

IN THE MATTER OF

COPE ENTERPRISES, LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2783. Complaint, Jan. 23, 1976—Decision, Jan. 23, 1976*

Consent order requiring a Brooklyn, N.Y., distributor of batteries and cosmetics, among other things to cease misrepresenting the high potential earnings of distributors; the type and number of sales locations the respondents would secure for distributors; the availability of training, business assistance, sales aids and advertising; the product line to be added; and the history of the company. Further, respondents are required to make refunds to requesting distributors and to disclose to prospective franchisees their right to cancel the agreement and obtain a full refund within ten (10) days of signing the agreement.

Appearances

For the Commission: *Sandra L. Bird* and *Sandra L. Grayson*.

For the respondents: *Soloman Z. Ferziger*, New York City and *Marvin Wolinetz*, Brooklyn, N.Y.

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 Cope Enterprises, Ltd., a corporation, Andrew Montero, individually and as an officer of said corporation, and Stanley Fuchs, individually and as former sales manager 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 Cope Enterprises, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. It formerly maintained its principal office and place of business at 2701 Avenue U, Brooklyn, New York.

Respondent Andrew Montero is an officer of the corporate respondent, Cope Enterprises, Ltd. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter set forth. His business address was the same as that of said corporation and his home address is 3626 Kings Hwy., Brooklyn, New York.

Respondent Stanley Fuchs was the sales manager of the corporate

respondent during the period from August 1972, to approximately October 1973. As such he cooperated and acted together with respondent Montero in formulating, directing and controlling the policies of the corporate respondent and was responsible for the planning, supervision and execution of certain of the acts and practices hereinafter set forth. His present address is 8 Paerdegat 1st St., Brooklyn, New York.

PAR. 2. Respondents Cope Enterprises, Ltd., Andrew Montero, individually and as an officer of said corporation, and Stanley Fuchs, individually and as former sales manager of said corporation, were and for some time in the past have been, engaged in the advertising, offering for sale, and sale of distributorships which authorize the purchasers to sell to members of the public items of merchandise, including Helen Neushaefer Hypo-Allergenic cosmetics and Burgess batteries.

PAR. 3. In the course and conduct of their business, respondents Cope Enterprises, Ltd., Andrew Montero, individually and as an officer of said corporation, and Stanley Fuchs, individually and as former sales manager of said corporation caused, and for some time last past have caused, said products, when sold, to be shipped from their suppliers' places of business in the States of New Jersey and Minnesota to purchasers thereof located in various other States of the United States. In addition, in the course and conduct of their business, respondents have disseminated and caused to be disseminated in newspapers of interstate circulation, advertisements designed to be read by persons residing outside the State of New York and intended to induce such persons to enter into contractual agreements with respondents to purchase distributorships and products from respondents. Respondents also introduced into interstate circulation, through the instrumentality of the United States mails, promotional materials, circulars, business papers and other written instruments and communications with the result and effect that members of the public residing outside the State of New York, in various other States of the United States did, in fact, purchased respondents' distributorships and products, thereby placing respondents' business in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Respondents have maintained, and at all times mentioned herein maintained, a substantial course of trade in distributorships and products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as above mentioned and for the purpose of inducing the purchase of their distributorships and products, respondents Cope Enterprises Ltd.,

129

Complaint

Andrew Montero, individually and as an officer of said corporation, and Stanley Fuchs, individually and as former sales manager of said corporation, engaged in a program of recruitment of distributors for their distributorship program. As part of this program respondents have made numerous statements and representations in promotional materials and in newspaper advertisements.

Typical and illustrative of such statements, but not all inclusive thereof, are the following:

P-T 5-6 Hours Weekly Nets To \$700 a MONTH

F-T 50 Hours Weekly Nets To \$7,000 a MONTH

\$2800 part time secured investment has unlimited growth potential with eventual full time earning of \$100,000 per year. This public company has an outstanding success record since 1945 and is seeking reliable individuals to service company secured routes.

