

IN THE MATTER OF
NEW PROCESS COMPANY, INC., ET AL.

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

Docket C-2824. Complaint, May 28, 1976—Decision, May 28, 1976

Consent order requiring a Warren, Pa., mail order seller and distributor of wearing apparel, among other things to cease failing to disclose the limitations of their "free" trial wear period; substituting inferior merchandise to that ordered without prior consumer authorization; misrepresenting their maintenance of a legal department; that collection letters are final notices before litigation; that nonpayment of debts will result in local credit investigations and legal action; and misrepresenting that in the event of litigation, debtors will be required to pay all court costs, and their properties may be seized to satisfy judgments if found guilty.

Appearances

For the Commission: *Thomas J. Keary* and *Alan L. Cohen*.

For the respondents: *Timothy J. May* and *E. Bruce Butler*, *Patton, Boggs, Blow, Verrill, Brand & May*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that New Process Company, Inc., a corporation, and Robert P. Eaton, an individual, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent New Process Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 220 Hickory St., Warren, Pennsylvania.

Respondent Robert P. Eaton is an individual engaged in the practice of law as a member of the Bar of the Commonwealth of Pennsylvania, with his office and principal place of business located at Warren National Bank Building, Suite 309, Warren, Pennsylvania.

The aforementioned respondents cooperate and act together to bring about some of the acts and practices which are hereinafter set forth.

PAR. 2. Respondent New Process Company, Inc. is now, and for some

time last past has been, engaged in the advertising, offering for sale, sale and distribution of wearing apparel and other merchandise, to the public by mail order and through a retail outlet, as well as the collection of accounts resulting from the retail sale of such merchandise.

Respondent Robert P. Eaton, through an agreement with respondent New Process Company, Inc., prepared form letters under his attorney's letterhead which were and are now being used by respondent New Process Company, Inc. in the collection of accounts.

PAR. 3. In the course and conduct of its mail order business, respondent New Process Company, Inc. is causing, and for some time last past has caused, said merchandise, when sold, to be shipped from its place of business located in the Commonwealth of Pennsylvania to purchasers thereof located in the various other States of the United States and in the District of Columbia.

In the further course and conduct of its business, respondent New Process Company, Inc. is causing, and for some time last past has caused, advertisements, brochures, fliers, letters, and order forms to be mailed through facilities of the United States Postal Service, from the place of business of respondent New Process Company, Inc. located in the Commonwealth of Pennsylvania to individuals located throughout the United States.

In the course and conduct of their business, respondents are causing, and for some time last past have caused, debt collection letters to be mailed, through facilities of the United States Postal Service, from the place of business of respondent New Process Company, Inc. located in the Commonwealth of Pennsylvania to alleged debtors located throughout the United States.

Respondent's volume of business is substantial and their acts and practices, as hereinafter set forth, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in or affecting commerce, with corporations, firms and individuals engaged in the sale of products and services of the same general kind and nature as those sold by the respondents.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, as amended, by respondent New Process Company, Inc., the allegations of Paragraphs One, Two, Three and Four hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 5. In the course and conduct of its mail order business, as aforesaid, respondent New Process Company, Inc. offers merchandise for sale by means of advertisements, brochures, fliers, letters or other material which make certain statements and representations descriptive of the type and kind of merchandise offered. In reliance on said descriptive representations, consumers have placed, and continue to place, orders for merchandise. In many instances, respondent New Process Company, Inc. has substituted and sent to the consumer and continues to substitute and send to the consumer, without the consent of the consumer, merchandise which is substantially different from that described by respondent New Process Company, Inc. and ordered and prepaid by the consumer.

Consequently, in many instances, consumers receive merchandise which is a substantially different color, pattern, design or style from that ordered. Therefore, such descriptive representations were and are false and misleading and respondent New Process Company, Inc.'s substitution policy constitutes an unfair and deceptive act and practice.

PAR. 6. In the course and conduct of its mail order business, as aforesaid, and for the purpose of inducing the purchase of its products, respondent New Process Company, Inc. has made, and is now making, numerous statements, and representations in its advertisements, brochures, fliers, letters, and other promotional material disseminated through the United States Postal Service.

Typical and illustrative of said statements and representations, but not all-inclusive thereof, are the following:

Dear Mr. Smith:

Early next week, I'm sending you one of these handsome new All-Weather Coats to wear — FREE!

Wear Yours FREE!

PAR. 7. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, respondent New Process Company, Inc. has represented, and is now representing, directly or by implication, that the offer of a free trial wear period is without limit, restriction or qualification, and no cost is incurred by persons accepting this trial period.

PAR. 8. In truth and in fact, the offer of the free trial wear period is not without limit, restriction or qualification, and these limitations,

restrictions or qualifications are not clearly and conspicuously disclosed to prospective purchasers. In many instances, persons accepting said free trial period must pay postage and handling charges for return of the merchandise.

Therefore, the statements and representations as set forth in Paragraphs Six and Seven hereof, were and are, false, misleading and deceptive.

PAR. 9. The use by respondent New Process Company, Inc. of the aforesaid false, misleading, and deceptive statements and representations, directly or by implication, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of substantial quantities of merchandise from respondent New Process Company, Inc. by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondent New Process Company, Inc. as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent New Process Company, Inc.'s competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

Alleging violations of Section 5 of the Federal Trade Commission Act, as amended, by respondent New Process Company, Inc., the allegations of Paragraphs One, Two, Three and Four hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 11. In the course and conduct of the business of respondent New Process Company, Inc., and in furtherance of a program for inducing the payment of debts allegedly due and owing to it by consumers, respondent New Process Company, Inc., has made, and is now making, numerous statements and representations in dunning letters, notices and similar instruments which respondent New Process Company, Inc. mails, or causes to be mailed, to alleged delinquent debtors.

Typical and illustrative of said statements and representations, but not all-inclusive thereof, are the following:

We have written you many times about your overdue account, but, to our dismay, have not received payment.

Therefore, we are compiling a CASE HISTORY of your account and will turn it over to our Legal Department ten days from today — unless we receive a remittance from you in the meantime — with instructions to make collection.

CASE HISTORY OF ACCOUNT IN DEFAULT (must be completed by Accounts Dept., and accompany any account passed on for further action.)

* * *III. INFORMATION ASSEMBLED FROM LOCAL RATING BUREAUS, BANKS, NEIGHBORS, ETC.

A. Debtor's present occupation (*name and address of employer*)

B. Approximate weekly earnings _____

C. Debtor's paying habits.

Prompt Pay _____ Slow Pay _____ Poor Pay _____

* * * * *

Hence we have registered this letter before a Notary Public, so that in the event of a suit being filed against you, the defense cannot be that you were not properly notified.

* * * * *

When judgment is entered against a debtor, he is assessed all the costs, and these are often greater than the original debt. All services, subpoenas, court costs, attachments, executions and lawyer fees are charged against him and his property when it is seized and sold to satisfy the judgment.

We will wait only the customary TEN DAYS after receipt of this registered notification before instructing our attorneys to proceed with vigorous action in accordance with their custom in cases of this kind.

PAR. 12. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, respondent New Process Company, Inc. has represented, and is now representing, directly or by implication, that:

1. If payment is not made within 10 days, the debtor's account will be promptly turned over to respondent's attorneys for the initiation of legal proceedings.

2. Respondent maintains a Legal Department for the purpose of debt collection.

3. If payment is not made, respondent will compile a case history of the debtor's account, and in the process will conduct a credit investigation in the debtor's local area, and will contact rating bureaus, banks, neighbors and others to determine the debtor's earnings and "paying habits."

4. Respondent engages in the collection of debts through litigation in civil courts.

5. Where a judgment is entered against the debtor pursuant to the debt, said debtor will in all cases pay all services, subpoenas, court costs, attachments, executions and attorney's fees and his property where seized will be sold to satisfy the judgment.

PAR. 13. In truth and in fact:

1. A debtor's account is seldom, if ever, turned over within the specified time to respondent's attorneys to initiate legal proceedings.

2. Respondent does not maintain a Legal Department to which it refers delinquent accounts.

3. Respondent does not compile a case history of the debtor's account nor does respondent make a credit investigation in the debtor's local area and obtain information from rating bureaus, banks and neighbors among others.

4. Respondent seldom, if ever, collects debts through litigation in the civil courts.

5. If respondent did engage in litigation for the collection of debts, the debtor would not necessarily be bound to pay all services, subpoenas, court costs, attachments, executions and attorney's fees, and his property would not necessarily be seized and sold to satisfy the judgment.

Therefore, the statements and representations as set forth in Paragraphs Eleven and Twelve hereof were and are false, misleading and deceptive.

PAR. 14. The use by the respondent New Process Company, Inc. of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true, and into the payment of alleged debts by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of the respondent New Process Company, Inc., as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent New Process Company, Inc.'s competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT III

Alleging violations of Section 5 of the Federal Trade Commission Act, as amended, by respondents New Process Company, Inc. and Robert P. Eaton, the allegations of Paragraphs One, Two, Three and Four hereof are incorporated by reference in Count III as if fully set forth verbatim.

PAR. 16. In the further course and conduct of its business, as aforesaid, respondent New Process Company, Inc., has entered into an agreement with respondent Robert P. Eaton, an attorney and member of the Bar of the Commonwealth of Pennsylvania, under which form collection letters are prepared by respondent New Process Company, Inc. and respondent Robert P. Eaton, under Robert P. Eaton's

1359

Complaint

letterhead. The form letters are printed at the sole cost and expense of New Process Company, Inc., which has sole discretion in selection of debtors to whom the letters are sent and complete control over the usage of the letters in the collection process.

By acquiescing to the use of the aforesaid collection letters by the respondent New Process Company, Inc., respondent Robert P. Eaton has placed in the hands of the respondent New Process Company, Inc. the means and instrumentalities by which it may, and does, mislead members of the public in the manner hereinafter described.

Respondents New Process Company, Inc. and Robert P. Eaton have made certain statements and representations to alleged delinquent debtors on letters bearing the letterhead of respondent Robert P. Eaton and mailed, or caused to be mailed, by respondent New Process Company, Inc.

Typical and illustrative of said statements and representations, but not all-inclusive thereof, are the following:

It becomes my painful duty to forward your account to a collection agency in your vicinity* * *

I am very much more desirous of keeping your good will as a New Process Company customer than of having you sued for this debt in a local court with the attendant publicity and embarrassment and costs which would alienate your customer - friendship which the Company values highly.

Therefore, I hope that promptly upon receiving this letter you will write me frankly stating whether it is agreeable to you for me to have a local bill collector take judgment against you and issue execution, or whether you prefer to avoid that dilemma by paying your account direct to New Process Company now, at least in part if you cannot pay it all.

Sincerely yours,

/s/ Robert P. Eaton

* * * * *

Before authorizing legal action, I now give you one LAST opportunity to adjust this matter amicably - direct to me.

PAR. 17. By and through the use of the aforesaid statements, representations and practices, and others of similar import and meaning not specifically set out herein, respondents Robert P. Eaton and New Process Company, Inc. have represented to debtors, directly or by implication, that:

1. Collection letters sent to alleged debtors are sent pursuant to the direction and control of respondent Robert P. Eaton.
2. Respondent Robert P. Eaton has been retained by respondent New Process Company, Inc., to prosecute or to direct others in the prosecution of suit against the debtor.

3. Unless payment is received by respondent Robert P. Eaton soon after the date of his letter, court action will be commenced by respondent Robert P. Eaton, as attorney, or others under his direction and control, to recover the amount claimed.

4. The collection letter purportedly sent to the debtor by respondent Robert P. Eaton is a final notice before litigation.

PAR. 18. In truth and in fact:

1. Collection letters sent to alleged debtors are sent pursuant to the complete direction and control of respondent New Process Company, Inc., which pays for all expenses in connection with their use.

2. Respondent Robert P. Eaton has not been retained by respondent New Process Company, Inc. to prosecute, or to direct others in the prosecution of, suit against the debtor. Respondent New Process Company, Inc. does not engage in suit for the collection of debts.

3. Any payments made by debtors pursuant to demands and threats made upon them in letters under the letterhead of Robert P. Eaton are not received by respondent Robert P. Eaton but are paid directly to respondent New Process Company, Inc. which, in fact, controls receipts of monies paid by debtors who mistakenly believe that they are making payments to an attorney. Respondent Robert P. Eaton does not commence, or direct others to commence, court action if payment is not forthcoming.

