

IN THE MATTER OF
ASSOCIATED DRY GOODS CORPORATION
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT

Docket 8905. Complaint, Dec. 1, 1972-Decision, July 28, 1975.

Consent order requiring a New York City department store organization, among other things to divest itself of all stocks, assets, properties, etc., which it acquired in 1972, comprising Ayr-Way Stores, Inc.

Appearances

For the Commission: *Martin A. Rosen, Peter J. Brickfield, and David B. Loken.*

For the respondents: *W.S. Jackson, Milbank, Tweed, Hadley & McCloy and Theodore J. Carlson, Gould & Wilkie, New York City. Abe Krash, Arnold & Porter, Wash., D. C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Associated Dry Goods Corporation has violated the provisions of Section 7 of the Clayton Act (15 U.S.C. § 18) through its acquisition of L.S. Ayres and Company, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

I. Definitions

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

(a) "Department stores," as referred to herein, includes retail establishments normally employing 25 people or more, having sales of apparel and soft goods combined amounting to 20 percent or more of total sales and engaged in selling each of the following lines of merchandise:

- (i) Furniture, home furnishings, appliances, radio and TV sets;
- (ii) A general line of apparel; and
- (iii) Household linens and dry goods.

For establishments classified as department stores, sales of each of the lines listed above must be less than 80 percent of total sales. However, an establishment with total sales of \$5 million or more is classified as a department store even if sales of one of the merchandise lines described above exceed the maximum percent of total sales,

provided that the combined sales of the other two groups is \$500,000 or more.

This definition corresponds to Bureau of Census Industry Classification No. 531. Both discount department stores and conventional department stores (including, as to both categories, chain store operations) fall within such definition; the essential difference between these two types of department stores being that the discount department stores utilize mostly self service techniques and operate at a lower gross margin of profit than most conventional department stores and, as a consequence, compete primarily as to price.

(b) "GMAF stores," as used herein, refers to all retail establishments included in the following Bureau of Census Major Industry Group and Industry Classifications.

<i>Census Number</i>	<i>Descriptions</i>
Classification #531	Department stores
Major Industry Group #56	Other stores primarily engaged in the sale of apparel.
Classification #533	Limited price variety stores
Classification #539	General merchandise stores, dry goods stores and sewing and needlework stores.
Major Industry Group #57	Furniture, home furnishings, appliances and equipment stores.

(c) The "Louisville Standard Metropolitan Statistical Area" is comprised of Jefferson County, Kentucky and Clark and Floyd Counties, Indiana.

(d) The "Evansville Standard Metropolitan Statistical Area" is comprised of Vanderburgh and Warrick Counties, Indiana and Henderson County, Kentucky.

(e) The "Lexington Standard Metropolitan Statistical Area" is comprised of Fayette County, Kentucky.

II. Associated Dry Goods Corporation

2. Associated Dry Goods Corporation (Associated) is a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal office located at 417 Fifth Ave., New York, N.Y.

3. Associated is one of the largest department store organizations in the United States, with net sales during the fiscal year ended Jan. 29, 1972, of approximately \$849 million. Prior to the instant acquisition it operated 15 store divisions, each consisting of a main store and-with

one exception—one or more branch stores, located in 17 states and the District of Columbia. Altogether, the 15 divisions operated a total of 86 stores, occupying in the aggregate approximately 16,904,600 square feet of floor area. New stores and enlargements nearing completion and expected to open in 1972 will provide an additional 878,000 square feet of floor area.

4. Each of Associated's store divisions, and their constituent stores, are major retail institutions in the markets in which they are located. Nine of the 15 store divisions are the result of a series of acquisitions of major department store operations consummated since 1955, including: J.W. Robinson Co. (Southern California), Sibley, Lindsay & Curr Co. (Upstate New York), Stix, Baer & Fuller (Missouri), The Denver Dry Goods Company (Colorado), Joseph Horne Co. (Western Pennsylvania), The H.S. Pogue Company (Southwestern Ohio), Goldwaters (Phoenix, Arizona), Erie Dry Goods Company (Erie, Pennsylvania) and The Diamond (West Virginia). A major portion of Associated's business, in terms of square footage of floor area, sales volume and geographic areas of operations, is attributable to these acquisitions.

5. Associated does business in the Louisville, Lexington and Evansville Standard Metropolitan Statistical Areas (SMSA's) through its Stewart Dry Goods Company division (Stewart's). Stewart's operates two department stores, its main store, and a branch, in the Louisville SMSA, two branch department stores in the Lexington SMSA and a single branch department store in the Evansville SMSA.

6. The two Stewart's department stores in the Louisville SMSA, combined, have 715,500 square feet of floor area and had combined sales of approximately \$27 million in 1971. Stewart's is the leading department store operation in the Louisville market in terms of floor area and the second ranking department store operation and GMAF store operation in terms of sales volume.

7. The Stewart's branch department store in Evansville has 134,400 square feet of floor area and had sales of approximately \$4.7 million in 1971. It is the second largest individual department store in the Evansville SMSA in terms of floor area and ranks fourth among individual department stores in sales volume. Stewart's has the fifth ranking department store operation in the Evansville SMSA, in terms of sales, and is the fifth ranked GMAF store operator in that market.

8. Associated is, and has been, engaged in "commerce" within the meaning of Section 7 of the Clayton Act.

III. L.S. Ayres and Company

9. Prior to its acquisition by Associated Dry Goods Corporation on or about Apr. 20, 1972, L.S. Ayres and Company (Ayres) had been a

corporation organized and existing under the laws of the State of Indiana, with its principal office located at 1 W. Washington St., Indianapolis, Ind.

10. Ayres was the leading independent department store organization in the State of Indiana, with net sales during the fiscal year ended Jan. 29, 1972, of approximately \$213 million. It operated 30 conventional and discount department stores and 12 apparel specialty shops in various metropolitan markets in the States of Indiana, Illinois, Ohio and Kentucky, and a wholesale furniture business in Indianapolis, Ind. Ayres' department stores occupied in the aggregate approximately 3,867,000 square feet of floor area. New stores and enlargements nearing completion and expected to open in 1972 will provide an additional 271,000 square feet of floor area.

11. L.S. Ayres and Company was founded in 1872 and assumed its present name in 1874. Prior to 1958, substantially all of the company's operations were conducted in its main department store in downtown Indianapolis, Ind. Since then the company has undertaken an extensive expansion program. In 1958, it opened its first conventional department store branch, and has since opened four other such branches and acquired five additional conventional department stores. In 1961, it opened its first discount department store, and has since opened 19 additional similar stores. In 1968, it opened the first of its apparel specialty shops. Eleven additional similar shops have since been established. The substantial growth of Ayres as a department store operator and GMAF store operator has been accomplished preponderantly through internal expansion.

12. Ayres was doing business in the Louisville, Lexington and Evansville SMSA's at the time the instant acquisition was consummated. Its initial entry into these markets was accomplished through the opening of two discount department stores in Evansville in the mid 1960's. Its most recent store opening in these markets was the establishment of a specialty apparel shop in Lexington in August 1971, representing its initial entry into that market.

13. In the Louisville SMSA, Ayres was operating (and Associated now operates) two conventional department stores, two discount department stores and an apparel specialty shop. Two additional discount department stores are scheduled for opening in August 1972. The conventional stores, representing Ayres' initial entry into the Louisville market, were acquired late in 1969. The apparel specialty shop was opened in 1970 and the two existing discount department stores were opened in 1971.

14. The four department stores formerly operated by Ayres in the Louisville SMSA, combined, have approximately 328,000 square feet of

floor area and had combined sales of approximately \$16 million during 1971. In terms of square footage of floor area, they made Ayres the third largest department store operation in the Louisville market. Upon the opening of the two additional discount department stores, in August 1972 Ayres would have become the second largest department store operation in Louisville in terms of floor area, exceeded only by Stewart's. With regard to sales volume, Ayres was the fifth ranking department store operator and the eighth ranking GMAF store operator in the Louisville SMSA. With the opening of additional stores, and increased consumer familiarity with and acceptance of the Ayres name, Ayres' market share and market rank as a department store operator and GMAF store operator in the Louisville SMSA and market rank could have been expected to increase appreciably.