NO SELLING, NO OVERHEAD

Simply restock merchandise and collect money * * *.

* * * * *

Our national advertised name brand product opens the door to top retail accounts. All accounts secured by the company * * *. Your job is to restock and collect money. This is the only experience you will ever know * * *.

* * * * *

For a minimum investment of \$2,800 you can earn approximately \$624 or more a month * * *.

* * * * *

A full time distributorship can produce earnings from \$60,000 up to \$100,000 a year * * *.

* * * * *

Earnings increase with the addition of add-on items which we literally have 100's of * * *.

* * * * *

National accounts * * *.

* * * * *

Types of locations

Airports, Food Stores, Discount Stores, Variety stores * * *.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning not

expressly set forth herein, respondents have represented directly or by implication:

A. That persons who purchase a distributorship from respondents can earn sums ranging from approximately \$600 a month to \$100,000 a year in their spare time or through full time operation of a distributorship.

B. That said earnings projections are the earnings made by a significant number of persons who have purchased and operated respondents' distributorships.

C. That respondents will secure established, sales producing accounts or locations for purchasers of respondents' distributorships.

D. That purchasers of respondents' distributorships will not be required to sell products or engage in sales activities with potential customers in order to operate and maintain their distributorships successfully.

E. That corporate respondent is a public company with an outstanding record of success for a period of time in excess of 25 years.

PAR. 6. In truth and in fact:

A. Relatively few, if any, persons who purchased distributorships from the respondents earned sums ranging from \$600 a month to \$100,000 a year in their spare time or through full time operation of their distributorships.

B. Respondents' claimed earnings projections are far in excess of the earnings of any person or persons who purchased and operated respondents' distributorships.

C. In the vast majority of cases respondents did not secure established, sales-producing locations for purchasers of their distributorships, but placed most of their merchandise in retail establishments which have very little consumer traffic. The locations secured by respondents were usually undesirable, unsuitable and unprofitable.

D. The purchasers of the distributorships are required to sell and engage in sales activities in order to operate and maintain their distributorships successfully. It is frequently necessary to place merchandise in other locations because of the unprofitable nature of the locations selected by the respondents.

E. The corporate respondent is not a public company. It has not had an outstanding record of success for twenty-five or more years. In fact, at the time of this representation, the corporate respondent had been in business less than a year.

Said statements and representations were therefore false, misleading, deceptive or unfair.

PAR. 7. In the further course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their

distributorships and products, respondents, their agents, representatives or employees, or any of them, have made representations, either orally or in writing, that:

A. Respondents will secure a specific number of profitable locations for each purchaser of a distributorship within a specified time period.

B. Merchandise and/or sales aids purchased from respondents by respondents' distributors will be furnished to said distributors within a specified time period.

C. Respondents will provide purchasers of its distributorships with sales literature, instruction manuals, order forms and other materials in connection with the operation of their distributorships.

D. Respondents will provide national and local advertising of the products purchased by their distributors so as to create a greater demand for same.

E. Purchasers of respondents' distributorships will be trained in the operation of their distributorships, and respondents will furnish business assistance which will be of value to their distributors.

F. Respondents will repurchase a distributorship at 75 percent of its original value, after a period of one year, if a distributor fails to maintain a stated quota for said distributorship or respondents, at the request of a distributor, will aid in the resale of a distributorship.

G. New cosmetic products are added every six weeks to the line of Helen Neushaefer Hypo-Allergenic cosmetics available to distributors.

H. Respondent Cope Enterprises, Ltd. and the Helen Neushaefer Division of Supronics Corp., an established company, are one and the same company and that purchasers of distributorships are dealing with both.

PAR. 8. In truth and in fact:

A. In a substantial number of instances, respondents did not secure the agreed upon number of locations for the purchasers of distributorships within the time period specified, or only secured them after undue delay. In a substantial number of instances, the locations respondents did obtain were unprofitable and the merchandise was later removed at the location owner's request.

B. In a substantial number of instances, respondents failed to cause delivery of the merchandise and/or sales aids purchased from respondents by distributors within the time period specified, or only shipped them after undue delay and repeated complaints.

C. In a substantial number of instances, respondents failed to provide distributors with sales literature, instruction manuals, order forms and other materials in connection with the operation of the distributorships within the time period specified, or only furnished such materials after undue delay and repeated complaints.

D. Very few, if any, local or national advertisements or advertisements of any kind, were published or disseminated by respondents for products purchased by respondents' distributors.

E. Respondents failed to train distributors in the operation of their distributorships and did not furnish any significant business assistance to distributors.

F. Respondents rarely, if ever, repurchased at 75 percent of its original value, or for any other amount, the distributorship of any distributor after a one year period, or aided in any way in the resale of such distributorships.

G. New products are not added every six weeks to the line of Helen Neushaefer Hypo-Allergenic cosmetics available to distributors.

H. Respondent Cope Enterprises, Ltd. and the Helen Neushaefer Division of Supronics Corp. are not one and the same company. Respondent Cope Enterprises, Ltd. is an independent distributor and Supronics Corp. disclaims any responsibility for the agreements between Cope Enterprises, Ltd. and its distributors.

Said statements and representations were, therefore, false, misleading, deceptive or unfair.

PAR. 9. The use by respondents of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices, has had the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were true and complete, and into the purchase of respondents' distributorships and products by reason of said erroneous and mistaken belief, and into the assumption of obligations and the payment of monies, as a result thereof, which they might otherwise not have incurred.

PAR. 10. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of distributorships and products of the same general kind and nature as those sold by respondents.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were all to the prejudice and injury of the public and of respondents' competitors and constituted 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.

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 New York Regional Office 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 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 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 Cope Enterprises, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. It formerly maintained its principal place of business at 2701 Avenue U, Brooklyn, New York.

Respondent Andrew Montero is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation. His business address was the same as that of said corporation and his home address is 3626 Kings Hwy., Brooklyn, New York.

Respondent Stanley Fuchs was sales manager of said corporate respondent during the period from August 1972 to approximately October 1973. As such he cooperated and acted together with respondent Montero in formulating, directing and controlling the policies of the corporate respondent. His present address is 8 Paerdegat 1st St., Brooklyn, New York.

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 respondents Cope Enterprises, Ltd., a corporation,

its successors and assigns and its officers and ,Andrew Montero, individually and as an officer of said corporation, and Stanley Fuchs, individually and as former sales manager of said corporation, and respondents' agents, representatives and employees, individually, or in concert, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of cosmetics, batteries or any other products, distributorships or franchises in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or by implication:

A. 1. Representing in any manner the potential sales, income, gross or net profits of a prospective distributor, franchisee or salesman unless:

a. such sales, income or profits are reasonably likely to be achieved by the person to whom the representation is made;

b. the basis and assumptions for such representation are set forth in detail;

c. such representation and the underlying data have been prepared in accordance with generally accepted accounting principles;

d. in immediate conjunction therewith, the following statement is clearly and conspicuously disclosed:

"THERE IS NO ASSURANCE THAT INCOME AND PROFIT PROJECTIONS WILL BE ATTAINED BY ANY SPECIFIC (DISTRIBUTOR, FRANCHISEE OR SALESMAN). THEY ARE MERELY ESTIMATES."; and,

e. the amounts represented are not in excess of sales, income or profits actually achieved by existing distributors, franchisees or salesmen and where distributors, franchisees or salesmen have not been in operation long enough to indicate what sales, income or profits may result, making any representation of such to a prospective distributor, franchisee or salesman.

2. Representing that respondents, their agents, representatives or employees will secure sales producing and profitable locations or accounts for purchasers of respondents' distributorships or franchises; or misrepresenting, in any manner, the desirability of the locations to be provided by respondents.

3. Representing that prior sales experience or training is not necessary to successfully operate and maintain respondents' distributorships or franchises.

4. Representing that the corporate respondent is a public company or that respondents have been successful or have been in business for any significant period of time or misrepresenting in any manner the history, status or nature of respondents' business.

5. Representing that respondents will secure any number of locations for any distributor or franchisee within a specified period of time unless in fact they secure said number of locations within the stated period and offer to replace any locations that (1) refuse to receive the distributor's or franchisee's merchandise or (2) request the distributor or franchisee to remove the merchandise within three months of its initial placement.

6. Representing that any merchandise and sales aids offered for sale or sold by respondents to their distributors or franchisees will be delivered to said distributors or franchisees within a specified time period, unless respondents have available, or in stock, all such merchandise or sales aids in quantities sufficient to meet all reasonably anticipated orders.

7. Representing that respondents will provide their distributors or franchisees with sales literature, promotional literature, instructional manuals, forms or any other materials relating to the operation of respondents' distributorships or franchises within a specified time period, unless respondents have available, or in stock, all such literature, manuals, forms or such other materials in quantities sufficient to meet all reasonably anticipated orders.

8. Representing that respondents will provide national and local advertising of the products offered for sale or sold by respondents to their distributors or franchisees; or misrepresenting, in any manner the extent, type, and method of promotion and services provided by respondents in connection with the advertising of products offered for sale or sold by respondents to their distributors or franchisees; or misrepresenting, in any manner, the media in which said advertising has appeared or will appear.

9. Representing that purchasers of respondents' distributorships or franchises will be trained in the operation of their distributorships or franchises; or misrepresenting in any manner the quality, amount and nature of assistance to be provided by respondents.

10. Representing that respondents will repurchase distributorships or franchises or will aid or assist in the resale of the same.

11. Misrepresenting, in any manner the amount, nature, type and character of the products available to distributors through respondents' distributorships or franchises.

12. Representing that respondents have any connections, financial or otherwise, with the Helen Neushaefer Division of Supronics Corp. other than that of purchasers of cosmetics manufactured by that company; or misrepresenting, in any manner, respondents' business connections or associations with other firms, organizations, groups or individuals.

B. Making any claim, either orally or in writing, for which the respondents do not have in their possession valid substantiating data, which data shall be made available to prospective distributors or franchisees, or to the Commission or its staff upon demand.

C. Failing to furnish any prospective distributor or franchisee with all of the following information, in a clear and concise manner, at the time when a contract is first established between such prospective distributor or franchisee and the respondents or their representatives:

1. The official name(s) and address(es) of the franchisor, and the parent firm or holding company of the franchisor, if any.

2. A detailed statement setting forth all the rights and obligations of the parties under the distributorship or franchise agreement.

3. The business experience of the respondents, including the length of time the respondents have conducted a business of the type to be operated by the distributor or franchisee, or have granted distributorships or franchises for such business, or have granted distributorships or franchises in other lines of business.

4. Where such is the case, a statement that the franchisor or any of its directors, stockholders owning more than ten percent of the stock, or chief executive officers:

- a. has been held liable in a civil action, convicted of a felony, or pleaded nolo contendere to a felony charge in any case involving fraud, embezzlement, fraudulent conversion, or misappropriation of property; or

- b. is subject to any currently effective injunctive or restrictive order or ruling relating to business activity as a result of action by any public agency or department; or

- c. has filed bankruptcy or been associated with management or any company that has been involved in bankruptcy or reorganization proceedings; or

- d. is, or has been, a party to any cause of action brought by distributors or franchisees against the franchisor.

Such statement shall set forth the identity and location of the court, date of conviction or judgment, any penalty imposed or damages assessed, and the date, nature and issuer of each such order or ruling.

5. The financial history of the corporate respondent including balance sheets and profit and loss statements for the most recent five-year period; and a statement of any material changes in the financial condition of the corporate respondent since the date of such financial statement.

6. Complete financial details pertaining to the distributorship or franchise agreement including the amount to be paid by the distributor or franchisee, the amount to be paid for any services to be rendered by

respondents and the amount to be paid for any merchandise offered for sale or sold thereunder.

7. A description of the distributorship or franchise fee; and a statement indicating whether all or part of this fee may be returned to the distributor or franchisee and the conditions under which the fee will be refunded.

8. A statement of the number of distributorships or franchises that are presently operating and the number proposed to be sold.

9. A list of the names and addresses of all persons who, in the two calendar years immediately preceding, purchased a distributorship or franchise for products or product lines similar to, or the same as, those being offered by respondents to any prospective distributor or franchisee and who are situated in the same geographical area as the prospective distributor, or franchisee, and the gross dollar volume of purchases of such products from respondents by each such distributor or franchisee, exclusive of dollar amount of merchandise purchased and paid for at the time of purchase of the distributorship or franchise.

10. A statement of the conditions under which the distributorship or franchise agreement may be terminated or repurchased at the option of the corporate respondent, and a statement setting forth the number of distributors or franchisees that fell into each of those categories during the past 12 months.

11. If the respondents inform prospective distributors or franchisees that they intend to provide them with training, they must state the number of hours of instruction and furnish prospective distributors or franchisees with a brief biography of the instructors who will conduct the training.

12. A statement of the average length of time between the signing of a distributorship or franchise agreement and the time when a distributor could commence operation of his distributorship or franchise.

All of the foregoing information in 1 to 12 above shall be set forth in a single disclosure statement, which shall not contain any promotional claims or other information not required by this order. The statement shall carry a distinctive and conspicuous cover sheet with the following notice (and no other) imprinted thereon in boldface type of not less than 10 point size:

INFORMATION FOR PROSPECTIVE DISTRIBUTORS REQUIRED BY
FEDERAL TRADE COMMISSION

This package of information is provided for your own protection. It is in your best interest to study it carefully before making any commitment.

If you do sign a contract, you may cancel it, and obtain a full refund of any money paid,

for any reason within ten business days after signing. Details appear on the contract itself.

The information contained herein has not been reviewed or approved by the Federal Trade Commission, but any misrepresentation constitutes a violation of Federal law. If you feel you have been misled, you should contact the Federal Trade Commission in Washington, or the Federal Trade Commission Regional Office nearest you.

D. Failing to include immediately above and on the same page as the distributor's or franchisee's signature line of any contract establishing or confirming a distributorship or franchise agreement, the following statement in boldface print at least 50 percent larger than any other print in the body of such contract, or in boldface print of a contrasting color:

NOTICE: YOU ARE ENTITLED TO CERTAIN IMPORTANT INFORMATION CONCERNING THIS TRANSACTION, ENTITLED "INFORMATION FOR PROSPECTIVE DISTRIBUTORS REQUIRED BY FEDERAL TRADE COMMISSION." IT IS IN YOUR BEST INTEREST TO DEMAND AND STUDY SUCH INFORMATION. *YOU MAY CANCEL THIS CONTRACT FOR ANY REASON WITHIN TEN BUSINESS DAYS AFTER YOU SIGN IT.* If you do choose to cancel, you will be entitled to receive full refund of any money paid within ten business days after the franchisor receives notice of your cancellation. You must notify the franchisor by certified mail with return receipt requested, which would be sent to the address below. [Respondents will insert here the address and telephone number to which such notices should be sent.]

E. Failing to cancel any contract for which a notice of cancellation was sent by any reasonable means within ten business days after the contract's execution or to fail to refund any money paid by distributor or franchisee within ten business days after the date of receipt of such notice of cancellation.

F. Failing to furnish the prospective distributor or franchisee, upon request, at any time and in the absence of any request, before consummation of any agreement, with a copy of the franchise agreement proposed to be used.

As used in this order, the following definitions shall apply:

1. "Prospective distributor or franchisee" means any person who approaches, or is approached by, respondents or their agents or representatives for the purpose of investigating a distributorship or franchise between such person and respondents;

2. "Time when contact is first established" means the earlier of the time when:

(a) a direct personal meeting first occurs between respondents or their agents or representatives and a prospective distributor or franchisee or

(b) any document or promotional literature is distributed to a prospective distributor or franchisee.

It is further ordered, That respondents Cope Enterprises, Ltd. and Andrew Montero 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.

It is further ordered, That respondent Andrew Montero promptly notify the Commission upon the discontinuance of his present business 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 respondent Stanley Fuchs promptly notify the Commission of his current business address and the nature of the business or employment in which he is presently engaged, as well as a description of his duties and responsibilities.

It is further ordered, That the respondents herein distribute a copy of this order to each of their officers, agents or representatives engaged in the offering for sale of respondents' distributorships or franchises or in any aspect of the preparation, creation, or placing of advertisements or promotional materials for this purpose.

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders, or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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

87 F.T.C.

IN THE MATTER OF
AMREP CORPORATION

Docket 9018. Order, Jan. 27, 1976

Complaint counsel directed to consider whether to seek preliminary injunction under Section 13(b) of Federal Trade Commission Act, with appropriate motion to Commission seeking such action with notice to respondent.

Appearances

For the Commission: *Perry W. Winston, Jon R. Calhoun and George E. Schulman.*

For the respondent: *Solomon Friend, Theodore Schaeier and I. David Parkoff*, In-house General Counsel for Amrep Corporation, N.Y. *Morton M. Maneker, Proskauer, Rose, Goetz & Mendelsohn*, New York City.

ORDER

In accordance with the suggestion of the Court in *United States v. Amrep Corp.*, 75 Cr. 1023 (S.D.N.Y.), that the Commission might apply for a preliminary injunction under Section 13(b) of the Federal Trade Commission Act¹, the Commission directs complaint counsel to consider whether a preliminary injunction should be sought. In the event that complaint counsel so conclude, they should make a motion, on notice to respondent, requesting the Commission to take such action.

It is so ordered.

¹ Opinion, dated January 15, 1976, pp. 10-11.

IN THE MATTER OF
CAVANAGH COMMUNITIES CORPORATION, ET AL.

Docket 9055. Order, Jan. 27, 1976

Portions of complaint counsel's motion to supplement complaint with paragraphs 95a and 95b and the notice order with paragraph 50 granted; and portion of complaint counsel's motion to supplement complaint with paragraphs 95c-95e, remanded to administrative law judge for determination.

Appearances

For the Commission: *Jeffrey Tureck, David C. Keehn and Pamela B. Stuart.*

For the respondents: *Philip Zeidman and Sara Holtz, Brownstein, Zeidman, Schomer & Chase, Washington, D.C.*

ORDER GRANTING IN PART AND REMANDING IN PART
MOTION TO SERVE SUPPLEMENTAL PLEADING

This matter is before us upon complaint counsel's motion to amend the complaint. The administrative law judge certified the motion to the Commission on December 23, 1975.

Complaint counsel request that the complaint be amended to allege that (1) respondents' statements to purchasers concerning the instant proceedings, including but not limited to, statements characterizing the complaint allegations and describing their applicability to the Rotonda subdivisions are false and deceptive (proposed paragraphs 95a, 95b) and (2) respondents are misrepresenting the extent of recent development activities at Rotonda (proposed paragraphs 95c-95e).¹ In addition, complaint counsel move that a prohibition against misrepresentations concerning legal proceedings pending before the Commission or any other forum be added to the notice order.

The Commission will treat complaint counsel's motion to amend the complaint as a motion to serve a supplemental pleading since the motion concerns "transactions, occurrences, or events which have allegedly happened since the date of the pleading * * *." Rules of Practice, Section 3.15(b).

The Commission agrees with the administrative law judge's decision to certify those portions of complaint counsel's motion which relate to alleged misrepresentations concerning these proceedings and which seek an addition to the notice order since the above-described allegation is sufficiently different in theory from the allegations

¹ With respect to paragraphs 95c-95e, the Commission assumes that complaint counsel refer to alleged misrepresentations made after the complaint issued.