4. Collection letters sent on the letterhead of Robert P. Eaton, Attorney, containing threats that they are final notices before litigation are, in fact, not final inasmuch as respondents seldom, if ever, engage in litigation to collect said debt.

Therefore, the statements, representations and practices as set forth in Paragraphs Sixteen and Seventeen were and are false, misleading and deceptive.

PAR. 19. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true, and into the payment of alleged debts by reason of said erroneous and mistaken belief.

PAR. 20. The aforesaid acts and practices of the respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Washington, D.C. Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent New Process Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 220 Hickory St., Warren, Pennsylvania.

Respondent Robert P. Eaton is an individual engaged in the practice of law as a member of the Bar of the Commonwealth of Pennsylvania, with his office and principal place of business located at Warren National Bank Building, Suite 309, Warren, Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondent New Process Company, Inc., a corporation, its successors, assigns, officers, agents, representatives

and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, and distribution of wearing apparel, or any other products or services, and in connection with collection of, or attempt to collect, accounts allegedly due and owing to respondent New Process Company, Inc., in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Shipping or causing to be shipped, without the prior written or telephonic consent of a prospective customer, any merchandise which is not substantially similar in design, style, pattern, or in any other manner, to the merchandise which is ordered by that customer in response to any depiction or description in any of respondent's advertisements, mailings, literature, or any other offer, orally or in writing, that solicits the purchase of respondent's merchandise.

2. Shipping, or causing to be shipped, any merchandise which is substantially similar to but differs in design, style, pattern, or in any other manner, from the merchandise which is ordered by that customer in response to any depiction or description in any of respondent's advertisements, mailings, literature, or any other offer, orally or in writing, that solicits the purchase of respondent's merchandise, unless all of the following conditions are met:

- a. The merchandise supplied is of equal or better quality to the merchandise depicted or described;

- b. respondent notifies the customer in writing in every case in which such differing merchandise has been supplied;

- c. respondent notifies the customer in writing of the customer's right to a refund of any prepayment he or she has made, as well as his or her right to reimbursement for the postage cost incurred in returning the substituted merchandise which the customer determines he or she does not want, for any reason; and

- d. respondent does in fact promptly refund such prepayment and reimburse such postage without further action of the customer.

3. Failing to maintain records which will reveal, for every substitution for a period of three (3) years following the effective date of this order, the identity of the customers to whom substitutions were sent and a description of the items that were ordered and substituted.

4. Using the word "free," "absolutely free," or any other word or words of similar import or meaning in advertisements, mailings, literature or any other offer, orally or in writing, that solicits the purchase of respondent's merchandise, to designate or describe a trial or examination period unless all of the conditions, obligations, costs, and prerequisites to the utilization of such trial or examination period

are clearly and conspicuously disclosed in the offer so as to leave no reasonable probability that the terms of the trial or examination might be misunderstood; *provided*, that it shall not be a violation of this provision if the aforesaid disclosure of all such conditions, obligations, costs and prerequisites is clearly and conspicuously made on each and every order blank for merchandise for which an offer of a free trial is made.

5. Representing, directly or by implication, orally or in writing, that any consumer's account will be referred to an attorney for the initiation of legal proceedings, or representing, directly or by implication, orally or in writing, that an attorney is or will be actively involved in collecting or reviewing any consumer's account; *provided*, *however*, that it shall not be a violation of this paragraph where at the time such representation is made, and in each and every instance in which such representation is made, the representation is true.

6. Representing, directly or by implication, orally or in writing, that any consumer's account may be referred to an attorney to determine what action is appropriate; *provided*, *however*, that it shall not be a violation of this paragraph to represent that respondent may refer the account of a delinquent debtor to an attorney for evaluation of what action is appropriate where, in fact, respondent takes such action in a majority of cases in which such representation is made and payment has not been made on the account at the time of the representation.

7. Representing, directly or by implication, orally or in writing, that specific action will be taken by respondent upon nonpayment by a consumer, or within a specified number of days after nonpayment by a consumer, unless respondent actually takes such action within the time represented.

8. Representing, directly or by implication, orally or in writing, that respondent maintains a Legal Department or employs an attorney as part of its debt collection business, unless such is the fact.

9. Representing, directly or by implication, orally or in writing, that because of a consumer's nonpayment a credit investigation or any other inquiry will be made with a rating bureau, bank, neighbor or any other individual or institution unless respondent actually causes such action to be taken at the time represented or within a reasonable time after such representation.

10. Representing, directly or by implication, orally or in writing, that legal action has been or will be taken against a delinquent debtor unless payment is made on a delinquent account; *provided*, *however*, that it shall not be a violation of this paragraph to represent that respondent has taken or will take legal action against a delinquent

debtor unless payment is made on a delinquent account where, in fact, respondent does take or has taken such legal action when payment is not made in all cases in which the representation is made.

11. Representing, directly or by implication, orally or in writing, that legal action may be taken against a delinquent debtor unless payment is made on a delinquent account; *provided, however*, that it shall not be a violation of this paragraph to represent that respondent may take legal action against a delinquent debtor unless payment is made on a delinquent account where, in fact, respondent takes such legal action against a majority of debtors to whom such representation is made.

12. Representing, directly or by implication, orally or in writing, contrary to fact or the law applicable to such debtor, that where judgment is obtained by respondent pursuant to suit on the debt, the delinquent debtor will be bound to pay services, subpoenas, court costs, attachments, executions or attorney's fees, or that the debtor's property will be seized and sold to satisfy the judgment.

13. Representing, directly or by implication, orally or in writing, that communications to an alleged debtor are from an attorney when, in fact, no attorney is actively involved in reviewing the case or when such attorney does not, in fact, subsequently deal directly with any communication to him, or her, from the alleged debtor.

14. Representing, directly or by implication, orally or in writing, that some person or organization other than respondent is engaged in the collection of an allegedly delinquent account, unless such is the fact.

15. Representing, directly or by implication, orally or in writing, that any collection letter or notice is a final notice before litigation, unless such is the fact.

II

It is ordered, That respondent Robert P. Eaton, an individual, his agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection of, or attempting to collect, or assisting in the collection of, or inducing, or attempting to induce, the payment of accounts allegedly due and owing on merchandise or services purchased by consumers, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

16. Making any of the representations prohibited by Paragraphs Five, Six, Seven, Ten, Eleven, Twelve, Thirteen, Fourteen, and Fifteen of Part I of this order.

17. Placing in the hands of others the means and instrumentalities for making any of the representations prohibited by Paragraphs Five, Six, Seven, Ten, Eleven, Twelve, Thirteen, Fourteen, and Fifteen of Part I of this order.

III

It is further ordered, That respondent New Process Company, Inc. deliver a copy of this order to all present and future employees or other persons with responsibility for the preparation and placing of respondent New Process Company, Inc.'s advertisements, brochures, fliers, letters or other material soliciting orders, or in any aspect of the collection of accounts, and that respondent New Process Company, Inc. secure from each such employee or other person a signed statement acknowledging receipt of a copy of said order.

It is further ordered, That respondent New Process Company, Inc. notify the Commission at least thirty (30) days prior to any proposed change in the corporate status such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondent Robert P. Eaton promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent Robert P. Eaton's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

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

Complaint

87 F.T.C.

IN THE MATTER OF

RICH'S, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2825. Complaint, June 7, 1976—Decision, June 7, 1976*

Consent order requiring an Atlanta, Ga., operator of retail department stores, among other things to cease entering into agreements applicable to shopping centers, which enables it to restrain entry of competing retailers; control competitors' advertising, pricing or merchandising policies; and types or brands of merchandise and services offered for sale. Further, the order prohibits respondent from conspiring with other tenants to exclude particular classes of tenants from shopping centers.

Appearances

For the Commission: *H. Marshall Korschun* and *Stephen E. Nagin*.

For the respondent: *John Izard, King & Spalding*, Atlanta, Ga.

COMPLAINT

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

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

a. The term "respondent" refers to Rich's, Inc., its operating divisions, its subsidiaries, and their respective officers, agents, representatives, employees, successors or assignees.

b. The term "shopping center" refers to a group of retail outlets in the United States of America planned, developed and managed as a unit and containing (1) a total floor area designed for retail occupancy of 200,000 square feet or more, of which at least 50,000 square feet is for occupancy by tenants other than respondent; (2) at least two tenants other than respondent; (3) at least one major tenant; and (4) on-site parking.