15. The two department stores in the Evansville SMSA formerly operated by Ayres (and presently operated by Associated) have 176,000 combined square feet of floor area and had combined sales of approximately \$9.5 million during 1971. Ayres had the second largest department store operation in the Evansville market in terms of floor area. With regard to sales, it was the third ranking department store operator and GMAF store operator in said market.

16. Ayres was engaged in "commerce" within the meaning of Section 7 of the Clayton Act.

IV. The Acquisition

17. On or about Apr. 20, 1972, Associated acquired the assets of L.S. Ayres and Company, consisting of all of the stock of Ayres' wholly owned operating subsidiaries, in exchange for common stock of Associated having a market value on the above date of approximately \$80 million. The Associated stock was then distributed to Ayres' shareholders and Ayres was dissolved as a corporate entity.

V. Nature of Trade and Commerce

A. *Generally*

18. GMAF stores comprise the leading group of retail operations in the United States, with a sales volume approaching \$100 billion in 1970. GMAF store sales represent approximately 25 percent of all retail sales in the United States.

19. Department stores are the leading component within the GMAF store group, accounting for approximately 38 percent of GMAF store sales, as of 1970. Department stores are the third most important group of retail stores in the United States, exceeded in sales volume only by grocery stores and automotive dealers. Their national sales volume of

approximately \$38.5 billion in 1970 represented over 10 percent of all retail sales in the country. The percentage of all retail sales accounted for by department store sales has, moreover, been rising in recent years.

20. Department stores constitute a distinct line of commerce, recognized as such by the consuming public, the trade, and agencies and organizations which gather and disseminate information on retailing as a distinct line of commerce.

21. The department store industry has been subject to a significant and continuing merger trend in recent years, and is substantially and increasingly dominated by multi-unit organizations. A number of leading multi-unit organizations are currently subject to Federal Trade Commission consent orders in connection with previous acquisitions and mergers.

B. *Louisville, Evansville and Other Markets*

22. Department store sales in the Louisville SMSA totalled approximately \$270 million in 1971, and GMAF store sales totalled approximately \$520 million. Associated's 1971 sales through its two Louisville department stores were approximately \$27 million. Ayres' 1971 department store sales in the Louisville SMSA were approximately \$16 million. In addition, Ayres' specialty apparel shop had total 1971 sales of approximately \$200 thousand in said market. These sales represent the following approximate shares of 1971 sales in the respective lines of commerce in the Louisville SMSA.

	<i>Associated</i>	<i>Ayres</i>	<i>Combined</i>
<i>Department stores</i>	10.1%	5.9%	16.0%
<i>GMAF stores</i>	5.2%	3.1%	8.3%

Prior to the instant acquisition, Associated ranked second in sales among department stores and among GMAF stores in said market. Following the acquisition, Associated ranks first in both lines of commerce.

With regard to existing concentration, prior to the acquisition the four leading sellers in the Louisville SMSA accounted for approximately 41.3 percent of department store sales and 22.8 percent of GMAF store sales. The eight leading sellers accounted for approximately 64.3 percent of department stores sales and 38.3 percent of GMAF store sales. Following the acquisition such figures are approximately as follows:

	<i>Top 4</i>	<i>Top 8</i>
<i>Department stores</i>	47.3%	68.2%
<i>GMAF stores</i>	25.9%	40.7%

23. Department store sales in the Evansville SMSA totalled approximately \$80 million in 1971, while GMAF store sales totalled approximately \$158 million. Associated's 1971 department store sales in said market totalled approximately \$4.7 million. Ayres' 1971 total department store sales in the Evansville SMSA were approximately \$9.6 million. In addition, Ayres' specialty apparel shop had total 1971 sales of approximately \$180 thousand in said market. These sales represent the following approximate shares of 1971 sales in the respective lines of commerce in the Evansville SMSA.

	<i>Associated</i>	<i>Ayres</i>	<i>Combined</i>
<i>Department stores</i>	5.9%	12.1%	18.0%
<i>GMAF stores</i>	3.0%	6.1%	9.1%

Prior to the instant acquisition, Associated ranked fifth in sales among department stores and GMAF stores in said market. Following the acquisition, Associated ranks third in both lines of commerce.

With regard to existing concentration, prior to the acquisition the four leading sellers in the Evansville SMSA accounted for approximately 71.5% of department store sales and 38.5% of GMAF store sales. The eight leading sellers accounted for approximately 47.7% of GMAF store sales. Following the acquisition such figures are approximately as follows:

	<i>Top 4</i>	<i>Top 8</i>
<i>Department stores</i>	77.4%	
<i>GMAF stores</i>	41.4%	48.8%

24. In addition to competition between Associated and Ayres in the Louisville and Evansville SMSA's, the two companies are potential significant competitors in a number of other metropolitan areas in or near the midwestern United States, including, for example, Indianapolis, Ind., Dayton, Ohio and Lexington, Ky. Initial actual competition in the Lexington SMSA commenced in 1971, with the establishment of Ayres' specialty apparel shop. Associated's Stewart's division opened an additional branch department store in Lexington in May 1972, located in the same shopping center as Ayres' recently established apparel shop.

VI. *Effects of the Acquisition*

25. The effect of the acquisition of Ayres by Associated may be substantially to lessen competition or to tend to create a monopoly in the department store industry and/or the GMAF store industry, throughout the United States or in certain sections thereof. In particular, the effects of such violation have been and may be the following, among others:

(a) Actual and potential competition between Associated and Ayres in the department store industry and/or the GMAF store industry has been eliminated, prevented or lessened in the Louisville and Evansville SMSA's.

(b) Potential competition between Associated and Ayres in the department store industry and/or the GMAF store industry has been eliminated, prevented or lessened in other metropolitan areas in or near the midwestern United States.

(c) Associated, a significant competitive factor in the department store industry and the GMAF store industry in the Louisville and Evansville SMSA's, has eliminated Ayres as another significant competitive factor in such markets.

(d) Concentration in the department store industry and the GMAF store industry will be preserved and increased in the Louisville and Evansville SMSA's, in other metropolitan areas in or near the midwestern United States and throughout the United States.

VII. *Violation Charged*

26. The effect of Associated's acquisition of Ayres may be substantially to lessen competition or to tend to create a monopoly, in violation of Section 7 of the Clayton Act (15 U.S.C. §18), as more fully described in Paragraph 25, above.

DECISION AND ORDER

The Federal Trade Commission, having issued a complaint charging that the respondent named in the caption hereof has violated the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. §18; and

Upon joint application of the parties and certification of such application to the Commission by the administrative law judge, the Commission, by order dated Jan. 23, 1975, having withdrawn the matter from adjudication pursuant to Section 2.34(d) of the rules of practice; and

Respondent and complaint counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by respondent of all jurisdictional facts set forth in the 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, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted it, and the agreement containing consent order

having thereupon been placed on the public record for a period of sixty (60) days having duly considered the comment filed thereafter pursuant to Section 2.34(b) of its rules;

Now, in further conformity with the procedure prescribed in Section 3.25(d) of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Associated Dry Goods Corporation is a corporation, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 417 Fifth Ave., New York, N.Y.
2. The Federal Trade Commission has jurisdiction of this proceeding and of the respondent, and this proceeding is in the public interest.

ORDER

I

Respondent shall, as soon as possible and in no event later than two years from the effective date of this order, divest all of the assets, properties, stores, good will, rights, privileges and interests of whatever nature, real, personal, tangible and intangible (subject to liabilities and to the other provisions of this order) comprising Ayr-Way Stores, Inc., a division of respondent Associated. Divestiture shall include but shall not be limited to the Ayr-Way stores and warehouse listed in the schedule attached hereto as Exhibit A and all Ayr-Way facilities opened after Dec. 1, 1974, and prior to divestiture.

Respondent may, but shall not be required to divest the names, trademarks, service names, service marks, or logos "Ayr-Way" or "Ayr-Way Stores, Inc." Nothing in this order shall be deemed to require the divestiture of respondent of the names, trademarks, service names, service marks, or logos "Associated Dry Goods Company," "Ayres," "L.S. Ayres" or "L.S. Ayres and Company, Inc.," or to require the divestiture of any other assets relating to the business of Associated Dry Goods Corporation or L.S. Ayres and Company, Inc.

Divestiture shall be in a manner which preserves the assets and business of Ayr-Way Stores, Inc. as a going concern and fully effective competitor.

In the event that respondent elects to divest itself of the assets or capital stock of Ayr-Way Stores, Inc. by a sale of such assets or capital stock other than by means of a public offering of capital stock which is registered pursuant to the Securities Act of 1933, the acquirer or acquirers shall be approved in advance by the Commission. Nothing in this order shall be deemed to preclude divestiture to a firm which is engaged in operating department stores or GMAF stores, as defined by

the Complaint, if such acquirer is otherwise acceptable to the Commission. Respondent shall not knowingly sell, divest, or otherwise transfer, directly or indirectly, any assets or stock of Ayr-Way Stores, Inc. to any person (other than an underwriter or selling dealer) who is at the time of the transfer the beneficial owner of more than two (2) percent of the outstanding stock of Associated.

If divestiture has not been effected within the two-year period provided by this order, the Commission, on request submitted at least 30 days prior to the expiration of the period shall grant respondent an opportunity to file a written submission which it will consider before issuing any further order or orders which may be deemed appropriate.

II

Associated or its subsidiaries may be obligated on the effective date of this order as lessee, guarantor or otherwise with respect to leases pertaining to Ayr-Way stores, its land or buildings, and other obligations of Ayr-Way. Associated will use its good faith efforts to obtain releases of such obligations in connection with the divestiture. In the event that Associated is unable to obtain such releases, the divestiture herein provided shall be deemed to have been accomplished notwithstanding the continuance of any such obligations on the part of Associated, *Provided*, That at the time of divestiture the acquiring entity assumes responsibility for the operation of the divested facilities; and *Provided further*, That the continuance of any such obligation on the part of Associated does not give rise to any influence or control, on the part of Associated in, over or with respect to the operations by said entity of the facilities divested.

In the event of default by the acquiring entity with respect to any such lease or other obligation upon which Associated may remain obligated, Associated shall be entitled, without being deemed to have violated any provisions of this order, to take whatever action may be necessary with respect to the defaulted facility or facilities to hold itself harmless from the consequences of any such default or defaults, including the right to repossess and to reoperate any such retail facility or facilities the lease of which is in default, *Provided*, That Associated notifies the Commission within 48 hours of taking such action, and Associated shall redinvest itself of any such retail facilities so repossessed within one year from the date of repossession unless a longer period is approved by the Commission, or unless the Commission approves the continued operation by Associated of any such facility.

Associated shall not utilize the names, trademarks, service names, service marks, or logos "Ayr-Way" or "Ayr-Way Stores, Inc.," in the

course of any retail business operated by Associated for a period of at least two years from the date of the divestiture.

III

(1) Pending divestiture, respondent shall make every reasonable effort to maintain and preserve the assets and business of Ayr-Way Stores, Inc. in good operating condition with such replacements and additions and such effective overall organization as may be necessary to divest Ayr-Way Stores, Inc. as a viable competitive entity; *Provided, however,* That nothing contained herein shall be deemed to require respondent to continue to operate any store which has become so unprofitable that sound business judgment requires its closing or which is rendered inoperative as a result of force majeure or other event beyond the control of respondent.

(2) Whether the operation of a particular store 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. An "operating loss" occurs when the total operating revenues of a store 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 L.S. Ayres and Company, Inc. or Associated Dry Goods Corporation. Other general and administrative expenses, provision for doubtful accounts and inventory adjustments shall be deemed to be reasonable if they do not exceed by more than one-third Associated Dry Goods' average for stores of similar size. Corrections to year-end statements and inventory shall be made in accordance with the methods and procedure used by Ayr-Way Stores, Inc. for the two years prior to the making of corrections.

(3) The judgment of respondent that a particular store should be closed prior to divestiture shall be communicated in writing to the Commission at least 30 days before the proposed closing, together with a full statement of (a) the reasons for such closing; (b) in case unprofitability is alleged, the store's sales and profitability history; (c) respondent's plans, if any, for the disposition of the store's assets, the consideration to be received therefor and the identity of proposed transferees so far as then known; and (d) such other information, including production of and/or access to original accounting records, as may be required for consideration of the proposed closing.

