

• IN THE MATTER OF
STRAWBRIDGE & CLOTHIER

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

Docket C-2812. Complaint, Mar. 22, 1976—Decision, Mar. 22, 1976

Consent order requiring a Philadelphia, Pa., developer of shopping centers and operator of retail department stores and discount outlets, among other things to cease entering into agreements which empower it to control the admission of competing retailers into shopping centers; restrict and control retailers' conduct of sales, use of advertising and other methods of sales promotion; determining particular types or brands of goods and services competing retailers may or may not sell; and determining price or quality ranges within which competing retailers may sell their goods or services.

Appearances

For the Commission: *Richard F. Kelly* and *Gary M. Laden*.

For the respondent: *Benjamin M. Quigg, Jr.*, *Stephen W. Armstrong*, *Morgan, Lewis & Brohius*, Philadelphia, Pa.

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 "shopping center" refers to a planned development of retail outlets, managed as a unit in relation to a trade area which the development is intended to serve and containing (1) at least two tenants other than respondent; (2) at least one major tenant; and (3) on-site parking in some definite relationship to the types and sizes of stores in the development.

(b) The term "tenant" includes any occupant or potential occupant of retail space in a shopping center, whether a lessee or owner of such space, but the term does not refer to an occupant of space within the

store or other areas occupied by respondent, which occupant operates a department for respondent pursuant to a license from respondent.

(c) The term "major tenant" refers to tenant providing primary drawing power for a shopping center. A tenant which occupies at least 50,000 square feet of floor area will be deemed to provide primary drawing power.

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

(e) The terms "price line," "price range," "range of prices," "fashion range," "range of fashions," "quality range" and "range of quality" refer to descriptive words identifying a particular tenant as an example of a category of merchants selling merchandise within a generally identifiable range of prices, and also include, but are not limited to, such descriptive words as "popular priced," "medium priced," and "better priced;" "popular fashion," "medium fashion," and "high fashion;" and "popular quality," "medium quality," and "high quality."

(f) The term "fringe area" refers to land area bordering a shopping center property, which land area respondent does not own or does not have a right to purchase. A shopping center property includes the tract of land on which the physical structures, parking areas, roadways, landscaped area, open areas, and other common facilities of the shopping center are located, and areas reserved for future use, as shown on the layout.

(g) The term "developer" means any business entity which plans, constructs, or operates a shopping center and negotiates and executes lease agreements with tenants.

PAR. 2. (A) Respondent Strawbridge & Clothier (hereinafter referred to as S & C) is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal office and place of business located at 801 Market St., Philadelphia, Pennsylvania. S & C is engaged in the development and operation of retail stores in the Delaware Valley Area, including department stores and discount outlets, the latter being operated by S & C's Clover Discount Stores Division. S & C operates ten department stores, seven of which are located in shopping centers. S & C's Clover Discount Stores Division operates six discount outlets (hereinafter referred to as Clover Stores).

(B) S & C's stores achieved sales in its fiscal year 1974 in excess of \$225 million. Sales in S & C's department stores in shopping centers account for a majority of respondent's yearly net retail sales.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaged in acts or practices in or affecting

commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

(A) Respondent purchases for resale a great variety of consumer products from a large number of suppliers located throughout the United States. Respondent causes these products, when purchased by it, to be transported from the place of manufacture or purchase to its business establishments located in Pennsylvania, Delaware, and New Jersey. Such products have been and are advertised and offered for sale by respondent in newspapers circulated among and between the States of Delaware, New Jersey and the Commonwealth of Pennsylvania. Respondent has engaged in the planning and development of its retail department stores in shopping centers in the States of Delaware, New Jersey and the Commonwealth of Pennsylvania.

(B) In the course of the development of these stores in shopping centers in the State of New Jersey and the Commonwealth of Pennsylvania, respondent has negotiated and executed agreements, leases and contracts with developers. In the course of negotiating and executing these leases, agreements and contracts, exchanges of information and communications have occurred between respondent in Pennsylvania and developers in States other than the Commonwealth of Pennsylvania. Correspondence with respect to respondent's approval of tenants for inclusion in shopping centers has passed between respondent in Pennsylvania and developers in States other than the Commonwealth of Pennsylvania through the use of the United States mails.

PAR. 4. Except to the extent that competition has been hindered, frustrated and eliminated as set forth in this complaint, respondent, in the course and conduct of its business of offering for sale and selling household goods, home furnishings, apparel and services, has been and is in substantial competition with other corporations, individuals and partnerships in the retail sale of the same or comparative brands of merchandise carried and sold by respondent.

PAR. 5. In recent years, S & C has negotiated, entered into, executed and enforced operating agreements, contracts, understandings and lease agreements with shopping center developers for the purpose of establishing department stores. In the course and conduct of negotiating such agreements with developers, S & C has induced various developers of shopping centers to agree to certain types of restrictive covenants or provisions which authorize S & C to control and determine the admission of other tenants into shopping centers and give S & C control of various other conditions affecting other tenants in shopping centers as is hereinafter set forth in Paragraph Six.

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 or affecting commerce, in that it has caused the execution and enforcement of operating agreements, contracts, understandings and lease agreements which have suppressed, restricted, restrained, hindered, lessened, prevented and foreclosed competition in the retail distribution of goods and services in, among others, the States of New Jersey, Delaware and the Commonwealth of Pennsylvania and have injured consumers. Said agreements, contracts, understandings and lease agreements have conferred upon respondent the following:

(a) the right to approve or disapprove the admission or expulsion of other retailers in shopping centers or to set conditions for their entry;

(b) the right to prohibit the admission into a shopping center of a particular class of retailers;

(c) the right to control or restrict other retailers with respect to the conduct of sales, use of advertising or other methods of promotion;

(d) the right to approve or disapprove the amount of space available to other retailers in shopping centers or the use to which such space may be put within said shopping centers;

(e) the right to approve, disapprove, or determine the particular brands or types of goods and services which other retailers may sell in shopping centers, or the right to approve, disapprove, or determine the amount of floor space that may be utilized for the display and sale of such goods and services;

(f) the right to determine the price ranges or price lines at which other retailers may sell their goods and services in shopping centers;

(g) the right to utilize or enforce quality standards for goods and services so as to determine or control the price ranges or price lines at which other retailers may sell their goods and services in shopping centers;

(h) the right to require or approve that a particular retailer be permitted to have an exclusive right or right of first refusal to operate a particular type of business, sell a particular type or brand of merchandise, or furnish a particular type of service, or the right to obtain exclusive covenants for itself;

(i) the right to approve or disapprove other retailers' hours of operation in shopping centers;

(j) the right to approve or disapprove the location of other retailers in shopping centers;

(k) the right to preclude a retailer from opening or maintaining another store similar to or in competition with that retailer's own store within a specified radius or distance from a shopping center;

(l) the right to prevent or limit further expansion of the shopping center;

(m) the right to restrict or limit the uses to which fringe area land may be developed or used;

(n) the right to use preapproved tenant lists to exclude potential tenants and classes of tenants from shopping centers.

PAR. 7. The aforesaid operating agreements, contracts, understandings and lease agreements, and the rights, powers and privileges thereby conferred upon respondent, and its exercise and enforcement thereof, have had and continue to have the tendency to restrain trade and commerce. The effects of these acts and practices have tended to cause injury to respondent's competitors, to other businessmen and to consumers. In particular, included among the effects of such restraints are the following:

(a) fixing, establishing, controlling, stabilizing, and maintaining prices at which or the price ranges within which tenants must sell their merchandise;

(b) allowing respondent to choose competitors and to exclude actual or potential competitors and limit the number and diversity of their competitors;

(c) allowing respondent to influence the location of other tenants so as to induce the public to shop in areas of shopping centers where respondent's stores are located, and conversely, so as to draw the public away from areas in shopping centers where other major tenants are located;

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

(e) denying the public the benefit of price competition;

(f) boycotting potential occupants of shopping centers;

(g) limiting the numbers and locations of other retail stores operated by tenants outside of the shopping center, thereby limiting competition and limiting the numbers and locations of other retail stores that might otherwise be accessible to the public;

(h) restricting, hindering, and coercing developers in their choice of tenants in shopping centers;

(i) restricting and hindering developers in their expansion of existing shopping centers;

(j) permitting respondent to limit or restrict the types or brands of merchandise that tenants may sell;

(k) allocating territories among competitors for the sale of goods and services;

(l) foreclosing competitors from competing with respondent both inside and outside of shopping centers in which respondent operates;

(m) denying other retailers the freedom to choose the hours of business in which they may compete.

PAR. 8. The aforesaid operating agreements, contracts, understandings or lease agreements, respondent's acts, practices and methods of competition in connection therewith, and the adverse competitive effects resulting therefrom are injurious to consumers and to respondent's competitors, and constitute unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the 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, as amended; and

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

The Commission having thereafter considered the matter and having determined 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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Strawbridge & Clothier is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 801 Market St., Philadelphia, Pennsylvania.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and the respondent, and the proceeding is in the public interest.

ORDER

I

For purposes of this order the following definitions shall apply:

(a) The term "shopping center" refers to a planned development of retail outlets, managed as a unit in relation to a trade area which the development is intended to serve and containing (1) at least two tenants other than respondent; (2) at least one major tenant; and (3) on-site parking in some definite relationship to the types and sizes of stores in the development.

(b) The term "tenant" includes any occupant or potential occupant of retail space in a shopping center, whether a lessee or owner of such space, but the term does not refer to an occupant of space within the store or other areas occupied by respondent, which occupant operates a department for respondent pursuant to a license from respondent.

(c) The term "major tenant" refers to a tenant providing primary drawing power in a shopping center. A tenant which occupies at least 50,000 square feet of floor area will be deemed to provide primary drawing power.

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

(e) The terms "price line," "price range," "range of prices," "fashion range," "range of fashions," "quality range" and "range of quality" refer to descriptive words identifying a particular tenant as an example of a category of merchants selling merchandise within a generally identifiable range of prices, and also include, but are not limited to, such descriptive words as "popular priced," "medium priced," and "better priced;" "popular fashion," "medium fashion," and "high fashion;" and "popular quality," "medium quality," and "high quality."

(f) The term "fringe area" refers to land area bordering a shopping center property, which land area respondent does not own or does not have a right to purchase. A shopping center property includes the tract of land on which the physical structures, parking areas, roadways, landscaped area, open areas, and other common facilities of the shopping center are located, and areas reserved for future use, as shown on the layout.

(g) The term "developer" means any business entity which plans, constructs, or operates a shopping center and negotiates and executes lease agreements with tenants.

II

It is ordered, That respondent Strawbridge & Clothier, a corporation,

its successors and assigns, and its officers, and respondent's agents, representatives and employees, hereinafter sometimes referred to as respondent, directly or through any corporation, subsidiary, division or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, in its capacity as a tenant in a shopping center, forthwith cease and desist from requesting, obtaining, making, executing, carrying out, or enforcing, directly or indirectly, any agreement, lease provision, operating agreement, contract, or understanding which:

(1) grants respondent the right to approve or disapprove the entrance into a shopping center of any other retailer, or the conditions for entry of other retailers;

(2) prohibits the admission into a shopping center of retailers, including, but not limited to, for purposes of illustration:

- (a) other department stores,
- (b) junior department stores,
- (c) discount stores, or
- (d) catalog stores;

(3) grants respondent the right to control or restrict the business operations of other retailers, including but not limited to:

(a) the right to specify, prohibit or restrict any type of advertising, including discount advertising, or the right to specify or restrict the content of store signing;

(b) the right to use trading stamps, auction sales, bona fide going out of business sales, bankruptcy sales or other like methods of merchandising; or

(c) the right to be a discounter or sell merchandise or services at discount prices;

(4) grants respondent the right to approve or disapprove the amount of floor space that any other retailer may lease or purchase in a shopping center, or limit or restrict the use to which such space may be put within the shopping center;

(5) limits the types of merchandise or brands of merchandise or services which any other retailer in a shopping center may offer for sale, or the amount of floor space that may be utilized for the display and sale of such merchandise or service;

(6) specifies that any other retailer in the shopping center shall or shall not sell its merchandise or services at any particular price or within any range of prices, or shall not sell designated price lines of merchandise;

(7) specifies that any other retailer in the shopping center shall or shall not sell merchandise unless said merchandise is of a certain quality or fashion range;

(8) gives covenants to other retailers in their shopping center leases whereby a particular tenant is permitted to have an exclusive right or a right of first refusal to operate a particular type of business, sell a particular type or brand of merchandise, or furnish a particular type of service;

(9) grants respondent the right to approve or disapprove any other retailer's hours of operation in a shopping center;

(10) grants respondent the right to approve or disapprove the location in a shopping center of any other retailer;

(11) establishes or maintains a radius or distance from shopping centers within which a retailer may not operate another store similar to or in competition with that retailer's own store at the shopping center;

(12) grants respondent the right to restrict, approve, or disapprove the uses to which fringe areas of a shopping center may be developed or used;

(13) grants respondent the right to prevent or limit expansion of the shopping center;

(14) grants respondent the right to restrict the categories or types of uses designated for the land on which a shopping center is being developed or expanded;

(15) establishes quotas on or limits the number of any class of retailer which can become tenants in a shopping center, by any device, such as, but not limited to, preapproved lists.

Provided, however, That respondent's full line department stores shall not be subject to the provisions of Section II of this order unless said full line department stores are tenants in a shopping center, as defined as follows: The term "shopping center" refers to a planned development of retail outlets, managed as a unit in relation to a trade area which the development is intended to serve and containing (1) a total floor area designed for retail occupancy of 200,000 square feet or more, of which at least 50,000 square feet is for occupancy by tenants other than respondent; (2) at least two tenants other than respondent; (3) at least one major tenant; and (4) on-site parking in some definite relationship to the types and sizes of stores in the development.

III

A. *It is further ordered,* That respondent, in its capacity as a shopping center developer, 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 or price lines, or within any range of fashions or within any range of quality;

(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, in its capacity as a shopping center developer, 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, price ranges, price lines, fashion ranges, or quality 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.

C. *It is further ordered*, That respondent, in its capacity as a shopping center developer, advise the Commission in writing within sixty (60) days 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, price lines, fashion ranges, quality ranges, trade names, store names, trademarks, 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.

D. *It is further ordered*, That respondent, in its capacity as a shopping center developer, 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.

E. *It is further ordered*, That respondent, in its capacity as a shopping center developer, shall 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.

IV

A. *It is further ordered*, That this order shall not prohibit respondent from including a provision in a construction, operating and reciprocal easement agreement or lease with respect to a shopping center, which provision identifies in designated buildings respondent and those other major tenants which contemporaneously enter into such agreement or lease with respect to such shopping center; *provided*, that the operation of this Section shall not in any way limit or modify provisions II.(1) or II.(10) of this order.

B. *It is further ordered*, That this order shall not prohibit respondent from negotiating to include, including, carrying out, or enforcing an agreement or provision in any agreement with the developer or the landlord of a shopping center that the respondent may:

(1) require that with respect to the selection of other tenants in the shopping center, the developer shall select businesses which are financially sound and of good reputation;

(2) require the developer or the landlord to maintain reasonable standards of appearance, maintenance and housekeeping of and in the shopping center, including reasonable standards of appearance, maintenance and housekeeping relative to the use of common areas of the shopping center for the advertising or sale of merchandise, and reasonable uniform standards with respect to the appearance of signs;

(3) approve or grant to respondent the right to approve a layout of the shopping center, which layout may (a) designate respondent's store, (b) set forth the location, size and height of all buildings, (c) locate parking areas, roadways, utilities, entrances, exits, walkways, malls, landscaped areas and other common areas, and (d) establish a proposed layout for future expansion of the shopping center;

(4) require the developer or landlord to prohibit occupancy of space

in a shopping center immediately proximate to respondent by types of tenants that create undue noise, litter or odor;

(5) require that in respect of the selection of other tenants in the shopping center by the developer, the objective of maintaining a balanced and diversified grouping of retail stores, merchandise, and services shall be considered;

(6) require that the developer or the landlord consider the objective of maintaining reasonable uniform minimum hours of operation; or

(7) require that any expansion of the shopping center not provided for in the layout:

(a) shall not interfere with efficient automobile and pedestrian traffic flow into and out of the shopping center and between respondent's store and perimeter and access roads, parking areas, malls and other common areas of the shopping center;

(b) shall not interfere with the efficient operation of respondent's store, including its utilities or its visibility from within the shopping center or from public highways adjacent thereto;

(c) shall not result in a change of (i) the shopping center's parking ratio, (ii) the location of parking spaces reasonably accessible to respondent's store, (iii) the entrances and exits to and from respondent's store and any malls, and (iv) those parking area mall entrances and exits which substantially serve respondent's store;

(d) shall be accomplished only after any and all covenants, obligations and standards (for example, construction, architecture, operation, maintenance, repair, alteration, restoration, parking ratio and easements) of the shopping center, exclusive of the expansion area (i) shall be made applicable to the expansion area, (ii) shall be made prior in right to any and all mortgages, deeds of trust, liens, encumbrances, and restrictions applicable to the expansion area, and (iii) shall be made prior in right to any and all other covenants, obligations and standards applicable to the expansion area.

V

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

It is further ordered, That respondent shall within thirty (30) days after service of this order upon respondent, notify each developer or landlord of shopping centers in which respondent occupies floor space, of this order by providing each such developer or landlord with a copy thereof by registered or certified mail.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a

successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

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

Complaint

87 F.T.C.

IN THE MATTER OF
MUTUAL HOME EQUIPMENT COMPANY, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS

Docket C-2813. Complaint, Mar. 25, 1976—Decision, Mar. 25, 1976

Consent order requiring a Philadelphia, Pa., door-to-door seller of household goods, and other consumer goods and products, among other things to cease misrepresenting retail installment sales contracts as rental agreements; accepting obligations from consumers which unfairly authorize it to enter buyers' homes without legal process and retake encumbered property without the buyer's permission, with the buyer waiving any action for trespass or damage and provide that the buyer forfeit all previously made payments in the event of default in payment of the obligation; failing to disclose to customers their right to a three-day cooling-off period during which they may cancel their contract with a full refund of monies paid; and in connection with the extension of consumer credit, failing to make such disclosures as required by Regulation Z of the Truth in Lending Act.

Appearances

For the Commission: *Bernard Rowitz.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mutual Home Equipment Company, Inc., a corporation, and Samuel H. Alessi and Irving Gaeman, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have engaged in acts and practices contrary to the Commission's Trade Regulation Rule Concerning a Cooling-Off Period for Door-To-Door Sales (16 C.F.R. §429), as amended, in violation of the Federal Trade Commission Act, as amended, and have also engaged in acts and practices in violation of the provisions of the above-mentioned Acts, and the implementing regulation promulgated under the Truth in Lending 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 Mutual Home Equipment Company, Inc. is a corporation organized, existing and doing business under and by