

IN THE MATTER OF

RUBBERMAID INCORPORATED

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

*Docket 8939. Complaint, Sept. 5, 1973—Final Order, April 13, 1976**

Consent order requiring a Wooster, Ohio, manufacturer, seller and distributor of rubber, plastic and rubber coated wire household products, under the brand name "Rubbermaid," among other things to cease maintaining contracts with wholesalers or retailers containing provisions which restrict trade and prices of respondent's commodities; refusing to deal with customers without such agreements; and discriminating against any reseller because of his failure to adhere to set resale prices or conditions. Further, respondent is required to make written offers of reinstatement to wholesalers terminated by respondent since January 1, 1966, for failure to comply with refusal to deal provisions of their contracts.

Appearances

For the Commission: *Ronald A. Bloch* and *Jerry A. Philpott*. Before the administrative law judge, *Ronald A. Bloch* and *Peter W. Marshall*.

For the respondent: *K. Norman Diamond* and *David Bonderman*, *Arnold & Porter*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Rubbermaid Incorporated, a corporation, hereinafter referred to as respondent, has been and is now in violation of Section 5(a)(1) 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 as follows:

COUNT I

PARAGRAPH 1. Unless otherwise required by context, the following definitions shall apply for purposes of this complaint and the accompanying Notice of Contemplated Relief:

(a) "State" means any State or Territory of the United States and the District of Columbia.

(b) "Fair trade law (or statute)" means any State statute or provision thereof providing in substance that contracts permitting

* Final order reported as corrected by order dated April 30, 1976.

intrastate vertical price fixing, as such statutes are described in Sections 5(a)(2) and 5(a)(3) of the Federal Trade Commission Act, are valid and enforceable against signers or nonsigners of such contracts, or against both, any other law of the State to the contrary notwithstanding.

(c) "Fair trade contract (or agreement)" means any contract or agreement entered into pursuant to a fair trade law.

(d) "Retailer contract (or agreement)" means respondent's fair trade contract forms for retail resellers of commodities which bear, or the labels or containers of which bear, respondent's "Rubbermaid" trademark, brand, or name. Copies of said contracts are incorporated by reference into this complaint and are attached hereto as Appendix A.

(e) "Fair trade State" means any State having a fair trade statute which is valid and enforceable as to signers and nonsigners, or only as to signers.

(f) "Non-signer State" means a fair trade State wherein the nonsigner clause of the State's fair trade statute is valid and enforceable. The nonsigner States are Arizona, California, Connecticut, Delaware, Illinois, Maine, Maryland, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Tennessee, Virginia and Wisconsin.

(g) "Signer-only State" means a fair trade State wherein no nonsigner clause is included in the fair trade statute, or wherein the nonsigner clause has been repealed or held invalid and unenforceable. The signer-only States are Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, New Mexico, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Washington and West Virginia.

(h) "Free trade State" means any State wherein no fair trade statute has been enacted, or in which the last enacted fair trade statute has been repealed or held wholly invalid and unenforceable. The free trade States are Alabama, Alaska, District of Columbia, Hawaii, Kansas, Mississippi, Missouri, Montana, Nebraska, Nevada, Puerto Rico, Rhode Island, Texas, Utah, Vermont and Wyoming.

(i) "Wholesaler contract (or agreement)" means respondent's fair trade contract forms for wholesale resellers of commodities referred to in subparagraph (d) of this Paragraph. Copies of said contracts are incorporated by reference into this complaint and are attached hereto as Appendix B.

(j) The term "fair traded goods" shall refer to commodities which bear, or the labels or containers of which bear, respondent's "Rubbermaid" trademark, brand, or name and which are resold

pursuant to wholesaler and/or retailer contracts. The words "wholesaler" and "retailer" refer to resellers of said commodities. A list of said commodities is incorporated by reference into this complaint and is attached hereto as Appendix C.

PAR. 2. Respondent, Rubbermaid Incorporated is a corporation organized and existing under the laws of the State of Ohio and whose principal office address is 1255 Bowman Street, Wooster, Ohio.

PAR. 3. Respondent's consolidated net sales during its fiscal year ended December 31, 1970 were in excess of sixty-nine million dollars (\$69,000,000), approximately forty million dollars (\$40,000,000) of which sales were of respondent's fair traded goods. For its fiscal years ended December 31, 1971 and December 31, 1972, respondent's consolidated net sales were in excess of seventy-eight million dollars (\$78,000,000) and one hundred two million dollars (\$102,000,000) respectively, substantial portions of which sales were of respondent's fair traded goods.

PAR. 4. (a) Respondent is now and for some time last past has been engaged in the manufacture, advertising, offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of numerous commodities which bear, or the labels or containers of which bear, trademarks, brands and names owned by respondent.

(b) Among said commodities are rubber, plastic and coated wire houseware products which bear, or the labels or containers of which bear, the name "Rubbermaid."

(c) Respondent sells these commodities directly to both wholesalers and retailers. Respondent's wholesalers are located in every State except Delaware, Nevada, New Hampshire, Puerto Rico and North Dakota. Respondent's wholesalers purchase said merchandise and resell it to retailers located in every State.

(d) Except as set forth in Paragraph Five below, respondent's wholesalers are free to, and many in fact do or could, resell respondent's fair traded goods to retailers or other wholesalers in other States.

PAR. 5. (a) Through wholesaler contracts with all of its wholesalers in all States and retailer contracts with all direct and indirect purchasing retailers in States having fair trade laws, respondent now maintains, and for some time last past has maintained, a retail fair trade program for its goods.

(b) Respondent's wholesaler contracts (see Section 5(a), App. B) provide in part that wholesalers may not sell, consign, or transfer any of respondent's fair traded goods to any wholesaler or retailer located in a State with a fair trade law unless such wholesaler or retailer signs

or has signed a wholesaler or retailer contract (as may be appropriate). These customer restriction provisions are operative and apply either (i) when the wholesaler makes or would make a resale within a fair trade State, or (ii) regardless of whether such (first) resale occurs in a fair trade State or in a free trade State, when the merchandise will be transported to any fair trade State in which another resale will occur (see Section 5(b), App. B).

(c) Respondent's retailer contracts (see Section 3, App.A) provide in part that retailers located in States with fair trade laws may not advertise, offer for sale, or sell respondent's fair traded products at less than the retail selling prices stipulated by respondent.

PAR. 6. (a) Respondent's wholesalers are located geographically so as to efficiently serve the vast majority of respondent's direct-buying retailers.

(b) It is respondent's policy and practice to sell directly to any retailer who so requests. A number of former direct-buying retailers have elected to change to wholesaler service.

PAR. 7. All of respondent's wholesaler contracts are agreements between wholesalers or between actual or potential competitors within the meaning of Section 5(a)(5) of the Federal Trade Commission Act and are now, and since their inception have been—

(a) outside the exemption from being declared unlawful under the Antitrust Acts and the Federal Trade Commission Act afforded certain fair trade contracts and agreements by Section 5(a)(2) of the Federal Trade Commission Act;

(b) an unlawful burden and restraint upon, and interference with, interstate commerce within the meaning of Section 1 of the Sherman Act and Section 5(a)(4) of the Federal Trade Commission Act; and, therefore,

(c) unlawful under, and in violation of, Section 5(a)(1) of the Federal Trade Commission Act.

COUNT II

PAR. 8. (a) The allegations of Paragraphs One through Five are incorporated herein by reference.

(b) As set forth in Paragraph Five above, respondent has used a refusal-to-deal provision to force fair trade State resellers, primarily retailers, to sign fair trade contracts in order to obtain respondent's merchandise and has contractually required its free trade State wholesalers to deal only with signer resellers in fair trade States.

(c) Respondent thereby prevents its free trade State wholesalers from making sales of respondent's goods in interstate commerce to all

nonsigner resellers in all fair trade States, and more specifically, to such retailers in the signer-only States.

(d) Respondent's wholesaler contracts by their terms apply to resellers located, and/or to resales made, within jurisdictions having no statute, law, or public policy making contracts so limiting a reseller's right to resell lawful with respect to intrastate sales, and into which jurisdictions (free trade States) respondent has shipped or transported its merchandise for resale.

PAR. 9. Respondent's contracts with its free trade State wholesalers, insofar as said contracts in any way purport to restrict sales of respondent's goods by said free trade State wholesalers to fair trade State resellers, and particularly to nonsigner retailers in signer-only States, are now and since their inception have been—

(a) outside the exemption from being declared unlawful under the Antitrust Acts and the Federal Trade Commission Act afforded certain fair trade contracts and agreements by Section 5(a)(2) of the Federal Trade Commission Act;

(b) an unlawful burden and restraint upon, and interference with, interstate commerce between free trade States and fair trade States within the meaning of Section 1 of the Sherman Act and Section 5(a)(4) of the Federal Trade Commission Act; and, therefore,

(c) unlawful under, and in violation of, Section 5(a)(1) of the Federal Trade Commission Act.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceeding in this matter that the respondent, Rubbermaid Incorporated, is in violation of Section 5 of the Federal Trade Commission Act as alleged in the complaint, the Commission may order such relief as is supported by the record and is necessary and appropriate, including, but not limited to:

1. Cancellation of all existing wholesaler contracts and a ban on their future use.

2. Prohibition of the use of any other means to prevent wholesalers from selling to any retailer or to prevent retailers from purchasing from wholesalers without signing a fair trade contract.

3. Prohibition of the use of any means not specifically permitted by the McGuire Act for the purpose or with the effect of fixing resale prices.

4. Requirement that appropriate notices be mailed to all wholesalers and retailers informing them of their rights with respect to purchase and sale.

5. Cancellation of all retailer contracts obtained or submitted by

any Rubbermaid wholesaler, and notification to said retailers that they do not have to sign any new fair trade contract in order to purchase Rubbermaid's fair traded merchandise.

6. Notification to appropriate Rubbermaid personnel of the terms of the order.

7. Submission to the Commission of periodic compliance reports.

8. Notification to the Commission of proposed corporate changes which might affect compliance obligations under the order.

Complaint

87 F.T.C.

RUBBERMAID COPY

AUTHORIZED RETAILER

Rubbermaid Authorized Retailer Fair Trade Agreement

No. _____

AGREEMENT made at Wooster, Ohio, this _____ day of _____, 19____, by and between RUBBERMAID INCORPORATED, an Ohio Corporation with its principal offices at Wooster, Ohio, hereinafter referred to as "Rubbermaid," and _____

Please Print

of _____
 Street Address City County State Zip
 hereinafter referred to as "Retailer."

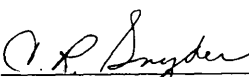
1. In consideration of the mutual obligations and covenants herein contained, Rubbermaid hereby appoints Retailer an Authorized Rubbermaid Housewares Retailer.
2. Rubbermaid products now or hereafter made subject to this agreement are and will be distributed under Rubbermaid's trademark, brand or name in free and open competition with commodities of the same general class produced or distributed by others.
3. Retailer agrees (except as specifically permitted by statute) not to advertise, offer for sale, or sell the products listed in Schedule A here-to attached or in said Schedule A as it may from time to time be amended at less than the minimum retail selling price stipulated on such Schedule for such a sale.
4. Rubbermaid by written notice to Retailer may from time to time as of a date specified in said notice, amend Schedule A so as to (a) eliminate one or more products; (b) add one or more products and stipulate minimum retail selling prices therefor; or (c) change the minimum retail selling price of one or more products. Such notice may take the form of a revised Schedule A which specifies its effective date.
5. Except as authorized by Schedule A or any amendment thereof: (a) the offering or giving of any thing of value by Retailer in connection with the sale of any of the products in Schedule A; (b) the offering or making of any concession in connection with any such sale; or (c) the sale or offering for sale of any of the products in combination with any other merchandise, shall constitute a breach by Retailer of this agreement.
6. Rubbermaid will employ all reasonable means, including legal proceedings where warranted, to obtain and enforce observance by competitors of Retailer of the minimum retail selling prices established by this agreement.
7. This agreement shall apply to sales, offers or advertisements only when and where agreements of the character of this agreement shall be lawful as applied to intrastate transactions under a statute, law or public policy now or hereafter in effect in the state in which such sale is to be made or to which the products are to be transported for sale.
8. Rubbermaid agrees to provide the Retailer, either directly or through an Authorized Wholesaler, with selling aids such as newspaper mats, in-store point of sale display material and cooperation of the Rubbermaid representative in the interest of promoting the Retailer's full sales potential of Rubbermaid products.
9. Retailer agrees to cooperate with Rubbermaid to develop the full potential sales by the following: (a) maintaining an adequate inventory of the complete line of Rubbermaid products consistent with the sales potential of Retailer; (b) displaying Rubbermaid profitably and attractively in a high traffic location in the store.
10. Retailer agrees not to sell, consign or transfer any of the products listed on Schedule A to any person known by Retailer to be engaged in a resale business and located in a state permitting Fair Trade Agreements, including any wholesaler, distributor, dealer, retailer or jobber, unless (i) such person has previously signed and delivered to Rubbermaid a Rubbermaid Authorized Retailer or Wholesaler Agreement, and said agreement is in full force and effect; or (ii) unless prior to any sale, consignment or transfer of such products by Retailer, such other person executes and furnishes to Retailer such an agreement and the same has been forwarded to Rubbermaid. Prior to any sale, consignment or transfer of such products to any such person, it shall be the burden of Retailer to verify that such person has theretofore entered into an agreement similar to this agreement, or to obtain such an agreement from such a person and to forward the same to Rubbermaid.
11. This agreement may be terminated by either party on ten (10) days' written notice to the other, but such termination shall not affect the obligations of Rubbermaid or Retailer arising from any other contract made by Rubbermaid pursuant to an applicable Fair Trade Act.
12. In the event this agreement is terminated by either party, Rubbermaid shall, at its option, have the right at any time within two (2) weeks from the giving or receipt of notice of termination to purchase from Retailer at Retailer's invoice cost, Retailer's entire inventory of Rubbermaid products then listed on Schedule A.

I certify that I have read paragraphs numbered 1 through 12 above and paragraph 13 along with Schedule A on the reverse side hereof and agree to the terms therein.

Company

By: _____

Title

By: 
 C. R. SNYDER
 VICE PRESIDENT, MARKETING


 WOOSTER, OHIO

Complaint

13. This agreement shall become effective upon the signing by Retailer and the signing by Rubbermaid on the reverse side hereof by duly authorized representative. This agreement shall constitute the entire agreement between the parties and any verbal statements, representations or agreements made prior to or contemporaneously with the execution of this agreement which vary, amend or modify its terms, are void. This agreement shall become effective only upon its receipt by Rubbermaid at Wooster, Ohio, properly executed by both parties. The execution by Rubbermaid may be by facsimile signature.

REVISED
schedule A

EFFECTIVE JANUARY 1, 1970
TO RUBBERMAID AUTHORIZED
FAIR TRADE AGREEMENT

RUBBERMAID INCORPORATED

Minimum Retail Selling Price

The products listed below shall be sold at not less than the fair trade list price set opposite the product number. Please refer to the latest illustrated RUBBERMAID Housewares Catalog - Price List for more complete product descriptions.

Unless otherwise prohibited by law, a bona fide cash discount may be given in an amount not exceeding three per cent (3%) of the minimum retail selling price only under the following terms and conditions:

1. The discount must be in the form of cash, trading stamps, coupons, cash register receipts or analogous form.
2. The discount must be given as a matter of the Retailer's general policy and not on RUBBERMAID products alone.
3. RUBBERMAID products must continue to be advertised and offered for sale at the minimum retail price as set out in this Schedule A.
4. The discount shall not be given solely for the purpose of selling trademarked RUBBERMAID products below the established minimum retail price.

Any sale of RUBBERMAID trademarked products sold at less than the established minimum retail price in violation of the above terms and conditions shall be considered a violation of RUBBERMAID'S retail fair trade agreement.

MINIMUM RETAIL SELLING PRICE

Item No.	Description	Retail Each	Item No.	Description	Retail Each	Item No.	Description	Retail Each
1131	Drainboard Mat	.98	2308	Slide-Out Storage Drawer	3.98	2935	"Busy Susan" Turntable	2.79
1133	Drainboard Mat	1.29	2309	Slide-Out Storage Drawer	4.29	2936	Single Turntable	.98
1141	Drainboard Mat	1.49	2310	Slide-Out Storage Drawer	4.69	2937	Twin Turntable	1.98
1142	Drainboard Mat	1.79	2311	Slide-Out Storage Drawer	4.98	2938	Cup 'n Plate Carousel	1.98
1161	Decorative Drainer Tray	3.98	2312	Slide-Out Vegetable Drawer	4.98	2939	Tissue Dispenser	1.79
1180	Drainer Tray	1.79	2313	Slide-Out Lid Rack	4.98	2940	Vanity Wastebasket	.98
1181	Drainer Tray	1.98	2314	Storage Drawer Stacking Kit	1.98	2948	Sink Basin	.98
1190	Drainer Tray	2.49	2350	Spacemaker Drawer	5.95	2950	Dishpan	1.79
1191	Drainer Tray	2.98	2351	Spacemaker Bread Drawer	6.95	2951	Dishpan	1.79
1211	Sink Liner Mat	1.98	2352	Towel & Wrap Dispenser	7.95	2952	Vanity Wastebasket	.98
1290	Sink Mat	.98	2353	Spacemaker Cabinet	7.95	2959	Vanity Wastebasket	1.79
1291	Sink Mat	1.49	2354	Spacemaker Canister	4.95	2960	Sponge Mop Bucket	2.29
1292	Sink Mat	1.98	2355	Spacemaker Canister Set	10.95	2963	Neat 'n Tidy Bucket	1.98
1294	Sink Divider Mat	.98	2501	Pet Feeding Dish	.98	2965	Laundry Basket	2.98
1297	Sink Divider Mat	1.49	2830	Round Wastebasket	2.98	2967	Laundry Basket	3.98
1303	Protector Mat	.98	2834	Spin-A-Bin	5.95	2969	Storage Bin	1.98
1305	Protector Mat	1.49	2837	Mini-Bin	4.95	2970	Dishpan	1.98
1314	Solid Stove Mat	.98	2844	Canister Carousel	10.95	2975	Covered Container	4.49
1315	Solid Stove Mat	1.29	2845	Wastebasket	1.98	5817	Sink Strainer	.59
1321	Stove 'n Counter Mat	1.98	2846	Wastebasket	2.98	6008	Dish Drainer	2.49
1322	Stove 'n Counter Mat	2.98	2856	Vanity Cabinet	9.95	6032	Deluxe Dish Drainer	2.98
1415	Tredcasy Floor Mat	4.95	2857	Tool Caddy	2.98	6049	Twin Sink Dish Drainer	1.59
1416	Tredcasy Floor Mat	5.95	2859	Small Parts Caddy	2.98	6050	Dish Drainer	1.98
1603	Shelf Liner 12 ft. roll	.98	2862	Ice Cube Bin	1.49	6051	Dish Drainer	2.98
1604	Shelf Liner 25 ft. roll	1.98	2864	Self-Closing Wastebasket	3.98	6072	Deluxe Dish Drainer	3.98
1613	Shelf Liner 6 ft. roll	.98	2865	Ice Cube Tray	.79	6103	Sink Rack	1.79
1614	Shelf Liner 12 ft. roll	1.98	2875	Diaper Pail	3.98	6104	Sink Rack	1.98
1635	Wall Cab. Shelf-Kushion yd.	.79	2882	Refuse Container	8.95	6203	Plate Rack	1.98
1644	Base Cab. Shelf-Kushion yd.	1.49	2909	Extra Silverware Cup	.59	6211	Dinnerware Rack	3.98
1901	Spatula	.29	2915	Instant Drawer Organizer	.39	7035	Safty-Grip Bathtub Mat	1.49
1903	Deluxe Bottle & Jar Scraper	.35	2916	Instant Drawer Organizer	.49	7038	Safty-Grip Bathtub Mat	1.98
1904	Deluxe Plate & Bowl Spatula	.39	2917	Instant Drawer Organizer	.49	7041	Safty-Grip Bathtub Mat	2.98
1915	Toilet Bowl Brush	1.49	2918	Instant Drawer Organizer	.79	7043	Safty-Grip Bathtub Mat	3.98
2001	Dust Pan	1.49	2921	Cutlery Tray	.98	7085	Bathtub Appliques	1.98
2003	Dust Pan	.98	2922	Cutlery Tray	1.49	7090	Bathtub Appliques	2.98
2102	Sink Stopper	.29	2923	Drawer Divider	1.98	7112	Safty-Grip Shower Mat	3.49
2206	Soup Dish	.29	2931	Calander	.98	7202	Toilet Top Tray	1.49
2300	Turntable	2.98	2933	Vanity Wastebasket	1.79	8719	Deluxe Toilet Bowl Brush Set	2.98
2301	Storage Turntable	3.98	2934	"Cool Susan" Turntable	2.29	8818	Instant Drawer Organizer Asst.	36.48
2302	Storage Turntable	4.98						

Complaint

87 F.T.C.

RETAILER COPY

VIRGINIA

AUTHORIZED RETAILER

Rubbermaid Authorized Retailer Fair Trade Agreement

No. _____

AGREEMENT made at Wooster, Ohio, this _____ day of _____, 19____, by and between RUBBERMAID INCORPORATED, an Ohio Corporation with its principal offices at Wooster, Ohio, hereinafter referred to as "Rubbermaid," and _____

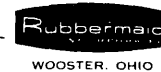
of _____ PLEASE PRINT _____ VIRGINIA
 STREET ADDRESS CITY COUNTY STATE
 hereinafter referred to as "Retailer."

1. In consideration of the mutual obligations and covenants herein contained, Rubbermaid hereby appoints Retailer an Authorized Rubbermaid Housewares Retailer.
2. Rubbermaid products now or hereafter made subject to this agreement are and will be distributed under Rubbermaid's trademark, brand or name in free and open competition with commodities of the same general class produced or distributed by others.
3. Retailer agrees (except as specifically permitted by statute) not to advertise, offer for sale, or sell the products listed in Schedule A hereto attached or in said Schedule A as it may from time to time be amended at less than the minimum retail selling price stipulated on such Schedule for such a sale.
4. Rubbermaid by written notice to Retailer may from time to time as of a date specified in said notice, amend Schedule A so as to (a) eliminate one or more products; (b) add one or more products and stipulate minimum retail selling prices therefor; or (c) change the minimum retail selling price of one or more products. Such notice may take the form of a revised Schedule A which specifies its effective date.
5. Except as authorized by Schedule A or any amendment thereof: (a) the offering or giving of any thing of value by Retailer in connection with the sale of any of the products in Schedule A; (b) the offering or making of any concession in connection with any such sale; or (c) the sale or offering for sale of any of the products in combination with any other merchandise, shall constitute a breach by Retailer of this agreement.
6. Rubbermaid will employ all reasonable means, including legal proceedings where warranted, to obtain and enforce observance by competitors of Retailer of the minimum retail selling prices established by this agreement.
7. This agreement shall apply to sales, offers or advertisements only when and where agreements of the character of this agreement shall be lawful as applied to intrastate transactions under a statute, law or public policy now or hereafter in effect in the state in which such sale is to be made or to which the products are to be transported for sale.
8. Rubbermaid agrees to provide the Retailer, either directly or through an Authorized Wholesaler, with selling aids such as newspaper mats, in-store point of sale display material and cooperation of the Rubbermaid representative in the interest of promoting the Retailer's full sales potential of Rubbermaid products.
9. Retailer agrees to cooperate with Rubbermaid to develop the full potential sales by the following: (a) maintaining an adequate inventory of the complete line of Rubbermaid products consistent with the sales potential of Retailer; (b) displaying Rubbermaid profitably and attractively in a high traffic location in the store.
10. (a) Retailer agrees not to sell, consign or transfer any of the products listed on Schedule A to any person known by Retailer to be engaged in a resale business and located in a state permitting Fair Trade Agreements, including any wholesaler, distributor, dealer, retailer or jobber, unless (i) such person has previously signed and delivered to Rubbermaid a Rubbermaid Authorized Retailer or Wholesaler Agreement, and said agreement is in full force and effect; or (ii) unless prior to any sale, consignment or transfer of such products by Retailer, such other person executes and furnishes to Retailer such an agreement and the same has been forwarded to Rubbermaid. Prior to any sale, consignment or transfer of such products to any such person, it shall be the burden of Retailer to verify that such person has theretofore entered into an agreement similar to this agreement, or to obtain such an agreement from such person and to forward the same to Rubbermaid.
 (b) Rubbermaid agrees not to sell, consign or transfer the products listed on Schedule A to any Wholesaler located in the State of Virginia, unless such Wholesaler will agree not to resell the same to any Retailer unless the Retailer will in turn agree not to resell the same except at the stipulated minimum price; or to any Retailer unless the Retailer will agree not to resell the same except at the stipulated minimum price.
11. This agreement may be terminated by either party on ten (10) days' written notice to the other, but such termination shall not affect the obligations of Rubbermaid or Retailer arising from any other contract made by Rubbermaid pursuant to an applicable Fair Trade Act.
12. In the event this agreement is terminated by either party, Rubbermaid shall, at its option, have the right at any time within two (2) weeks from the giving or receipt of notice of termination to purchase from Retailer at Retailer's invoice cost, Retailer's entire inventory of Rubbermaid products then listed on Schedule A.
13. This agreement shall become effective upon the signing by Retailer and the signing by Rubbermaid by duly authorized representative. This agreement shall constitute the entire agreement between the parties and any verbal statements, representations or agreements made prior to or contemporaneously with the execution of this agreement which vary, amend or modify its terms, are void. This agreement shall become effective only upon its receipt by Rubbermaid at Wooster, Ohio, properly executed by both parties. The execution by Rubbermaid may be by facsimile signature.

I certify that I have read paragraphs numbered 1 through 13 above, along with Schedule A on the reverse side hereof, and agree to the terms therein.

 COMPANY
 By: _____

By: *C. R. Snyder*
 C. R. SNYDER
 VICE PRESIDENT - MARKETING



REVISED
Schedule A

RUBBERMAID INCORPORATED Minimum Retail Selling Price

The products listed below shall be sold at not less than the fair trade list price set opposite the product number. Please refer to the latest illustrated RUBBERMAID Housewares Catalog - Price List for more complete product descriptions.

Unless otherwise prohibited by law, a bona fide cash discount may be given in an amount not exceeding three per cent (3%) of the minimum retail selling price only under the following terms and conditions:

1. The discount must be in the form of cash, trading stamps, coupons, cash register receipts or analogous form.
2. The discount must be given as a matter of the Retailer's general policy and not on RUBBERMAID products alone.
3. RUBBERMAID products must continue to be advertised and offered for sale at the minimum retail price as set out in this Schedule A.
4. The discount shall not be given solely for the purpose of selling trademarked RUBBERMAID products below the established minimum retail price.

Any sale of RUBBERMAID trademarked products sold at less than the established minimum retail price in violation of the above terms and conditions shall be considered a violation of RUBBERMAID'S retail fair trade agreement.

MINIMUM RETAIL SELLING PRICE

Item No.	Description	Retail Each	Item No.	Description	Retail Each	Item No.	Description	Retail Each
1131	Drainboard Mat	.79	2303	Turntable Bin	1.98	2935	"Busy Susan" Turntable	2.49
1133	Drainboard Mat	.98	2308	Slide-Out Storage Drawer	3.98	2936	Single Turntable	.98
1141	Drainboard Mat	1.29	2309	Slide-Out Storage Drawer	4.29	2937	Twin Turntable	1.98
1142	Drainboard Mat	1.79	2310	Slide-Out Storage Drawer	4.69	2938	Cup'n Plate Carousel	1.98
1152	Drainer Tray	3.98	2311	Slide-Out Storage Drawer	4.98	2939	Tissue Dispenser	1.49
1180	Drainer Tray	1.79	2312	Slide-Out Vegetable Drawer	4.98	2940	Vanity Wastebasket	.98
1181	Drainer Tray	1.98	2313	Slide-Out Lid Rack	4.98	2948	Sink Basin	.79
1190	Drainer Tray	2.49	2314	Storage Drawer Stacking Kit	1.98	2950	Dishpan	1.09
1191	Drainer Tray	2.98	2350	Spacemaker Drawer	4.98	2951	Dishpan	1.09
1211	Sink Liner Mat	1.79	2351	Spacemaker Bread Drawer	5.95	2952	Vanity Wastebasket	.98
1290	Sink Mat	.89	2352	Towel & Wrap Dispenser	7.95	2959	Vanity Wastebasket	1.49
1291	Sink Mat	1.29	2501	Pet Feeding Dish	.79	2960	Sponge Mop Bucket	1.98
1292	Sink Mat	1.79	2830	Round Wastebasket	2.79	2963	Neat'n Tidy Bucket	1.09
1294	Sink Divider Mat	.89	2834	Spin-A-Bin	4.98	2966	Laundry Basket	2.98
1297	Sink Divider Mat	1.29	2837	Mini-Bin	3.98	2967	Laundry Basket	3.98
1303	Protector Mat	.79	2844	Canister Carousel	9.95	2969	Storage Bin	1.98
1305	Protector Mat	1.29	2845	Wastebasket	1.98	2970	Dishpan	1.09
1314	Solid Stove Mat	.79	2846	Wastebasket	2.98	2975	Covered Container	3.98
1315	Solid Stove Mat	.98	2854	Covered Wastebasket	3.98	5104	Kneeling Pad	.89
1321	Stove'n Counter Mat	1.49	2856	Vanity Cabinet	9.95	5817	Sink Strainer	.49
1322	Stove'n Counter Mat	2.49	2857	Tool Caddy	3.98	6008	Dish Drainer	2.39
1400	Boat Tray	2.98	2858	Small Parts Caddy	4.98	6021	Dish Drainer	1.59
1407	Door Mat	2.98	2859	Small Parts Caddy	3.98	6032	Deluxe Dish Drainer	2.98
1415	Treelove Floor Mat	3.98	2903	Ice Cube Bin	1.49	6050	Dish Drainer	1.98
1416	Treelove Floor Mat	4.98	2905	Ice Cube Tray	.79	6072	Deluxe Dish Drainer	3.98
1604	Shelf Liner 25 ft. roll	1.98	2972	Covered Container	2.98	6103	Sink Rack	1.59
1614	Shelf Liner 12 ft. roll	1.98	2975	Diaper Pail	3.98	6104	Sink Rack	1.89
1635	Wall Cab. Shelf-Kushion yd.	.79	2982	Refuse Container	7.95	6203	Plate Rack	1.98
1644	Base Cab. Shelf-Kushion yd.	1.49	2989	Extra Silverware Cup	.49	6211	Dinnerware Rack	3.98
1901	Spatula	.25	2915	Instant Drawer Organizer	.39	7035	Soft-Grip Bathtub Mat	1.29
1903	Deluxe Bottle & Jar Scraper	.29	2916	Instant Drawer Organizer	.49	7038	Soft-Grip Bathtub Mat	1.98
1904	Deluxe Plate & Bowl Spatula	.39	2917	Instant Drawer Organizer	.49	7041	Soft-Grip Bathtub Mat	2.98
1915	Toilet Bowl Brush	1.49	2918	Silverware Drainer	.98	7043	Soft-Grip Bathtub Mat	3.98
2001	Dust Pan	1.49	2921	Gutter Tray	.98	7112	Soft-Grip Shower Mat	2.98
2003	Dust Pan	.98	2922	Gutter Tray	1.49	7202	Toilet Top Tray	1.29
2102	Sink Stopper	.25	2923	Drawer Divider	1.98	8700	Cabinet Organizer Set	5.95
2206	Soap Dish	.25	2925	Drawer Divider	.79	8718	Toilet Bowl Brush Set	1.98
2300	Turntable	2.98	2931	Cauler	1.98	8719	Deluxe Toilet Bowl Brush Set	2.98
2301	Storage Turntable	3.98	2933	Vanity Wastebasket	1.49	8815	Instant Drawer Organizer Asst.	32.88
2302	Storage Turntable	4.98	2934	"Busy Susan" Turntable	1.98			

Complaint

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RUBBERMAID COPY

AUTHORIZED WHOLESALER

Rubbermaid Authorized Wholesaler Fair Trade Agreement

NO. _____

AGREEMENT made at Wooster, Ohio, this _____ day of _____, 19____, by and between RUBBERMAID INCORPORATED, an Ohio Corporation with its principal offices at Wooster, Ohio, hereinafter referred to as "Rubbermaid," and _____

Please Print

of _____
 Street Address City County State

hereinafter referred to as "Wholesaler."

1. In consideration of the mutual obligations and covenants herein contained, Rubbermaid hereby appoints Wholesaler an Authorized Rubbermaid Housewares Wholesaler.

2. Rubbermaid products now or hereafter made subject to this agreement are and will be distributed under Rubbermaid's trademark, brand or name in free and open competition with commodities of the same general class produced or distributed by others.

3. Rubbermaid agrees to provide the Wholesaler with selling aids and the co-operation of the Rubbermaid representative in the interest of promoting the Wholesaler's full sales potential of Rubbermaid products.

4. Wholesaler agrees to cooperate with Rubbermaid to develop the full potential sales by (a) maintaining an adequate inventory of the complete line of Rubbermaid products consistent with the sales demand of Rubbermaid Authorized Retailers; (b) remitting to Rubbermaid in accordance with invoice terms on all purchases; (c) cooperating fully with Rubbermaid representatives in connection with sales meetings, instruction and training of salesmen and the promotion, timing and sale of seasonal products.

5. (a) Wholesaler agrees not to sell, consign or transfer any of the products listed on Schedule A to any person located in a state permitting Fair Trade Agreements and intending to sell or resell the same, including any wholesaler, distributor, dealer, retailer or jobber unless (i) such person has previously signed and delivered to Rubbermaid either an agreement similar to this agreement of the Rubbermaid Retailer Agreement, and said agreement is in full force and effect; or (ii) unless prior to any sale, consignment or transfer of such products by Wholesaler, such other person executes and furnishes to Wholesaler either an agreement similar to this agreement or a Rubbermaid Retailer Agreement and the same has been forwarded to Rubbermaid. Prior to any sale, consignment or transfer of such products to any such person, it shall be the burden of Wholesaler to verify

that such person has theretofore entered into an agreement similar to this agreement, or a Rubbermaid Retailer Agreement, or to obtain such an agreement from such person and to forward the same to Rubbermaid.

5. (b) Wholesaler located in non-fair trade jurisdiction. If Wholesaler is located in a state or other jurisdiction which does not authorize the resale price and fair trade provisions contained in the Rubbermaid Retailer Agreement, as to intrastate transactions therein, Wholesaler agrees only that he will observe the condition of the preceding subparagraph 5 (a) with respect to any sale, consignment or transfer of the products listed on Schedule A to any person who (i) intends to sell or resell the same and (ii) is located in a state in which such resale price and fair trade provisions are lawful as to intrastate transactions, and to which state said products are to be transported for sale.

6. This agreement may be terminated by either party on written notice to the other, but such termination shall not affect the obligations of Rubbermaid or Wholesaler arising from any other contract made by Rubbermaid pursuant to an applicable Fair Trade Act.

7. In the event this agreement is terminated by either party, Rubbermaid shall have, at its option, the right at any time upon the giving or receipt of notice of termination or within two (2) weeks thereof to purchase from Wholesaler at Wholesaler's invoice cost, the entire inventory of Rubbermaid products then listed on Schedule A.

8. This agreement shall become effective upon the signing by Wholesaler and Rubbermaid and upon its receipt by Rubbermaid at Wooster, Ohio, properly executed by both parties. The execution by Rubbermaid may be by facsimile signature. This agreement shall constitute the entire agreement between the parties and any verbal statements, representations or agreements made prior to or contemporaneously with the execution of this agreement which vary, amend or modify its terms are void.

I certify that I have read paragraphs 1 through 8 above along with Revised Schedule A on the reverse side hereof and agree to the terms therein.

 Company
 By: _____

 Title

By:



WOOSTER, OHIO

By: *C. R. Snyder*

C. R. SNYDER
 VICE-PRESIDENT, MARKETING
 HOUSEWARE DIVISION

REVISED
schedule AEFFECTIVE JANUARY 1, 1969
TO RUBBERMAID AUTHORIZED
FAIR TRADE AGREEMENTRUBBERMAID INCORPORATED
Minimum Retail Selling Price

The products listed below shall be sold at not less than the fair trade list price set opposite the product number. Please refer to the latest illustrated RUBBERMAID Housewares Catalog - Price List for more complete product descriptions.

Unless otherwise prohibited by law, a bona fide cash discount may be given in an amount not exceeding three per cent (3%) of the minimum retail selling price only under the following terms and conditions:

1. The discount must be in the form of cash, trading stamps, coupons, cash register receipts or analogous form.
2. The discount must be given as a matter of the Retailer's general policy and not on RUBBERMAID products alone.
3. RUBBERMAID products must continue to be advertised and offered for sale at the minimum retail price as set out in this Schedule A.
4. The discount shall not be given solely for the purpose of selling trademarked RUBBERMAID products below the established minimum retail price.

Any sale of RUBBERMAID trademarked products sold at less than the established minimum retail price in violation of the above terms and conditions shall be considered a violation of RUBBERMAID'S retail fair trade agreement.

MINIMUM RETAIL SELLING PRICE

Item No.	Description	Retail Each	Item No.	Description	Retail Each	Item No.	Description	Retail Each
1131	Drainboard Mat	.98	2301	Storage Turntable	3.98	2934	"Cool Susan" Turntable	1.98
1133	Drainboard Mat	1.29	2302	Storage Turntable	4.98	2935	"Busy Susan" Turntable	2.49
1141	Drainboard Mat	1.29	2303	Turntable Bin	1.98	2936	Single Turntable	.98
1142	Drainboard Mat	1.79	2308	Slide-Out Storage Drawer	3.98	2937	Twin Turntable	1.98
1180	Drainer Tray	1.79	2309	Slide-Out Storage Drawer	4.29	2938	Cup'n Plate Carousel	1.98
1181	Drainer Tray	1.98	2310	Slide-Out Storage Drawer	4.69	2939	Tissue Dispenser	1.79
1190	Drainer Tray	2.49	2311	Slide-Out Storage Drawer	4.98	2940	Vanity Wastebasket	.98
1191	Drainer Tray	2.98	2312	Slide-Out Vegetable Drawer	4.98	2948	Sink Basin	.98
1211	Sink Liner Mat	1.98	2313	Slide-Out Lid Rack	4.98	2950	Dishpan	1.69
1290	Sink Mat	.98	2314	Storage Drawer Stacking Kit	1.98	2951	Dishpan	1.69
1291	Sink Mat	1.29	2350	Spacemaker Drawer	5.95	2952	Vanity Wastebasket	.98
1292	Sink Mat	1.79	2351	Spacemaker Bread Drawer	6.95	2959	Vanity Wastebasket	1.49
1294	Sink Divider Mat	.98	2352	Towel & Wrap Dispenser	7.95	2960	Sponge Mop Bucket	1.98
1297	Sink Divider Mat	1.29	2353	Spacemaker Cabinet	7.95	2963	Neat'n Tidy Bucket	1.69
1303	Protector Mat	.98	2354	Spacemaker Canister	4.95	2965	Laundry Basket	2.98
1305	Protector Mat	1.29	2355	Spacemaker Canister Set	10.95	2967	Laundry Basket	3.98
1314	Solid Stove Mat	.98	2501	Pet Feeding Dish	.98	2969	Storage Bin	1.98
1315	Solid Stove Mat	1.29	2830	Round Wastebasket	2.98	2970	Dishpan	1.98
1321	Stove'n Counter Mat	1.98	2834	Spin-A-Bin	4.98	2975	Covered Container	4.49
1322	Stove'n Counter Mat	2.98	2837	Mini-Bin	3.98	5817	Sink Strainer	.49
1415	Tredcasy Floor Mat	3.98	2844	Canister Carousel	9.95	6008	Dish Drainer	2.49
1416	Tredcasy Floor Mat	4.98	2845	Wastebasket	1.98	6032	Deluxe Dish Drainer	2.98
1603	Shelf Liner 12 ft. roll	.98	2846	Wastebasket	2.98	6049	Twin Sink Dish Drainer	1.59
1604	Shelf Liner 25 ft. roll	1.98	2856	Vanity Cabinet	9.95	6050	Dish Drainer	1.98
1613	Shelf Liner 6 ft. roll	.98	2857	Tool Caddy	2.98	6051	Dish Drainer	2.98
1614	Shelf Liner 12 ft. roll	1.98	2858	Small Parts Caddy	3.98	6072	Deluxe Dish Drainer	3.98
1635	Wall Cab. Shelf-Kushion yd.	.79	2859	Small Parts Caddy	2.98	6103	Sink Rack	1.79
1644	Base Cab. Shelf-Kushion yd.	1.49	2862	Ice Cube Bin	1.49	6104	Sink Rack	1.98
1830	Interior Decorator Throw Rug	5.95	2865	Ice Cube Tray	.79	8203	Plate Rack	1.98
1831	Interior Decorator Throw Rug	8.95	2875	Diaper Pail	3.98	8211	Dinnerware Rack	3.98
1840	Interior Decorator Throw Rug	6.95	2882	Refuse Container	7.95	7035	Safty-Grip Bathtub Mat	1.29
1841	Interior Decorator Throw Rug	9.95	2909	Extra Silverware Cup	.49	7038	Safty-Grip Bathtub Mat	1.98
1901	Spatula	.29	2915	Instant Drawer Organizer	.39	7041	Safty-Grip Bathtub Mat	2.98
1903	Deluxe Bottle & Jar Scraper	.35	2916	Instant Drawer Organizer	.49	7043	Safty-Grip Bathtub Mat	3.98
1904	Deluxe Plate & Bowl Spatula	.39	2917	Instant Drawer Organizer	.49	7090	Bathtub Appliques	2.98
1915	Toilet Bowl Brush	1.49	2921	Cutlery Tray	.98	7112	Safty-Grip Shower Mat	2.98
2001	Dust Pan	1.49	2922	Cutlery Tray	1.49	7202	Toilet Top Tray	1.49
2003	Dust Pan	.98	2923	Drawer Divider	1.98	8700	Cabinet Organizer Set	5.95
2102	Sink Stopper	.29	2931	Colander	.98	8719	Deluxe Toilet Bowl Brush Set	2.98
2206	Soap Dish	.29	2933	Vanity Wastebasket	1.79	8815	Instant Drawer Organizer Asst.	32.88
2300	Turntable	2.98						

Complaint

87 F.T.C.

Rubbermaid Copy

V I R G I N I A

ADDENDUM TO RUBBERMAID AUTHORIZED
WHOLESALE FAIR TRADE AGREEMENT

THIS AGREEMENT shall constitute an addendum to the Rubbermaid Authorized Wholesaler Fair Trade Agreement executed by and between the parties hereto as of this _____ day of _____, 19____. In consideration of the mutual promises, covenants and conditions contained therein, and in order that said agreement meet the requirements of Section 59-8.3 of the Code of Virginia, paragraph 5 of said agreement is amended as follows:

5) (c) Rubbermaid agrees not to sell, consign or transfer the products listed on Schedule A to any Wholesaler located in the State of Virginia, unless such Wholesaler will agree not to resell the same to any Retailer unless the Retailer will in turn agree not to resell the same except at the stipulated minimum price; or to any Retailer unless the Retailer will agree not to resell the same except at the stipulated minimum price.

Signed as of this _____ day of _____, 19____.

RUBBERMAID INCORPORATED

By: C. R. SnyderC. R. SNYDER
Vice President, Marketing
Houseware Division

Company

By: _____

Title

REVISED
schedule A

 EFFECTIVE JANUARY 1, 1997
 TO RUBBERMAID AUTHORIZED
 FAIR TRADE AGREEMENT

RUBBERMAID INCORPORATED

The Minimum Retail Fair Trade Price for each product listed on this Schedule is the price established by Rubbermaid Incorporated and affixed to each product. Please consult the most recent Rubbermaid housewares catalog pages for product descriptions and amendments to this Schedule.

Unless otherwise prohibited by law, a bona fide cash discount may be given in an amount not exceeding three per cent (3%) of the minimum retail selling price only under the following terms and conditions:

1. The discount must be in the form of cash, trading stamps, coupons, cash register receipts or analogous form.
2. The discount must be given as a matter of the Retailer's general policy and not on RUBBERMAID products alone.
3. RUBBERMAID products must continue to be advertised and offered for sale at the minimum retail price as set out in this Schedule A.
4. The discount shall not be given solely for the purpose of selling trademarked RUBBERMAID products below the established minimum retail price.

Any sale of RUBBERMAID trademarked products sold at less than the established minimum retail price in violation of the above terms and conditions shall be considered a violation of RUBBERMAID'S retail fair trade agreement.

FAIR TRADED PRODUCTS

Item No.	Description	Item No.	Description	Item No.	Description
1120	Drainboard Mat	2350	Spacemaker Drawer	2967	Laundry Basket
1121	Drainboard Mat	2351	Spacemaker Bread Drawer	2969	Storage Bin
1161	Decorator Drainer Tray	2352	Towel & Wrap Dispenser	2970	Dishpan
1180	Drainer Tray	2353	Spacemaker Cabinet	2975	Covered Container
1181	Drainer Tray	2354	Spacemaker Canister	3030	Food Keeper - 1 Pt.
1190	Drainer Tray	2355	Spacemaker Canister Set	3031	Food Keeper - 1 Qt.
1191	Drainer Tray	2501	Pet Feeding Dish	3032	Food Keeper - 2 Qt.
1211	Sink Liner Mat	2830	Round Wastebasket	3034	Food Keeper - 4 Qt.
1290	Sink Mat	2834	Spin-A-Bin	3036	Food Keeper - 6 Qt.
1291	Sink Mat	2837	Mini-Bin	3042	Food Keeper - 2 Cup
1292	Sink Mat	2844	Canister Carousel	3044	Food Keeper - 4 Cup
1294	Sink Divider Mat	2845	Wastebasket	3046	Food Keeper - 6 Cup
1297	Sink Divider Mat	2846	Wastebasket	3048	Food Keeper - 8 Cup
1311	Protector Mat	2856	Vanity Cabinet	3052	Food Keeper - 12 Cup
1312	Protector Mat	2857	Tool Caddy	3054	Salad Keeper
1321	Stove'n Counter Mat	2859	Small Parts Caddy	3060	Bowl - 14 Oz.
1322	Stove'n Counter Mat	2862	Ice Cube Bin	3062	Covered Pitcher - 2 1/4 Qt.
1415	Tredeasy Floor Mat	2864	Self-Closing Wastebasket	3064	8 oz. Tumbler
1416	Tredeasy Floor Mat	2865	Ice Cube Tray	3066	14 oz. Tumbler
1603	Shelf Liner . . . 12 ft. roll	2875	Diaper Pail	5917	Sink Strainer
1604	Shelf Liner . . . 25 ft. roll	2882	Refuse Container	6008	Dish Drainer
1613	Shelf Liner . . . 6 ft. roll	2909	Extra Silverware Cup	6032	Deluxe Dish Drainer
1614	Shelf Liner . . . 12 1/2 ft. roll	2915	Instant Drawer Organizer	6049	Twin Sink Dish Drainer
1635	Wall Cab. Shelf-Kushion . . . yd.	2916	Instant Drawer Organizer	6050	Dish Drainer
1644	Base Cab. Shelf-Kushion . . . yd.	2917	Instant Drawer Organizer	6051	Dish Drainer
1901	Spatula	2918	Instant Drawer Organizer	6203	Plate Rack
1903	Deluxe Bottle & Jar Scraper	2921	Cutlery Tray	6211	Dinnerware Rack
1904	Deluxe Plate & Bowl Spatula	2922	Cutlery Tray	7035	Safty-Grip Bathtub Mat
1915	Toilet Bowl Brush	2923	Drawer Divider	7038	Safty-Grip Bathtub Mat
2001	Dust Pan	2931	Colander	7041	Safty-Grip Bathtub Mat
2003	Dust Pan	2933	Vanity Wastebasket	7043	Safty-Grip Bathtub Mat
2102	Sink Stopper	2934	"Cool Susan" Turntable	7075	Bathtub Appliques
2206	Soap Dish	2935	"Busy Susan" Turntable	7085	Bathtub Appliques
2300	Turntable	2936	Single Turntable	7090	Bathtub Appliques
2301	Storage Turntable	2937	Twin Turntable	7112	Safty-Grip Shower Mat
2302	Storage Turntable	2938	Cup 'n Plate Carousel	7202	Toilet Top Tray
2308	Slide-Out Storage Drawer	2939	Tissue Dispenser	8301	3-Bowl Food Keeper Set
2309	Slide-Out Storage Drawer	2940	Vanity Wastebasket	8302	3-Bowl Food Keeper Set
2310	Slide-Out Storage Drawer	2948	Sink Basin	8303	5-Bowl Food Keeper Set
2311	Slide-Out Storage Drawer	2950	Dishpan	8310	Mixing Bowl Set
2312	Slide-Out Vegetable Drawer	2951	Dishpan	8320	4-Bowl Salad Set
2313	Slide-Out Lid Rack	2952	Vanity Wastebasket	8321	Deluxe Salad Serving Set
2314	Storage Drawer Stacking Kit	2959	Vanity Wastebasket	8719	Deluxe Toilet Bowl Brush Set
2320	Clean-Up Caddy	2960	Sponge Mop Bucket	8818	Instant Drawer Organizer Asst.
2321	Wrap & Bag Organizer	2963	Neat 'n Tidy Bucket		
2322	Grocery Bag Holder	2965	Laundry Basket		

Initial Decision

87 F.T.R.

INITIAL DECISION BY ANDREW C. GOODHOPE, ADMINISTRATIVE
LAW JUDGE

DECEMBER 16, 1974

STATEMENT OF THE CASE

[1] On September 5, 1973, the Commission issued its complaint charging respondent with two violations of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), as set out in Counts I and II by reason of its fair trade contracts with its wholesalers and retailers.

[2] On October 16, 1973, respondent filed its answer to the complaint. With respect to Count I, Rubbermaid admitted the factual allegations but denied that its wholesaler fair trade contracts are not within the protection of the McGuire Act. As to Count II, Rubbermaid also admitted the factual allegations in substantial part but likewise denied that the challenged use of its wholesaler fair trade contracts is not protected by the McGuire Act.

Certain stipulations were thereafter entered into by counsel in support of the complaint and counsel for respondent which have been incorporated into the record as Commission Exhibits 1 and 2. Thereafter, counsel in support of the complaint filed a motion for summary decision pursuant to Section 3.24 of the Commission's Rules of Practice and Procedure. Counsel for the respondent likewise filed a motion for summary decision according to the Rules and counsel in support of the complaint filed a reply brief. Oral argument on these motions were held before the administrative law judge on November 14, 1974.

There being no material issue of fact in dispute at this time, it therefore appears appropriate for the entry of an initial decision pursuant to Section 3.24 of the Commission's Rules of Practice and Procedure. The administrative law judge, having considered all of the pleadings in this matter, the stipulations entered into between counsel, the motions for summary decision and replies filed by both parties, makes the following findings of fact.

FINDINGS OF FACT

1. Rubbermaid Incorporated is an Ohio corporation with its principal place of business at 1255 Borman St., Wooster, Ohio. It manufactures rubber, plastic, and coated wire household products which it sells under the trade name "Rubbermaid."

2. Respondent's consolidated net sales during its fiscal year ended December 31, 1970, were in excess of \$69 million, approximately \$40

million of which sales were of respondent's fair traded goods. For its fiscal years ended December 31, 1971, and December 31, 1972, respondent's consolidated net sales were in excess of \$78 million and \$102 million, respectively.

[3] During the years 1969 through 1973, Rubbermaid's sales of fair traded goods to purchasers in fair trade States increased from approximately \$27.5 million to approximately \$43 million. Sales made directly to retailers increased from approximately \$8 million in 1969 to approximately \$9.5 million in 1973, while sales to wholesalers increased from \$19.5 million to \$33.5 million. As these figures show, sales to retailers increased by 18.8 percent from 1969 to 1973, while sales to wholesalers increased 71.8 percent. During the same five years, a number of substantial retailer accounts which formerly purchased directly from Rubbermaid transferred their patronage to wholesalers, while only one previous wholesale customer became a direct retailer account of Rubbermaid. (Stipulation, CX 2, pp. 1-2)

3. Respondent is now and for some time last past has been engaged in the manufacture, advertising, offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of numerous commodities which bear, or the labels or containers of which bear, trademarks, brands and names owned by respondent.

4. In pursuance of its fair trade program, Rubbermaid has entered into retail fair trade contracts with retailers of Rubbermaid fair traded goods wherever such contracts are lawful under State law.¹ These contracts provide that retailers in fair trade States will maintain Rubbermaid's established fair trade prices. A copy of a Rubbermaid retailer fair trade agreement — which Commission counsel agree is entirely lawful under the McGuire Act — is attached to the complaint as Appendix A-1(a).

[4] 5. Rubbermaid also enters into wholesaler fair trade agreements where such agreements are authorized by State law. The Rubbermaid wholesaler fair trade agreements *do not* require a wholesaler to adhere to any schedule of fair trade prices. A wholesaler remains free to sell at whatever price he chooses. A copy of respondent's wholesaler agreement is attached to the complaint as Appendix B-1(a), B-2. The wholesaler agreement provides in paragraph 5(a) that:

Wholesaler agrees not to sell, consign or transfer any of the products listed on Schedule A to any person located in a state permitting Fair Trade Agreements and intending to sell or resell the same, including any wholesaler, distributor, dealer, retailer or jobber unless (i) such person has previously signed and delivered to Rubbermaid either

¹ There are 36 fair trade States and 14 free trade States. The District of Columbia and Puerto Rico are also free trade. (Paragraph One (f), (g), (h) of complaint and Paragraph One of the Answer, CX 1)

an agreement similar to this agreement of the Rubbermaid Retailer Agreement, and said agreement is in full force and effect; or (ii) unless prior to any sale, consignment or transfer of such products by Wholesaler, such other person executes and furnishes to Wholesaler either an agreement similar to this agreement or a Rubbermaid Retailer Agreement and the same has been forwarded to Rubbermaid. Prior to any sale consignment or transfer of such products to any such person, it shall be the burden of Wholesaler to verify that such person has theretofore entered into an agreement similar to this agreement, or a Rubbermaid Retailer Agreement, or to obtain such an agreement from such person and to forward the same to Rubbermaid.

In other words, all wholesalers of Rubbermaid's fair traded products agree to confine their resales to customers in fair trade jurisdictions to those who are parties to fair trade contracts with Rubbermaid.

COUNT I

6. Count I of the complaint presents the issue whether it constitutes unlawful resale price maintenance in violation of Section 5 of the Federal Trade Commission Act for a manufacturer who sells to both wholesalers and retailers to [5] require its wholesalers, with whom the manufacturer competes in selling to retailers, to agree that they will not resell to any retailer who has not signed a resale price maintenance agreement with the manufacturer.² More simply stated the issue is whether competitors (wholesalers) can agree that they will not sell products to any retailers who have not agreed to sell at the prices set by one of the competitors (the respondent manufacturer).

7. The relevant statutes are Section 5(a)(1) of the Federal Trade Commission Act and the amendments to that Act provided by the McGuire Act, 66 Stat. 631-32 (1952), 15 U.S.C. §§ 45(a)(2)-(a)(5).³

[6] 8. There is no dispute about Section 5(a)'s application to horizontal contracts which contain resale price specifications. Nor is it disputed that for purposes of the McGuire Act Rubbermaid is a wholesaler and that Rubbermaid competes with its wholesalers for the business of retail dealers.

² This issue does not involve any question as to whether the wholesalers or the retailers are located in fair trade (signer or not) or free trade States.

³ Sections 5(a)(2) and 5(a)(5) provide as follows:

(2) Nothing contained in this Act or in any of the Antitrust Acts shall render unlawful any contracts or agreements prescribing minimum or stipulated prices, or requiring a vendee to enter into contracts or agreements prescribing minimum or stipulated prices, for the resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale.

(5) Nothing contained in paragraph (2) of this subsection shall make lawful contracts or agreements providing for the establishment or maintenance of minimum or stipulated resale prices on any commodity referred to in paragraph (2) of this subsection, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other.

9. Counsel in support of the complaint urge that the contracts between respondent and its wholesalers are boycott agreements in that they prohibit respondent and its competing wholesalers from selling to any retailers not parties to a fair trade agreement with respondent. That they are boycott agreements follows from the language of the agreements themselves which limit sales to retailers who have signed such agreements. Such boycott agreements are, however, contemplated by the McGuire amendments since they make it legal for a seller to restrict his sales only to customers who are parties to such agreements. The issue framed by Paragraph Seven of the complaint is whether these agreements are price fixing agreements violative of the Sherman Act and the Federal Trade Commission Act.

10. Counsel for respondent argue that the provisions of the McGuire amendments to Section 5 of the Federal Trade Commission Act permit such contracts since Section 5(a)(2) permits contracts which require a vendee to enter into contracts or agreements prescribing minimum or stipulated prices for the resale of the commodity by subsequent purchasers (the so-called vendee clause). These contracts between respondent and its wholesalers providing for the minimum prices at which retailers can sell would undoubtedly be perfectly proper under the provisions of the McGuire amendments but for the fact that the respondent and its wholesalers are competitors in selling to retailers. Counsel for respondent present an ingenious argument to the effect that the vendee clause of Section 5(a)(2) permits such agreements between a seller and the seller's customers, and, since the provisions of Section 5(a)(5), making it clear that the establishment or maintenance of minimum or stipulated resale prices between competitors is not permitted by the McGuire amendments, does not mention the vendee clause; therefore, respondent's agreements with its wholesalers are within the protection of the McGuire amendments of Section 5(a)(2). Counsel for respondent bolster this argument with a detailed analysis of the Miller-Tydings Act and the McGuire Act and their legislative histories.

[7] 11. The argument of respondent's counsel must, however, be rejected. Respondent's contracts with its wholesalers provided that they will not sell products to retailers unless the retailer has signed a fair trade agreement with the respondent in States where such contracts are permitted by State law appear clearly to be price-fixing agreements between competitors. These agreements are certainly combinations "formed for the purpose and with the effect of raising, depressing, fixing, pegging or stabilizing the price of a commodity in interstate or foreign commerce," and are, therefore, "illegal *per se*." *U.S. v. Socony-Vacuum Co.*, 310 U.S. 150, 223 (1940); *U.S. v. General*

Motors, 384 U.S. 127 (1966); *U.S. v. Parke, Davis & Co.*, 362 U.S. 29 (1960). Inherent in the agreements between respondent and its wholesalers is a substantial restraint upon price competition by the respondent's and its wholesalers' customers. Respondent and its wholesalers by agreement are controlling the market price of respondent's products. This clearly constitutes a violation of the Sherman Act and the Federal Trade Commission Act.

12. The McGuire amendments do not specifically permit competitors to agree on the prices at which their customers must sell products. The fact that respondent's products are not fair traded at the wholesale level makes no difference. Section 5(a)(5) of the McGuire amendments would specifically prohibit such between competitors. Nor are respondent's agreements with its wholesalers given any sanction simply because the vendee clause of Section 5(a)(2) is not repeated in Section 5(a)(5).

13. It is concluded, therefore, that respondent's agreements with its wholesalers controlling the prices at which their customers must resell constitute price fixing agreements in violation of Section 1 of the Sherman Act and Section 5 of the Federal Trade Commission Act.

COUNT II

14. Count II of the complaint presents the identical issue that was decided by the Commission *In the Matter of Corning Glass Works*, F.T.C. Dkt. 8874, decided June 5, 1973 [82 F.T.C. 1675]; namely, whether it is a violation of Section 5 of the Federal Trade Commission Act for respondent to require its wholesalers who are located in free trade States to resell respondent's products only to retailers located in [8] fair trade States who have signed a fair trade agreement with respondent and refuse to sell to any such retailers located in fair trade States who have not signed fair trade agreements with the respondent.

15. There are no material issues of fact between the parties which need to be litigated to dispose of Count II of the complaint. Respondent makes a distinction between this proceeding and the *Corning Glass* proceeding in that it was stipulated in the *Corning Glass* matter that title to products sold by wholesalers located in free trade States passed to the purchaser within the free trade State. There is no such stipulation in this proceeding. The technicalities of passage of title do not have any bearing upon respondent's fair trade programs and consequently are irrelevant. The fact that title to respondent's products might pass to the retailer within a fair trade State rather than in a free trade State where a wholesaler is located has nothing to do with the enforceability of respondent's fair trade agreements. The effect of respondent's fair trade agreements is that any retailer

located in a fair trade State must abide by respondent's stipulated resale prices no matter what the location of his supplier, whether in a fair trade or free trade State.

16. The *Corning Glass* decision is controlling in this matter and is, of course, binding upon the administrative law judge. That decision held that it is a violation of Section 5 to place any requirement upon a wholesaler located in a free trade State with regard to the prices at which such wholesalers' customers may resell respondent's products regardless of their location — either free trade or fair trade State. It is found that the same exact line of conduct is followed by the respondent in this proceeding that was declared illegal in *Corning Glass*.

17. The respondent urges that a decision in this matter be delayed pending the outcome of the appeal in the *Corning Glass* matter to the Seventh Circuit Court of Appeals. This request is rejected since the Commission itself can delay its decision for this purpose if it sees fit.
[9]

CONCLUSIONS

1. It is concluded that the record establishes that there is no genuine issue as to any material fact, and consequently, it is now appropriate to enter a summary decision pursuant to Rule 3.24 of the Commission's Rules of Practice for Adjudicative Proceedings.

2. It is concluded that the motion for summary decision filed by counsel in support of the complaint as to both counts of the complaint should be granted and further that the motion for summary decision filed by counsel for respondent should be denied.

3. The Commission has jurisdiction over the respondent and the subject matter involved in this proceeding.

4. The allegations contained in Count I of the complaint constitute price fixing and boycott agreements between respondent and its wholesalers who compete with respondent and one another in violation of Section 5 of the Federal Trade Commission Act.

5. It is concluded that the allegations of Count II of the complaint that respondent has placed restrictions upon its wholesalers located in free trade States requiring them to sell only to retailers in fair trade States who have signed fair trade agreements with the respondent and refusing to sell to any retailer who has not signed such an agreement constitute a violation of Section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

I

It is ordered, That respondent, Rubbermaid Incorporated, a corporation, directly or indirectly, through its officers, agents, representatives, employees, subsidiaries, successors, licensees, or assigns, or through any reseller or any other corporate or other device, in connection with the manufacture, [10] advertising, offering for sale, sale, or distribution, in commerce, as "commerce" is defined in the Federal Trade Commission Act, of "Rubbermaid" brand commodities, or of any other commodity which bears, or the label or container of which bears, any other trademark, brand, or name owned by respondent, with respect to which commodity respondent has now established, or in the future may establish, any fair trade program, shall forthwith cease and desist from:

1. Maintaining or enforcing any existing understanding, contract, or agreement, or entering into, maintaining, or enforcing any future understanding, contract, or agreement, with any wholesaler in any State, or with any retailer located within, or applicable to resales occurring within, any State which is or henceforth shall become a free trade State, which contains any provision which restricts, is intended to restrict, or may be construed by the reseller to restrict, the reseller's right to deal with any customer, whether for subsequent resale or otherwise, in any State; or which otherwise imposes, is intended to impose, or may be construed by the reseller to impose, any qualification, precondition, or other limitation on said right; or which contains any circumstances or conditions under which any such provisions shall become applicable to any resale.

[11] 2. Maintaining or enforcing any existing understanding, contract, or agreement, or entering into, maintaining, or enforcing any future understanding, contract, or agreement, with any wholesaler in any State, or with any retailer in any State which is or henceforth shall become a free trade State, which requires, is intended to require, or may be construed by the reseller to require, as a precondition to any resale or as a qualification or other limitation on the right to resell, that said reseller —

(a) obtain from any customer or potential customer in any State any understanding, contract, or agreement by which said customer or potential customer agrees to maintain the fair trade price of the commodity to be resold; or

(b) refuse to deal with any customer or potential customer in any State unless such customer or potential customer has agreed to maintain the fair trade price of the commodity to be resold.

3. Imposing, by refusing to deal, termination or any other unilateral action, or by contract, combination or conspiracy, any limitation, qualification, or precondition not expressly permitted by Sections 5(a)(2) and 5(a)(3) of the Federal Trade Commission Act, on any reseller's right or ability to purchase or sell any fair traded commodity —

[12] (a) where the purpose or effect thereof is, or is likely to be, adherence to resale prices or any course of conduct established, required or suggested by respondent, by any reseller whose resale prices or conduct are not or cannot be, lawfully controlled by respondent; or

(b) where the purpose or effect thereof is, or is likely to be, the unavailability, through normal channels of distribution, of respondent's commodities to, or any discrimination with respect thereto against, any such reseller due to his failure or unwillingness to adhere to said resale prices or course of conduct.

II

It is further ordered, That respondent, directly or indirectly, through its officers, agents, representatives, employees, subsidiaries, successors, licensees, or assigns, or through any reseller or any other corporate or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution, in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any commodity, shall forthwith cease and desist from entering into, maintaining, or enforcing any contract, combination or conspiracy which imposes any limitation, [13] qualification, or precondition not expressly permitted by applicable State law and granted immunity by Section 5(a)(2) of the Federal Trade Commission Act, on any reseller —

1. Where the purpose or effect thereof is, or is likely to be, adherence to resale prices or any course of conduct established, required, or suggested by respondent, by any reseller whose resale prices or conduct are not, or cannot be lawfully controlled by respondent; or

2. Where the purpose or effect thereof is, or is likely to be, the unavailability through normal channels of distribution of respondent's commodities to, or any discrimination with respect thereto against, any such reseller due to his failure or unwillingness to adhere to said resale prices or course of conduct.

III

It is further ordered, That respondent shall:

1. Forthwith upon this order becoming final, mail or deliver, and obtain signed receipts for, copies of this order to —

(a) every reseller who was either under fair trade contract on August 1, 1971, or who was placed under such contract thereafter, and to whom subparagraph 1(b) of this Paragraph (III) does not apply; and

[14] (b) every reseller whose fair trade contract has been terminated by respondent since January 1, 1966.

2. Within sixty (60) days from the date on which this order becomes final, and every three (3) months for a period of two (2) years thereafter, mail or deliver, and obtain signed receipts for, notices, in forms submitted to and approved by the Commission prior to mailing or delivery, which clearly inform —

(a) all wholesalers to whom subparagraph 1(a) of this Paragraph (III) applies —

(i) that their fair trade contracts are (or in the case of subsequent notices, have been) cancelled;

(ii) that such contracts cannot lawfully, nor will they, therefore, be enforced;

(iii) that said wholesalers may and are encouraged to sell respondent's goods to any customer, whether for subsequent resale or otherwise, without restriction or precondition, and irrespective of whether the customer is located within, or may resell the goods within, any fair trade State;

[15] (iv) that the exercise by said wholesalers of any of their rights previously subject to the fair trade provisions of respondent's fair trade contracts shall in no way prejudice said wholesalers' ability to obtain or to continue to obtain respondent's merchandise; and

(v) that any wholesaler who believes that respondent is violating any provision of this order, either directly or indirectly, should set forth the facts and circumstances believed relevant and submit them to

Assistant Director
Division of Compliance
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

(b) all retailers in signer-only States to whom subparagraph 1(a) of this Paragraph (III) applies, and whose retailer contracts were submitted by any wholesaler at a time when the submitting wholesaler's contract with respondent contained any provision which required said wholesaler to deal only with resellers who had agreed with respondent to maintain respondent's fair trade prices —

[16] (i) that their retailer fair trade contracts are (or in the case of subsequent notices, have been) cancelled;

(ii) that with respect to all resales of respondent's goods made since the date on which this order became final, said retailers have been deemed nonsigners of respondent's retailer contracts, and that unless and until any of said retailers voluntarily reexecute retailer contracts, they shall continue to be so deemed;

(iii) that said retailers are under no legal duty to reenter into such agreements, and that their failure to do so will in no way prejudice said retailers' ability to obtain or to continue to obtain respondent's merchandise;

(iv) that unless and until said retailers enter into new retailer contracts, said retailers may, and are encouraged to, sell respondent's merchandise to any customer and at such prices as may be individually determined by each such nonsigner retailer;

[17] (v) that neither they, nor any retailers in any signer-only State and any wholesalers in any State, may lawfully refuse to deal, or by contract be required to refuse to deal, with any other reseller due to the other reseller's failure or unwillingness to sign any fair trade contract; and that no wholesaler in any State is now directly or indirectly required to refuse to deal with any customer in any State; and

(vi) that any nonsigner retailer in any signer-only State who places an order for respondent's goods with any wholesaler which is not filled due to the buyer's failure or unwillingness to become a signer of a retailer contract, or due to the buyer's having advertised, offered for sale, or sold such goods at less than the stipulated or minimum fair trade price, should immediately notify respondent in writing of the name and address of the reseller so refusing to deal.

(vii) Each of the notices required to be mailed or delivered by this subparagraph (2)(b) shall be accompanied by a list of the names and [18] addresses (arranged by State) of all wholesalers of respondent's goods. Said list shall contain a clear and conspicuous statement that all wholesalers listed therein are free to sell to any retailer in any State without qualification, limitation or precondition.

(viii) Upon the voluntary reexecution of a retailer contract pursuant to Paragraph IV (3) of this order by any retailer to whom this subparagraph (2)(b) applies, the further mailing or delivery of notices to said retailer pursuant to this subparagraph shall not be required; and upon such reexecution, said retailer shall be given the notice required by Paragraph IV (2) of this order.

3. (a) Within sixty (60) days from the date on which by virtue of any legislative or judicial action, any nonsigner State (which is a

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nonsigner State on the date this order becomes final) becomes a signer-only State, and every three (3) months for a period of two (2) years thereafter, mail or deliver, and obtain a signed receipt for, the notices required by subparagraph 2(b) of this Paragraph (III).

[19] (b) Within sixty (60) days from the date on which, by virtue of any legislative or judicial action, any fair trade State (which is a fair trade State on the date this order becomes final) becomes a free trade State, and every three (3) months for a period of two (2) years thereafter, mail or deliver, and obtain signed receipts for, notices, in forms submitted to and approved by the Commission prior to mailing or delivery, which clearly inform all retailers therein to whom subparagraph 1(a) of this Paragraph (III) applies —

- (i) that their fair trade contracts are (or in the case of subsequent notices, have been) cancelled;
- (ii) that such contracts cannot lawfully, nor will they, therefore, any longer be enforced;
- (iii) that said retailers may and are encouraged to sell respondent's goods to any customer, whether for subsequent resale or otherwise, without restriction or precondition, and irrespective of whether the customer is located within, or may resell the goods within, any fair trade State;

[20] (iv) that said retailers may and are encouraged to sell respondent's goods to any customer at such price as may be individually determined by each such retailer; and

(v) that the exercise by said retailers of any of their rights set forth above and previously subject to the fair trade provisions of respondent's fair trade contracts shall in no way prejudice said retailers' ability to obtain or to continue to obtain respondent's merchandise.

4. Within sixty (60) days from the date on which this order becomes final and every month for a period of six (6) months thereafter, mail or deliver, and obtain a signed receipt for, the wholesaler list described in subparagraph 2(b)(vii) of this Paragraph (III), and a notice, in a form submitted to and approved by the Commission prior to mailing or delivery, which clearly informs all retailers to whom subparagraph 1(b) of this Paragraph (III) applies that they are free to and are encouraged to submit their orders for respondent's merchandise on the accompanying list; that of their choosing whose name appears on the list in order to obtain such merchandise from any of said wholesalers; that none of respondent's wholesalers appearing on said list lawfully may or are required to refuse to deal with any of said retailers because of their failure or unwillingness to sign a retailer contract or because of any past or future advertising, offering for sale, or sale of respondent's merchandise.

dise at less than the stipulated or minimum fair trade price; and that respondent should be notified immediately in writing of any listed wholesaler so refusing to deal.

5. Within sixty (60) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt for, a written offer of reinstatement to any wholesaler who was terminated by respondent since January 1, 1966 for failure to comply with the refusal-to-deal provision of his wholesaler contract and reinstate forthwith any such wholesaler who within thirty (30) days thereafter requests reinstatement. Said offer of reinstatement shall be accompanied by a copy of this order and any notice which would have been required to be sent to such wholesaler under subparagraph 2(a) of this Paragraph (III) had no termination occurred.

[22] 6. Immediately upon receipt, take such action as is necessary to ensure correction of all complaints received pursuant to any provision of this Paragraph (III), and retain such complaints and records of all corrective action taken thereon for a period of five (5) years from the date on which each complaint is received. Reports of said complaints and of corrective action shall be included in reports to the Commission required by Paragraph V(1) of this order.

IV

It is further ordered, That respondent shall:

1. Fully acquaint all appropriate present and future personnel with the provisions and requirements of this order.

2. Mail or deliver to all future resellers, and obtain a signed receipt for, a copy of this order, together with an appropriate notice in a form submitted to and approved by the Commission prior to its use explaining the limitations hereby imposed on respondent's resale price maintenance programs and contracts.

3. Revise the fair trade provisions of its retailer contracts to conform with the law and the requirements and intent of this order and submit said revised contracts to and obtain the approval of the Commission prior to their use; and neither execute nor obtain the execution of any [23] new retailer fair trade contract or provision thereof which is required to be cancelled by this order on any contract or form which has not been submitted to and approved by the Commission pursuant to this subparagraph (3). In no event, however, shall any new fair trade agreement be obtained by or on behalf of respondent from any signer-only State retailer to whom subparagraph 2(b) of Paragraph III applies, before thirty (30) days following the second mailing or delivery of notices required by said subparagraph.

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v

It is further ordered, That respondent shall:

1. Within sixty (60) days from the date on which this order becomes final, and annually each year for a period of five (5) years thereafter, submit to the Commission a written report setting forth in full detail the manner in which respondent is complying with each requirement of this order, accompanied by such documents, forms, contracts, receipts, or other material as is necessary to constitute proof that respondent is in full and faithful compliance herewith.

2. Notify the Commission at least ninety (90) days in advance of any proposed change in its method of sale or distribution of fair traded commodities or in its contracts or agreements relating thereto.

[24] 3. Notify the Commission at least thirty (30) days prior to any proposed change in the corporation 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.

4. Retain all receipts required to be obtained by this order for a period of five (5) years from the date of each said receipt.

OPINION OF THE COMMISSION

By NYE, *Commissioner*:

[1] This is an appeal by respondent Rubbermaid, Incorporated (hereinafter "Rubbermaid") from the decision of an administrative law judge filed December 16, 1974, finding Rubbermaid to have violated Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. §45(a)(1)) and entering an order to cease and desist.

This case concerns the application of the McGuire Act,¹ one of the two enabling acts for the so-called State fair trade laws,² to certain contracts entered into between [2] respondent and its wholesale distributors. At issue is the legality of those contractual provisions which forbade Rubbermaid's wholesale distributors from selling to customers located in fair trade States,³ unless such customers had contracted with Rubbermaid to adhere to stipulated retail prices.⁴

[3] The facts of this case have been stipulated by the parties.

¹ Pub. L. 542, 66 Stat. 631-632 (1952).

² The other was the Miller-Tydings Fair Trade Act (Ch. 690, Title VIII, 50 Stat. 693-694) (1937). Subsequent to the initial decision, both acts were repealed by the Consumer Goods Pricing Act, Pub. L. 94-145 (December 12, 1975). For ease of comprehension, in this opinion we will cite the McGuire Act as 15 U.S.C. §45(a)(2)-(a)(5) and we will cite Sections 5(a)(2)-(a)(5) of the Federal Trade Commission Act without endlessly repeating that they have been repealed.

³ For examples of the various types of State fair trade laws, see *Corning Glass Works v. F.T.C.*, 509 F.2d 292, 295-96 (7th Cir. 1975).

⁴ The pertinent provisions in the "Rubbermaid Authorized Wholesaler Fair Trade Agreement" were as follows:

5.(a) Wholesaler agrees not to sell, consign or transfer any of the products listed on Schedule A to any person located in a state permitting Fair Trade Agreements and intending to sell or resell the same, including

(Continued)

Rubbermaid sells trademarked rubber, plastic, and coated wire household products both to independent wholesalers and to retailers throughout the United States. According to the evidence of record, Rubbermaid maintained its fair trade program in all jurisdictions in which fair trading was permitted, regardless of whether affected retailers bought their Rubbermaid products from respondent or from wholesalers. Respondent's price maintenance program was challenged and initially held to be in violation of the Federal Trade Commission Act in two respects:

1. Count I of the complaint is based upon Section 5(a)(5) of the Act, which preserved the prohibitions of the Federal Trade Commission and Sherman Acts against:

contracts or agreements providing for the establishment or maintenance of minimum or stipulated resale prices on any commodity referred to in paragraph (2) of this subsection, between * * * wholesalers, * * * or between persons, firms, or corporations in competition with each other. 15 U.S.C. §45(a)(5).

The theory of this count is that when Rubbermaid sold directly to retailers it acted as a wholesaler and was in competition with the wholesalers to whom it also sold. The complaint [4] charges that Rubbermaid's dual system of sales to both wholesalers and retailers was therefore not within the protection of Sections 5(a)(2) and 5(a)(3) of the Federal Trade Commission Act (15 U.S.C. §45(a)(2)-(3))⁵ and was

any wholesaler, distributor, dealer, retailer or jobber unless (i) such person has previously signed and delivered to Rubbermaid either an agreement similar to this agreement of the Rubbermaid Retailer Agreement, and said agreement is in full force and effect; or (ii) unless prior to any sale, consignment or transfer of such products by Wholesaler, such other person executes and furnishes to Wholesaler either an agreement similar to this agreement or a Rubbermaid Retailer Agreement and the same has been forwarded to Rubbermaid. Prior to any sale, consignment or transfer of such products to any such person, it shall be the burden of Wholesaler to verify that such person has theretofore entered into an agreement similar to this agreement, or a Rubbermaid Retailer Agreement, or to obtain such an agreement from such person and to forward the same to Rubbermaid.

5.(b) Wholesaler located in non-fair trade jurisdiction. If Wholesaler is located in a state or other jurisdiction which does not authorize the resale price and fair trade provisions contained in the Rubbermaid Retailer Agreement, as to intrastate transactions therein, Wholesaler agrees only that he will observe the condition of the preceding subparagraph 5(a) with respect to any sale, consignment or transfer of the products listed on Schedule A to any person who (i) intends to sell or resell the same and (ii) is located in a state in which such resale price and fair trade provisions are lawful as to intrastate transactions, and to which state said products are to be transported for sale. Complaint Appendix B-1(a).

⁵ Sections 5(a)(2) and 5(a)(3) provided:

(2) Nothing contained in this Act or in any of the Antitrust Acts shall render unlawful any contracts or agreements prescribing minimum or stipulated prices, or requiring a vendee to enter into contracts or agreements prescribing minimum or stipulated prices, for the resale of a commodity which bears, or the label or container or which bears, the trade-mark brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale.

(3) Nothing contained in this Act or in any of the Antitrust Acts shall render unlawful the exercise or the enforcement of any right or right of action created by any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia, which in substance provides that willfully and knowingly advertising, offering for sale, or selling any commodity at less than the price or prices prescribed in such contracts or

(Continued)

thus subject to the antitrust laws' proscriptions against agreements fixing or maintaining prices.

[5] 2. Count II of the complaint challenged Rubbermaid's practice of requiring, by contract, that its wholesalers in free trade States agree to limit sales to retailers in fair trade jurisdictions to those retailers already bound by contract with Rubbermaid to adhere to retail prices dictated by Rubbermaid. This requirement affected transactions only in so-called "signer-only" States, wherein by statute or court decision no retailer was required to adhere to a resale price program unless he had expressly agreed to do so.⁶

As a preliminary matter, we must consider respondent's motion to dismiss this case as mooted by the repeal of the [6] McGuire Act.⁷ As respondent confidently predicted,⁸ that event has come to pass. We are not persuaded, however, that the repeal of the exemption Rubbermaid unsuccessfully sought to invoke either absolves it of the original wrongdoing or materially lessens the necessity of an order in this case.

Rubbermaid offers three reasons why this case is moot. We shall address each reason in turn. All three fail, however, basically because the McGuire Act was not the law that was violated but rather an exemption that was not met, and because the Commission is not constrained to limit its order to precisely the acts of respondent found in this case.⁹

The first reason given by respondent is that "a case becomes moot upon the repeal of a statute upon which a litigant is relying to justify challenged conduct."¹⁰ *Diffenderfer* [7] v. *Central Baptist Church*, 404 U.S. 412 (1972) is cited as on all fours. In *Diffenderfer*, however, the

agreements whether the person so advertising, offering for sale, or selling is or is not a party to such a contract or agreement, is unfair competition and is actionable at the suit of any person damaged thereby. 15 U.S.C. §45(a)(2) and (a)(3) (repealed 1975).

⁶ For reasons not made clear in the record before us, Rubbermaid even conditioned the right of wholesalers to sell to retailers located in so-called "non-signer" States (who were obligated to follow predetermined prices for resale whether they had signed or not) on the acceptance by such retailers of a Rubbermaid fair trade agreement. Since retailers located in "non-signer" States could not have legally sold below the fair trade price, it should have been unnecessary, at least in theory, for Rubbermaid to require its wholesalers to restrict customer sales in order to ensure that the prescribed price would be protected.

⁷ Motion for Deferral of Decision Pending Congressional Action on Repeal of McGuire Act and for Dismissal as Moot Upon Such Repeal. The issue has been fully briefed. See Memorandum in Support of Motion for Deferral of Decision Pending Congressional Action on Legislation to Repeal McGuire Act and for Dismissal as Moot Upon Such Repeal (hereinafter Respondent's Memorandum); Memorandum of Complaint Counsel in Opposition to Respondent's Motion for Deferral of Decision Pending Congressional Action on Legislation to Repeal the McGuire Act and for Dismissal as Moot Upon Such Repeal (hereinafter Complaint Counsel's Memorandum); Reply Memorandum on Motion for Deferral of Decision Pending Congressional Action on Repeal of McGuire Act and for Dismissal as Moot Upon Such Repeal (hereinafter Respondent's Reply Memorandum).

⁸ Respondent's Memorandum at 2. If Rubbermaid had not had such a long history of fair trading, one might almost say it had confidently and hopefully predicted.

⁹ See text at notes 17-19, 25, and 78, *infra*.

¹⁰ Respondent's Memorandum at 7.

only relief sought was a declaratory judgment that a statute was unconstitutional.¹¹ The sole purpose of that case was to have an act invalidated, and that purpose was completely achieved by legislative action while the case was pending. The Court accordingly declined to declare unconstitutional a statute subsequently repealed, absent proof of some continuing force.¹² In the case before us, illegal conduct has been challenged, based on an act still very much alive, and complaint counsel have sought to prohibit related violations of that act in the future. That a case may become moot upon the repeal of the statute that is challenged as unconstitutional does not mean a case is mooted by the repeal of a statute which, at most, provided respondent with a colorable defense.¹³

[8] The second argument of respondent is that "a case becomes moot when the party seeking relief has already obtained all the relief to which it would be entitled if it prevailed."¹⁴ Because of Rubbermaid's "total abandonment of fair trading,"¹⁵ it reasons, the Commission has already obtained more effective relief than it would have by an order alone.

If the fair trade laws had not been repealed, the answer to this argument would be easy. Rubbermaid could always resume fair trading. Since without an order it could stray over the applicable fair-trading lines again, the Commission would not have obtained all the relief to which it would be entitled.¹⁶

[9] Even though the fair trade laws have now been repealed, the

¹¹ 404 U.S. at 414-15.

¹² The Court remanded the case so appellants could amend their pleadings to show this or to challenge the newly enacted legislation. 404 U.S. at 415.

¹³ *Hall v. Beals*, 396 U.S. 45 (1969), another case respondent cite on this point, is similarly distinguishable. In that case, the fact that the date of the election for which appellants sought the right to vote had passed made any relief impossible. The Court also relied on the fact that the challenged residency statute had been changed. Just as with *Diffenderfer*, then, this case is inapposite because the statute changed was the basis of the challenge.

It should be further noted that the Court in *Hall v. Beals* emphasized the repeal of the statute because of a court's institutional duty to only decide live controversies. This duty is less applicable to the Commission. Unlike a court, the Commission regularly issues advisory opinions. And every order is, to a certain extent, an advisory opinion. Further, the Commission's duty is to prevent unfair practices. *FTC v. Gratz*, 253 U.S. 421, 435 (1920) (Brandeis, J., dissenting); *Nireak Industries, Inc. v. Federal Trade Commission*, 278 F.2d 337, 343 (7th Cir. 1960), cert. denied, 364 U.S. 883 (1960). The Commission cannot act until a violation is proven, to be sure; but once a violation is found the relief is keyed to the violation only to prevent the imposition of "requirements that are in essence punitive because they are superfluous." *Curtis Publishing Co.*, 3 Trade Reg. Rep. ¶19,719 at 21,753 (F.T.C. 1971 [78 F.T.C. 1472 at 1514]). Since the purpose is prevention, and the violation found only a triggering device, there is less concern with mootness than there would be for an Article 3 court.

¹⁴ Respondent's Memorandum at 8.

¹⁵ *Id.*

¹⁶ *DeFunis v. Odegaard*, 416 U.S. 312 (1974) is clearly distinguishable because, since DeFunis had already started his last semester and the school had a settled and unchallenged policy to permit students to complete a term once commenced, there was no further relief needed or possible. See, 416 U.S. at 318. The Court expressly distinguished as calling for a different result the case of a voluntary (and reversible) change in the admissions policies. *Id.* So also in *Taylor v. McElroy*, 361 U.S. 709 (1959), the Court's decision turned upon the certainty that no more relief was needed or possible.

The question, we should add, is not whether the world would be better off with fair trading and with an order, or without fair trading but without an order. The question, even as respondent phrases it, is whether the Commission has obtained all the relief it is entitled to. We have determined it has not.

answer is the same. Respondent did not run afoul of the fair trade laws. It ran afoul of the antitrust laws. The Commission has "wide discretion"¹⁷ to "cope with the unlawful practices" found,¹⁸ and it "may fashion its relief to restrain 'other like or related unlawful acts.'"¹⁹ This does not mean, of course, that we necessarily either can or will issue an order covering the entire range of antitrust illegalities respondent may be tempted to step over. But it does mean, at the very least, that we must consider the case on the merits and, if appropriate, issue an effective order.

The third and final reason offered by respondent is that "a case is moot where the actions at issue have ceased and 'the allegedly wrongful behavior could not reasonably be [10] expected to recur.'"²⁰ Respondent then assures us that it will never again institute the challenged restrictions. The question, however, is not whether respondent is likely to again wander beyond the area of immunity established by the fair trade laws, but whether there is a chance respondent will again engage in illegal resale price maintenance similar or related to that which it has been accused of engaging in here. As to this question, respondent has not met the "heavy burden" placed upon it.²¹

In *U.S. v. Phosphate Export Assn.*, 393 U.S. 199 (1968), a case dealing with changes in the law similar to the one found here, the Court refused to find that "subsequent events made it *absolutely clear* that the allegedly wrongful behavior could not reasonably be expected to recur."²² The Court [11] carefully distinguished between the level of proof of remoteness of the likelihood of recurrence that could be used to persuade a trial judge relief was unnecessary and the much higher level of proof that the likelihood of repetition was so remote the case was moot.²³ For this question, a statement that changes in the law made it impossible to continue as before was insufficient.

¹⁷ *Fedders Corp. v. F.T.C.*, Slip Op. at 1606 (2d Cir. 1976) [529 F.2d 1398 at 1401].

¹⁸ *F.T.C. v. Mandel Bros., Inc.*, 359 U.S. 385, 392 (1959); *Jacob Siegel Co. v. F.T.C.*, 327 U.S. 608, 611 (1946).

¹⁹ *F.T.C. v. Mandel Bros., Inc.*, 359 U.S. at 392, quoting *Labor Board v. Express Pub. Co.*, 312 U.S. 426, 436 (1941).

²⁰ Respondent's memo at 9, quoting *Securities and Exchange Commission v. Medical Commission for Human Rights*, 404 U.S. 403, 406 (1972), which in turn was quoting *United States Concentrated Phosphate Export Assn.*, 393 U.S. 199, 203 (1968).

²¹ *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953). Respondent attempts to meet that burden by showing that the facts in this case largely "track" those in *Grant*. Memorandum at 8. But the Court in *Grant* only said the fact prevented it from finding there was "no reasonable basis for the District Judge's decision" that a recurrent violation was extremely unlikely. The Court specifically said, "Were we sitting as a trial court [as the Commission in this respect is], this showing [of the chance of recurrence] might be persuasive." 345 U.S. at 634.

²² 393 U.S. 199, 203-4 (1968) (emphasis added).

²³ Respondent also cited *S.E.C. v. Medical Commission for Human Rights*, 404 U.S. 403 (1972). The Court in that case expressed certainty that a profit-oriented management would not needlessly resist placing the proposition at issue in its proxies in the future. The case is also distinguishable because of the much lower level of certainty that three years hence the same plaintiffs would litigate than that, if Rubbermaid were to resume violating the antitrust laws, the F.T.C. would again be in court. See "Mootness on Appeal in the Supreme Court," 83 Harv. L. Rev. 1672, 1685 (1970). Finally, we again note that the Court stressed the "case or controversy" limit on Article three courts that may be less applicable to the Commission. See note 13, *supra*.

This third reason offered by respondent is actually a variation of the one before—that complete relief has allegedly already been achieved. If this were a Sherman Act Section 1 criminal case, for instance, there would be no suggestion that because respondent had reformed its ways suit was moot; nor, presumably, if this was a private action alleging violation of Section 1 of the Sherman Act. Although the Commission can only seek an injunction, the suggestion has no more merit in the case before us. [12]

The finding of a violation, we have said, acts as a trigger.²⁴ Hereafter, the Commission can prohibit “the future use of related and similar practices.”²⁵ Even if we were certain that the precise acts involved in the case would not be repeated, we would not be prevented on the ground of mootness²⁶ from prohibiting closely related violations in the future. This would be so even if respondent had abandoned the part of his business in which the violation occurred before the complaint issued.²⁷ Therefore, though we do so without the excitement that comes from addressing issues of great future legal import, we must decide this case on its merits and from the facts in the record before us. [13]

COUNT I

Where the terms of Section 5(a)(5) of the Federal Trade Commission Act are met, the effect, as indicated, is to render the erstwhile fair trader vulnerable under the basic provisions of the Federal Trade Commission and Sherman Acts. Counsel supporting the complaint contends that respondent’s distributional activities fell within Section 5(a)(5). This is so, it is argued, because when Rubbermaid sold to retailers, it was a “wholesaler,” or at least “in competition with” its wholesalers. Since contracts requiring that respondent’s wholesalers refuse to deal with those retailers in signer-only States who have not pledged to maintain prices are effectively “contracts * * * providing for the * * * maintenance of minimum or stipulated resale prices * * *,” complaint counsel concludes that the terms of Section 5(a)(5) are met and that respondent can claim no fair trade shield from antitrust law enforcement.

We agree.

[14] The stipulated record makes clear that Rubbermaid sold to some

²⁴ See note 13, *supra*.

²⁵ *Nireek Industries, Inc. v. F.T.C.*, 278 F.2d 337, 343 (7th Cir. 1960), citing *F.T.C. v. Ruberoid Co.*, 343 U.S. 470 (1952).

²⁶ See text at note 23, *supra*.

²⁷ See *Coro, Inc. v. F.T.C.*, 338 F.2d 149 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965). The slightly circular form of analysis traditionally employed would not be necessary, of course, if the Commission were able to issue punitive orders. But although the prospect of a prospective order probably serves a prophylactic role in restraining the illicit impulses of business, we are not entitled to order relief solely for purposes of punishment.

retailers and offered to sell to any retailer who chose to deal with it (Complaint p. 6; Answer p. 6). Because Rubbermaid's retail trade constituted nearly 20 percent of its volume, this is clearly not a case with a *de minimis* amount of competition.²⁸ It is further agreed that retailers have, on occasion, shifted their trade allegiances between Rubbermaid and its wholesalers. It is thus obvious that Rubbermaid and its wholesalers are "in competition with each other." Even if Rubbermaid did not in fact sell directly to retailers, its open offer to serve any retailer places it "in competition" with its wholesalers.²⁹ As has been held, "any competition for customers is an absolute bar to price maintenance agreements between the competitors." *Esso Standard Oil Co. v. Secatore's, Inc.*, 246 F.2d 17, 22 (1st Cir.) *cert. denied*, 355 U.S. 834 (1957).

[15] Since Rubbermaid was "in competition with" its wholesalers, its distributional practices lost their antitrust immunity if the customer restriction requirements imposed on wholesalers constituted "agreements providing for the establishment or maintenance of minimum or stipulated resale prices." Whether these restrictions constituted the type of agreement contemplated by Section 5(a)(5) is a matter of first impression.³⁰ We find that, according to the plain meaning of the statutory language, the restrictions placed by Rubbermaid on its wholesalers were such agreements.

The argument of complaint counsel, and the one we find persuasive, is relatively straightforward. While Section 5(a)(2) is limited to "prescribing" prices, Section 5(a)(5) extends to the "establishment or maintenance" of prices. "Price maintenance" has long been used by the courts to describe both resale price-fixing plans and the many ancillary refusals to deal often vital to their [16] execution.³¹ What could do more to maintain resale prices than to have an agreement prohibiting sales to price-cutters? We think it clear that if Rubbermaid today exacted a promise from its wholesalers to resell only to parties with

²⁸ In *Janel Sales Corp. v. Lanvin Parfums, Inc.*, 396 F.2d 398 (2d Cir.), *cert. denied*, 399 U.S. 938 (1968), Lanvin was regarded as a "retailer" on the basis of its direct sales to consumers of little more than 1 percent of its total production. 396 F.2d at 399-400. Compare *Upjohn Co. v. Charles Labs, Inc.*, 277 F. Supp. 445 (S.D.N.Y. 1967). Respondent asserts its retail sales are not growing at as fast a rate as its wholesale sales. The question, however, is not whether it will compete with wholesalers in the future but whether it was competing at the time of the alleged violation.

²⁹ *Ar-Ez Prods. Co. v. Capital Vitamin & Cosmetic Corp.*, 351 F.2d 938 (1st Cir. 1965).

³⁰ In the only case in which this specific question was raised, the court declined to find a violation on the ground that the practice had been abandoned. *United States v. McKesson & Robbins, Inc.*, 1955 Trade Cas. ¶68,066 (S.D.N.Y.) (agreement described in 122 F. Supp. 333 (motion for summ. judgment S.D.N.Y. 1954)), *rev'd on other grounds*, 351 U.S. 311 (1956). No court has held that the challenged fair trade activities undertaken by respondent were acceptable, and no court has interpreted the general principles of Section 5(a)(5) in the context of the factual situation here presented.

³¹ See, e.g., *United States v. Parke, Davis & Co.*, 362 U.S. 29, 45, (1960); *United States v. Frankfort Distillers*, 324 U.S. 293, 296-97 (1945); *United States v. Bausch & Lomb Optical Co.*, 321 U.S. 707, 720, 721 (1944); *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U.S. 373, 407 (1911).

Rubbermaid itself has described "resale price maintenance" as "a generic synonym" for its fair trade program (which includes customer restrictions). Memorandum of Respondent in Support of Motion for Summary Dismissal of Count I and for Deferral of Decision on Count II at 24 (October 1, 1974).

whom Rubbermaid had agreed upon a retail price, a court would justly say this constituted tampering with the market and was illegal price maintenance.

Rubbermaid argues that the McGuire Act revision of the Miller-Tydings Act extended the basic fair trade exemption to permit states to sanction refusals to deal with nonsigning retailers³² but that the McGuire Act, by not [17] including language in Section 5(a)(5) corresponding to that of Section 5(a)(2), failed to withdraw fair trade protection from agreements between wholesalers or competitors to boycott nonsigning retailers. Rubbermaid contends, citing *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384 (1951) and *United States v. McKesson & Robbins, Inc.*, 351 U.S. 311 (1956), that the McGuire Act's addition of Section 5(a)(5) was meant only to withdraw the fair trade exemption from horizontal price-fixing by competitors doing business at the same rung of the distribution ladder and was not intended to affect agreements between firms at the same rung which have the effect of fixing prices only on a higher rung. Since it does not require wholesalers to sell at any stipulated prices, respondent reasons, its activities do not come within the proscriptions of Section 5(a)(5).

It is not inconceivable that even if the legal standard of liability required a showing of horizontal price-fixing, Rubbermaid could be found in violation. If Rubbermaid sold one of its products to a wholesaler at \$10, and only let a retailer sell it at \$10.50, the wholesale price has been set with substantial certainty.³³ But the fact is that the standard of liability is *not* horizontal price-fixing. That when confronted with similar restrictions some courts [18] have declared them illegal because of Section 5(a)(5)'s withdrawal of the fair trade exemptions does not mean that less direct restraints, such as customer restrictions, would not also have been found violative. Congress' use of the term "establishment *or* maintenance" (emphasis added) clearly implies that something more than mere price-setting was intended to be prohibited. The most obvious form of price-maintenance is that found here — direct maintenance of retail prices and indirect maintenance of wholesale prices.³⁴

Both respondent and complaint counsel rely heavily on the legislative history of the Miller-Tydings and McGuire Acts to support their

³² The Supreme Court had held in *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384 (1951), that a retailer could not be compelled to follow a manufacturer's pronouncements as to retail price, unless the retailer had signed a fair trade contract obligating him to do so. Thereafter, the McGuire Act was enacted to make clear that all retailers, including nonsigners, could be required under State law to adhere to retail prices set by the manufacturer.

³³ Respondent's argument that the wholesalers can "charge any price they want," Transcript at 13, line 27, is conditioned on the cheerful suggestion that they can sell at cost or at a loss. Transcript at 14, line 6. It does not seem likely that they could do so for long.

³⁴ See text at note 31, *supra*. A competing wholesaler like Rubbermaid could also use vendee restrictions to segment an otherwise unitary market—thus insuring two price/service packages.

respective interpretations of Section 5(a)(5). We have studied the assertedly "unedifying and unilluminating"³⁵ legislative history in an attempt to determine what Congress did and did not wish to accomplish with respect to this issue when the pertinent acts were passed. We find that our construction of Section 5(a)(5) is neither contradicted by a legislative history nor inconsistent with any of the several possible legislative intentions which may have existed when it was enacted.

[19] Congress could have had any of three views of the meaning of Section 5(a)(5), all of which lead to the same conclusion. First, Congress may have originally intended the Miller-Tydings Act to permit customer restrictions.³⁶ If so, the most reasonable construction of the Miller-Tydings prohibition of horizontal agreements to establish or maintain minimum resale prices is that it extends to horizontal boycott agreements.³⁷ It would follow that horizontal boycott agreements were illegal from the inception of the fair trade enabling legislation and, no showing having been made of a subsequent intent to legalize them, that they are still illegal.³⁸

[20] A second possibility is that the draftsmen of the Miller-Tydings Act were completely unaware of the commercial tactic of using customer restriction clauses in contracts with wholesalers for the purpose of maintaining fair trade prices. If so, the McGuire Act was Congress' first demonstration of its interest in such restrictions.³⁹ In that event, we cannot infer a Congressional intent in 1937 to permit an unforeseen category of horizontal agreements in furtherance of price maintenance, nor does it seem plausible that in 1952 Congress would have inserted a new antitrust exemption for horizontal agreements

³⁵ *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 397 (1951) (Jackson, J., concurring).

³⁶ See *Schwegmann Bros.*, 341 U.S. at 397-411 (1951) (Frankfurter, J., dissenting).

³⁷ Respondent's claim is that Section 5(a)(5) does not negate fair trade protection for horizontal agreements to restrict customers because that section recodified the second Sherman Act proviso without pertinent change at the same time as Section 5(a)(2) was enacted to declare State-sanctioned customer restrictions lawful. But if the Miller-Tydings Act had implicitly allowed customer restrictions prior to enactment of Section 5(a)(2), then that Act's reservation of the ban on horizontal agreements can hardly be read to permit horizontal agreements to restrict customers, and Congressional silence on the point in 1952 would not have altered the pre-existing law.

³⁸ There is rather persuasive evidence in the legislative history that Congress merely made explicit in the McGuire Act what had theretofore been implicit. 1952 *Hearings* 221 (statement of Herman S. Waller, H. Rep. No. 1437, *supra* n. 13, at 1. This view is at odds, however, with the interpretation placed on the Miller-Tydings Act by the Supreme Court in *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384 (1951), and was expressly rejected by the district court in *Masters, Inc. v. Sunbeam Corp.*, 112 F. Supp. 268 (S.D.N.Y. 1952). The opinions in both of those cases concluded that the boycott clause and other McGuire Act modifications had neither been expressed nor implied in the Miller-Tydings Act.

³⁹ We note that this is the least likely alternative. The outline contained in *Schwegmann*, 341 U.S. at 390-95 (1951), of the circumstances leading up to enactment of the Miller-Tydings Act indicates that some State fair trade laws contained boycott provisions even prior to enactment of the Act and that a number of bills introduced in Congress prior to the introduction of the Miller-Tydings legislation had similar provisions. It is almost inconceivable, therefore, that the draftsmen of the Act had no knowledge of the use of customer restrictions as a device for maintaining resale prices.

restraining trade without accompanying the exemption with unequivocal legislative comment.

The third possibility is that Congress intentionally omitted to insert a "vendee" clause when it passed the Miller-Tydings Act.⁴⁰ If so, the rather vague limitations expressed as the second proviso to Section 1 of the Sherman Act (the Miller-Tydings antecedent of Section 5(a)(5)) were surely [21] not intended to extend fair trade law protection to agreements between competitors to refuse to deal with non-signer retailers. This limiting proviso could not conceivably have sanctioned an antitrust exemption for horizontal agreements to restrict customers, when (under this hypothesis) the Miller-Tydings Act did not authorize customer restrictions at all.

Without focusing on the expressions of Congressional intent in 1937, respondent urges a variation of this third choice. As we understand the argument, it is as follows. By 1952 the Supreme Court had made clear that Section 5(a)(2) did not encompass vendee agreements within its antitrust immunity umbrella. Section 5(a)(5), therefore, could not have withdrawn immunity from such agreements. Because the relevant wording remained unchanged in the McGuire Act, the "meaning" must have remained constant also. Therefore, Section 5(a)(5) did not apply to vendee agreements.

We view this argument as verbally adept but singularly unpersuasive. Consider a statute with two sections, the second section saying "the provisions of section (a) shall apply in the District of Columbia." If Congress later added to section (a), one *could* reason that unless it specified in section (b) that the provisions of amended section (a) applied, only the old section (a) should apply; but it is obviously more logical to assume that Congress in amending section (a) without changing section (b) intended section (b) to continue operating as it had [22] in the past — by the same process, but with different result. Similarly, Congress passed the McGuire Act as a fully operative statute, not just a set of amendments to prior legislation. The normal assumption is that a section is not to be mummified and frozen into its original meaning, but rather should act upon the new provisions of the statute as it would have if that had been how the statute had been written in the first place.⁴¹

To bolster its argument, respondent relies principally upon a brief commentary presented by Congressman Wright Patman to the House

⁴⁰ If Congress did this, it may have been because of a belief that no fair trade law should be so expansive as to permit retail price maintenance to be enforced against retailers who would not expressly signify their willingness to abide by it. This is the conclusion reached by the majority in *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. at 889-95 (1951).

⁴¹ One can always imagine subtleties in drafting, but going overboard in doing so accords little with the political realities.

Committee which considered the McGuire Bill. Congressman Patman introduced a report of his Select Committee on Small Business, which observed that the Miller-Tydings Act was intended to forbid "the mutual observance of uniform minimum resale prices as to the commodities which [wholesalers or competitors] distribute."⁴² However, this fragmentary quotation (from a report by a committee other than the one which considered the bill and guided its passage) is unclear when situated in context.⁴³

[23] We make the foregoing observations with full realization that complaint counsel cannot muster any better specific legislative commentary to support their interpretation.⁴⁴ We reach our decision from concluding that both the plain [24] meaning of the statute and the several possible hypotheses as to Congressional intent support the position of complaint counsel. Since neither are contradicted by specific legislative history, and since our interpretation is fully consistent with the strict construction we are required to give the Miller-Tydings and McGuire Acts,⁴⁵ we are compelled to find respondent's conduct illegal.

Rubbermaid advances the proposition that because its method of distribution may have been procompetitive when compared to some alternatives, the method should be ruled acceptable. Rubbermaid

⁴² H. Rep. No. 1292, 82d Cong., 2d Sess., at 33 (1952).

⁴³ The words immediately following the cited passage cast a different light on its apparent meaning. The passage continues:

In the Frankfort Distillers case the Court held that the Act does not permit a combination of producers, wholesalers, and retailers to fix and maintain prices of products shipped into a state by adopting a single course in making contracts of sale and boycotting those who refuse to conform. (*U.S. v. Frankfort Distilleries*, 324 U.S. 293, 1945.) The illegal program in this case embraced a plan whereby the retailers agreed to boycott wholesalers or producers who refused to enter into or enforce compliance with the terms of price-fixing agreements. Noncomplying retailers were denied an opportunity to buy the goods of the complying producers and wholesalers. *Id.*

Thus, the only decision cited in support of Congressman Patman's declaration gives more attention to an illegal boycott program than to the fixing of prices. How, then, should we interpret the full declaration? The meaning of "mutual observance of uniform * * * prices" might well have comprehended boycott programs related thereto.

⁴⁴ Reference is made, for instance, to a series of hearings that do not actually focus on the question before us. *Hearings on H.R. 5767 Before Senate Comm. on Interstate and Foreign Commerce*, 82d Cong., 2d Sess., at 137, 195, 348 (1952); *Hearings on H.R. 5767 Before Subcomm. of the House Comm. on Interstate and Foreign Commerce*, 82d Cong., 2d Sess. (1952) (hereinafter cited as "1952 Hearings").

The prevailing tenor of the hearings is illustrated by the following passage:

[H]orizontal price fixing assumes an act of persons who conspire by agreement to set up a price at which no one should undersell. That tends to restrict trade and results in the creation of monopolies. That is prohibited, and rightfully so. But vertical price fixing is a scheme of operation which sets the price not by a group engaged in a certain activity but by a person who owns the product and wishes it to compete with other products. 1952 Hearings 224 (statement of Herman S. Waller, counsel, National Assn. of Retail Druggists).

This language leaves a lacuna, within which the present case falls. While condemning horizontal conspiracies to fix prices and condoning unilateral vertical price-fixing, the statement gives no insight as to how the hybrid situation — horizontal combinations to fix prices vertically — should be regarded.

⁴⁵ The policy of the McGuire Act was in large part inconsistent with the policies of the Sherman, Clayton, and Federal Trade Commission Acts. We do not, therefore, treat the McGuire Act as an organic statute the words of which should be stretched and shaped to protect all marketing activities which have a "fair trade" ring to them. The McGuire Act had no such dynamism. We must respect its provisions, but in doing so we will construe strictly any provision which deviates from fundamental antitrust policy, for exemptions from the antitrust law are to be strictly construed. *United States v. McKesson & Robbins, Inc.*, 351 U.S. 305, 316 (1955); *United States v. Philadelphia National Bank*, 374 U.S. 321, 348 (1963).

stresses that by eliminating its sales to retailers and selling only to wholesalers, it could have legally achieved its price maintenance objectives. It is true that Rubbermaid could have changed its posture completely (either by distributing all its products or none [25] of them), and thus avoided its current brush with Section 5(a)(5). But the question is not whether Rubbermaid could have fit its program within the boundary set out by Congress, but whether it did. It didn't. Perhaps, if the fair trade laws were still in effect, the result of our decision would be a less competitive method of distribution. But that choice was made by Congress in drawing the boundaries. We can only take comfort in thinking that Rubbermaid might tread more carefully along the line of antitrust immunity in the future. We thus rule that the customer restriction program conducted by Rubbermaid and its wholesalers was a horizontal agreement to maintain price and is in violation of Section 5(a)(1) of the Federal Trade Commission Act.⁴⁶ [26]

COUNT II

Count II charged that respondent Rubbermaid's contracts with wholesalers located in free-trade States restricted the terms of sale to fair-trade State resellers and, particularly, to fair-trade State retailers in signer-only States.⁴⁷ This charge is subsumed in Count I's broader charge of illegal price maintenance. Because we have found the contracts to be generally violative of Section 5, there is no need to reach Count II's charge of violations with regard to transactions between certain States, and we decline to do so. Count II is accordingly dismissed. [27]

THE ORDER

We have substantially simplified and otherwise modified the order in light of the repeal of the McGuire Act, and we have to a certain extent lessened the severity of the order. It is our belief that as it now stands the order is no broader than required to " 'cope with the unlawful practices' disclosed by the record."⁴⁸ The key to that belief is that, as we have pointed earlier in this opinion, Rubbermaid has engaged in illegal resale price maintenance and third party restrictions not excused by the now-repealed McGuire Act.

⁴⁶ Cf. *United States v. General Motors*, 384 U.S. 127 (1966); *United States v. Socony Vacuum Co.*, 310 U.S. 150 (1940).

⁴⁷ Complaint Par. 9, at 5.

⁴⁸ *Fedders Corp. v. FTC* (2d Cir. Jan. 21, 1976), Slip Op. 1603, 1606-7, quoting *FTC v. Mandel Bros., Inc.*, 359 U.S. 385, 392 (1959).

Final Order

87 F.T.C.

The initial decision order was to a large extent patterned after the order issued in *Corning Glass Works*.⁴⁹ Because the repeal of the fair trade laws eliminates the distinctions between the policies of the fifty states, we have deleted references to the laws of particular States. We have also [28] deleted references to restrictions sanctioned by the fair trade laws and, in the notice provisions, we have removed specific references to Rubbermaid's cessation of fair trading. The order has been further simplified by the incorporation of provision I(3) into section II. Finally, we have reduced the burden of the notice requirements by removing the "anniversary" notice requirements of Section III(2) in their entirety.

Despite the changes we have made, the basic thrust of the order remains the same. There is no question that the order is broader than the narrowest description of Rubbermaid's conduct. But it must be remembered we have found that Rubbermaid violated Section 5 by engaging in resale price maintenance. There are numerous ways to achieve that same result.

If the Commission is to attain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.⁵⁰

The order is fundamentally addressed to the problem of preventing, in the least burdensome way possible, similar or related forms of price maintenance in the future.⁵¹ [29] Having yielded to temptation once, Rubbermaid's resolve to resist in the future should be strengthened by the knowledge that if it should again yield in a similar fashion it will be subject to civil penalties.⁵²

FINAL ORDER

[1] This matter having been heard by the Commission upon the appeal of respondent Rubbermaid from the initial decision, and upon

⁴⁹ 82 F.T.C. 1675 (1973), *aff'd* 509 F.2d 293 (7th Cir. 1975). In *Corning*, the Commission reconsidered the order on Corning's motion. The motion was denied and the order was reaffirmed. Corning Glass Works, Order denying respondent's motion for reconsideration of the final order or in the alternative for reopening of proceeding, 3 CCH Trade Reg. Rep. ¶20,393 (July 24, 1973 [83 F.T.C. 217]). After Corning abandoned its fair trade program, it petitioned for and obtained from the Commission a modification by which the order previously entered against Corning was simplified to reflect Corning's new marketing status. Corning Glass Works, Order Reopening Proceedings and Modifying Order to Cease and Desist (June 17, 1975 [85 F.T.C. 1077]). *E.g.*, Respondent's Appeal Brief at 52-54.

⁵⁰ *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1957).

⁵¹ The dealer notice provisions we order also in part further "the goal of removing the vestiges of past . . . violations." *Corning Glass Works v. F.T.C.*, 509 F.2d 293, 303 (1975). This may be necessary despite repeal of the fair trade laws because a Rubbermaid reseller might assume Rubbermaid desired to perpetuate, to the extent possible, policies once part of fair trading (and, to that end, maybe even provide subtle positions or negative incentives to do so).

⁵² *Cf. FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 373 (1965): "[I]t does not seem unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line," quoting *Boyce Motor Lines, Inc. v. United States*, 343 U.S. 337, 340 (1952).

briefs and oral argument in support thereof and in opposition thereto, and the Commission having determined that the respondent Rubbermaid, Incorporated is in violation of Section 5 of the Federal Trade Commission Act:

It is ordered, That the findings of fact contained in the initial decision of the administrative law judge are adopted, with the conclusions of law expressed in this opinion, as the basis for the Commission's decision in this matter.

It is further ordered, That respondent's motion for dismissal as moot upon repeal of the McGuire Act be, and it hereby is, denied.

Accordingly, the following cease-and-desist order is hereby entered:
[2]

ORDER

I

It is ordered, That respondent, Rubbermaid Incorporated, a corporation, directly or indirectly, through its officers, agents, representatives, employees, subsidiaries, successors, licensees, or assigns, or through any reseller or any other corporate or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of any commodity¹ shall forthwith cease and desist from:

1. Maintaining or enforcing any existing understanding, contract, or agreement, or entering into, maintaining, or enforcing any future understanding, contract, or agreement, with any wholesaler or any retailer, which contains any provision which restricts, is intended to restrict, or may be construed by the wholesale or retail reseller (hereinafter, "reseller") to restrict the reseller's right to deal with any customer, whether for subsequent resale or otherwise; or which otherwise imposes, is intended to impose, or may be construed by the reseller to impose any qualification, precondition, or other limitation on said right; or which contains any circumstances or conditions under which such provisions shall become applicable to any resale.

2. Maintaining or enforcing any existing understanding, contract, or agreement, or entering into, maintaining, or [3] enforcing any future understanding, contract, or agreement, with any wholesaler or any retailer, which requires, is intended to require, or may be construed by the reseller to require, as a precondition to any resale or as a qualification or other limitation on the right to resell, that said reseller —

¹ Order correcting clerical error by adding phrase "of any commodity," issued April 30, 1976.

(a) obtain from any customer or potential customer any understanding, contract, or agreement by which said customer or potential customer agrees to maintain the price of the commodity to be resold; or

(b) refuse to deal with any customer or potential customer unless such customer or potential customer has agreed to maintain the price of the commodity to be resold.

II

It is further ordered, That respondent, directly or indirectly, through its officers, agents, representatives, employees, subsidiaries, successors, licensees, or assigns, or through any reseller or any other corporate or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of any commodity, shall forthwith cease and desist from entering into, maintaining, or enforcing any contract, combination, or conspiracy which imposes, and from [4] imposing by refusal to deal, by termination, or by any other unilateral action, any limitation, qualification, or precondition on any reseller's right or ability to purchase or sell any commodity —

1. Where the purpose or effect thereof is, or is likely to be, adherence to resale prices or to any course of conduct established, required, or suggested by respondent by any reseller whose resale prices or conduct are not or cannot lawfully be controlled by respondent; or 2. Where the purpose or effect thereof is, or is likely to be, the unavailability through normal channels of distribution of respondent's commodities to, or any discrimination with respect thereto against, any such reseller because of his failure or unwillingness to adhere to said resale prices or course of conduct.

III

It is further ordered, That respondent shall:

1. Within sixty (60) days from the date upon which this order becomes final, mail, deliver, or cause to be delivered, and request signed receipts for, copies of this order to the following resellers:

(a) Every current reseller; and

(b) every reseller on or after January 1, 1966 whose contract for or whose supply of Rubbermaid products has been terminated by, at the request of, or with the participation of respondent, and every [5] other reseller as to whose termination of the supply of Rubbermaid products respondent has actual knowledge.

2. Within sixty (60) days from the date upon which this order becomes final, mail, deliver, or cause to be delivered, and request

signed receipts for, notices, in forms submitted to and approved by the Commission prior to mailing or delivery, which clearly inform all resellers specified in subparagraphs 1(a) and (b) of this Paragraph III:

(a) That said resellers may and are encouraged to sell respondent's goods to any customer at such price as may be individually determined by each such reseller;

(b) that said resellers may and are encouraged to sell respondent's goods to any customer, whether for subsequent resale or otherwise, without restriction or precondition;

(c) that no resellers are required to refuse to deal with any other reseller due to the other reseller's failure or unwillingness to sign any contract requiring the maintenance of resale prices;

(d) that any reseller in any state who places an order for respondent's goods with any reseller which is not filled due to its having advertised, offered for sale, or sold such goods at less than [6] respondent's suggested resale price or any former stipulated or minimum price should immediately notify respondent in writing of the name and address of the reseller so refusing to deal;

(e) that the exercise by said resellers of any of their rights previously subject to the fair trade provisions of respondent's fair trade contracts shall in no way prejudice said resellers' ability to obtain or to continue to obtain respondent's merchandise;

(f) that any reseller who believes that respondent is violating any provision of this order, either directly or indirectly (through its wholesalers or otherwise) should set forth the facts and circumstances believed relevant and submit them to

Assistant Director
Division of Compliance
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

The first notice required to be mailed or delivered to retailers by this subparagraph 2 shall be accompanied by a list of the names and addresses (arranged by state) of all wholesalers or respondent's goods. Said list shall contain a clear and conspicuous statement that all wholesalers listed therein are free to sell at prices of their own choosing to any retailer in any state without qualification, limitation, or precondition.

[7] 3. Within sixty (60) days from the date upon which this order becomes final, mail or deliver, and obtain a signed receipt for, a written offer of reinstatement to any wholesaler who has been terminated by respondent since January 1, 1966 for failure to comply

with any refusal-to-deal provision of his wholesaler contract, and reinstate forthwith any such wholesalers who within thirty (30) days thereafter request reinstatement. Said offer of reinstatement shall be accompanied by a copy of this order and the notice required by subparagraph 2 of this Paragraph III.

4. Immediately upon receipt, take such action as is necessary to ensure correction of all complaints received pursuant to any provision of this Paragraph III, and retain such complaints and records of all corrective action taken thereon for a period of five (5) years from the date on which each complaint is received. Reports of said complaints and of corrective action taken shall be included in reports to the Commission required by Paragraph V 1. of this order.

IV

It is further ordered, That respondent shall:

1. Fully acquaint all appropriate present and future personnel with the provisions and requirements of this order.

2. For a period of five (5) years from the date of this order, mail or deliver, and obtain a signed receipt for, [8] a copy of this order and the Federal Trade Commission press release concerning this decision and order to all new resellers to whom respondent directly sells.

V

It is further ordered, That respondent shall:

1. Within sixty (60) days from the date on which this order becomes final, and annually for a period of five (5) years thereafter, submit to the Commission a written report setting forth in full detail the manner in which respondent is complying with each requirement of this order, accompanied by such documents, forms, contracts, receipts, or other material as is necessary to constitute proof that respondent is in full and faithful compliance herewith.

2. Notify the Commission at least thirty (30) days prior to any proposed change in the corporation 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.

[9] 3. Retain all receipts required to be obtained by this order for a period of five (5) years from the date of each said receipt.

Not having participated in the oral argument in this matter, Chairman Collier did not participate in the resolution of it.

IN THE MATTER OF
CHRYSLER CORPORATION

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

Docket 8995. Complaint, Oct. 9, 1974—Final Order, April 13, 1976

Order requiring a Detroit, Mich., automobile manufacturer, among other things to cease misrepresenting the superiority of their products over those of their competitors with regard to quality or properties, characteristics, performance and/or fuel economy.

Appearances

For the Commission: *H. Robert Field*. Before the administrative law judge, *Melvin H. Orlans* and *Richard A. Bloomfield*.

For the respondent: *Walter B. Maher*, Detroit, Mich. Before the administrative law judge, *Lee Loevinger* and *James H. Sneed*, *Hogan & Hartson*, Washington, 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 Chrysler Corporation, a corporation, hereinafter referred to as respondent, has 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 Chrysler Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive office and principal place of business located at 341 Massachusetts Ave., Detroit, Michigan.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, distribution, sale, and advertising of various products including automobiles.

PAR. 3. Respondent causes the said products, when sold, to be transported from its place of business in various States of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its said business, respondent has