IV

It is further ordered, That respondent shall, within ninety (90) days from the date of service of this order, and every one hundred eighty (180) days thereafter until the divestiture required by this Order has been completed submit in writing to the Commission, a report setting forth its plans, actions and progress in complying with the divestiture required by this order and such other reports related to the divestiture as may, from time to time, be requested by the Commission.

EXHIBIT A

APPENDIX A

1. Ayr-Way East, 6800 Pendleton Pike Indianapolis, IN 46226.
2. Ayr-Way West, 2333 Lafayette Road Indianapolis, IN 46222.
3. Ayr-Way South, 3700 South East Street Indianapolis, IN 46227.
4. Ayr-Way Washington East, 8101 East Washington Street Indianapolis, IN 46219.
5. Ayr-Way Richmond, 4401 National Food East Richmond, IN 47374.
6. Ayr-Way Evansville East, 730 South Green River Road Evansville, IN 47715.
7. Ayr-Way Anderson, 5501 Scatterfield Road Anderson, IN 47401.
8. Ayr-Way Evansville North, 4000 First Avenue Evansville, IN 46268.
9. Ayr-Way Indianapolis N.W., 6901 North Michigan Road Indianapolis, IN 46268.
10. Ayr-Way Kokomo, 1037 South Reed Road Kokomo, IN 46901.
11. Ayr-Way Nora, 1300 East 86th Street Indianapolis, IN 46240.
12. Ayr-Way Bloomington, 601 College Mall Road Bloomington, IN 47401.
13. Ayr-Way Fort Wayne North, 3801 Coldwater Road Fort Wayne, IN 46805.
14. Ayr-Way Fort Wayne South, 7601 South Anthony Boulevard Fort Wayne, IN 46806.
15. Ayr-Way Washington West, 1225 S. High School Road Indianapolis, IN 46241.
16. Ayr-Way South Bend, McKinley Square, 3512 East Cedar South Bend, IN 46615.
17. Ayr-Way St. Matthews, 4714 West Port Road Louisville, KY 40207.
18. Ayr-Way Clarksville, 1500 Greentree Boulevard Clarksville, IN 47130.
19. Ayr-Way Columbus, 2985 N. National Road Columbus, IN 47201.
20. Ayr-Way Champaign, 2002 Glen Park Drive Champaign, IL 61820.
21. Ayr-Way Danville, 2917 N. Vermilion Danville, IL 61832.
22. Ayr-Way Bashford Manor, 2034 Bashford Manor Lane West Buechel, KY 40218.
23. Ayr-Way Middletown, 1701 University Boulevard Middletown, OH 45042.
24. Ayr-Way Preston Road, 7100 Preston Road Louisville, KY 40218.
25. Ayr-Way Lafayette, 3100 Sagamore Parkway, North Lafayette, IN 47904.
26. Ayr-Way Scottsdale, 1112 Scottsdale Mall Road South Bend, IN 46612.
27. Ayr-Way Downtown Louisville, 427-437 South 4th Street Louisville, KY 40202.
28. Ayr-Way Distribution Center, 8250 Zionville Road Indianapolis, IN 46268.

IN THE MATTER OF
SAXONY POOLS, INC., ET AL.

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

Docket 8962. Complaint Apr. 19, 1974-Decision, July 28, 1975*

Consent order requiring a Linden, N.J., seller and distributor of swimming pools, among other things to cease using bait and switch tactics; misrepresenting prices; misrepresenting their product as "maintenance free;" furnishing false or misleading guarantees.

Appearances

For the Commission: *John A. Crowley and Alan F. Rubinstein.*

For the respondents: *Edward B. Dreskin, Newark, N.J., and Edwin S. Rockefeller, Bierbower & Rockefeller, Wash., D.C.*

COMPLAINT*

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Saxony Pools, Inc., a corporation, and Simon Sax, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said 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 Saxony Pools, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 416 E. Elizabeth Ave., Linden, N.J.

Respondent Simon Sax is the president of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is 45 Hassa St., Linden, N.J.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of swimming pools and other merchandise and home improvement products.

PAR. 3. In the course and conduct of their business as aforesaid, respondents cause advertisements designed to secure leads to potential

* Reported as amended by the administrative law judge's order of Aug. 23, 1974, to reflect that there have been changes in the name and address of the corporate respondent and in the address of the individual respondent.