

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.

c. The term "tenant" refers to any occupant or potential occupant of retail space in a shopping center which occupancy is for sale of merchandise or services to the public, whether said occupant leases or owns said space, but the term does not refer to an occupant of space within the store occupied by respondent, which occupant operates a department for respondent pursuant to a license from respondent.

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

PAR. 2. Respondent Rich's, Inc. (hereinafter referred to as Rich's) 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 45 Broad St., S.W., Atlanta, Georgia. Rich's is engaged in the operation of chain retail stores, including department stores and, through its Richway Division, discount department stores. In fiscal year 1973, Rich's sales exceeded \$284 million.

Rich's is the leading department store retailer in the Atlanta metropolitan area, with nine department stores containing approximately 2.53 million square feet of floor space, and seven discount department stores. Eight of the nine department stores are located in the following regional shopping centers:

- Belvedere Plaza Shopping Center — Decatur, Georgia
- Cobb County Shopping Center — Smyrna, Georgia
- Cumberland Mall — Cobb County, Georgia
- Greenbriar Shopping Center — Atlanta, Georgia
- Lenox Square Shopping Center — Atlanta, Georgia
- North DeKalb Shopping Center — Decatur, Georgia
- Perimeter Mall — Atlanta, Georgia
- South DeKalb Shopping Center — Decatur, Georgia

Additionally, Rich's has a department store located in Brookwood Village Mall, Birmingham, Alabama, and two discount department stores located in Charlotte, North Carolina. Rich's has entered into agreements for the operation of department stores in the following planned shopping centers:

- Century Plaza Shopping Center — Birmingham, Alabama
- Southlake Mall Shopping Center — Atlanta, Georgia

PAR. 3. Respondent's volume of business is substantial and its acts and practices, as hereinafter set forth, are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as

amended. Rich's has been and now is engaged in interstate negotiations and transactions with developers or prospective developers of shopping centers in which Rich's has, or plans, retail operations. These negotiations or transactions involved, or involve, extensive use of the United States mail across State lines.

Respondent also purchases for resale a great variety and substantial amount of consumer products from a large number of suppliers located throughout the United States. Respondent causes these products, when purchased by it, to be transported from the place of manufacture or purchase to its business establishments. Such goods have been and are shipped across State lines to customers. Rich's has also disseminated certain advertisements and promotional materials concerning its products across State lines through the United States mail. Moreover, