or services at discount prices;

3. specifies the content of or prohibits any type of advertising by a retailer, other than advertising within any of respondent's shopping centers, except that respondent may require a tenant to include the name, insignia, or other identifying mark of any of respondent's shopping centers in advertising pertaining to the tenant's store in any of respondent's shopping centers; or

4. prohibits price advertising within any of respondent's shopping centers or controls advertising within any of respondent's shopping centers in such a way as to make it difficult for consumers to discern advertised prices from the common area of such shopping centers, provided that in all other respects, respondent may make, carry out and enforce reasonable standards for advertising within any of respondent's shopping centers.

B. *It is further ordered*, That respondent will within sixty (60) days after service of this order mail a copy of Letter "A," attached hereto, to all tenants in respondent's shopping centers whose leases make reference in the use clauses to the price or quality of the merchandise or services to be sold.

C. *It is further ordered*, That respondent cease and desist from entering into any agreement with any tenant that said tenant may:

1. specify or control or may require respondent to specify or control prices or price ranges of merchandise or services sold by any other retailer;

2. control or may require respondent to control discounting by any other retailer; or

3. exclude any retailer from any of respondent's shopping centers by reason of such retailer's discount selling or discount advertising.

D. *It is further ordered*, That respondent advise the Commission in writing within sixty (60) days after respondent has knowledge of any occasion that:

1. a tenant disapproves the admission into any of respondent's shopping centers of any other retailer;

2. a tenant refuses to approve the renewal of another retailer's lease in any of respondent's shopping centers;

3. a tenant approves the admission of another retailer into any of respondent's shopping centers subject to conditions imposed by the tenant relating to the pricing, price ranges, trade names, store names, trade marks, brands or lines of merchandise, or the discounting practices or methods of such other retailer; or

4. a tenant enters into an agreement with respondent to become a tenant in any of respondent's shopping centers on condition that respondent refuse to renew the lease of another retailer.

E. *It is further ordered*, That respondent will not base its decision to grant, renew or extend the lease of a tenant in any of respondent's shopping centers upon the pricing practices of such tenant.

II

It is further ordered, That respondent shall:

A. distribute a copy of this order to each of its operating divisions within thirty (30) days after service of this order;

B. within thirty (30) days after service of this order upon respondent, notify each tenant in any of respondent's shopping centers of this order by providing each tenant with a copy of this order by registered or certified mail;

C. within sixty (60) days after service of this order upon respondent, file with the Commission a report showing the manner and form in which it has complied and is complying with each and every specific provision of this order; and

D. 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.

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Decision and Order

LETTER "A"

[On Official Stationery of The Rouse Company subsidiary or affiliate
operating the particular shopping centers affected by this order]

Gentlemen:

We have consented to the issuance by the Federal Trade Commission of an order which, among other things, prohibits us from specifying that our tenants shall or shall not sell merchandise or services at any particular price or within any range of prices. A copy of the order is enclosed.

Your lease may describe the merchandise or services you are to sell in terms such as "popular priced," "medium priced," "high priced," "medium to better quality," or the like. Please be advised that such language is intended only as a description of the general quality of the merchandise or services you sell. It is not intended and will not be enforced to affect the retail selling price of your merchandise or services. Pursuant to the terms of the order you are free to set the prices for your merchandise and services and are not required to adhere to any particular price or within any range of prices, expressed or implied, in your lease or in any other agreements with the shopping center.

Neither this letter nor the attached order shall operate as a waiver of any rights which we may now have to require you to sell certain merchandise or services at a general quality level or levels.

Sincerely,

Vice President
Rouse Subsidiary or Affiliate
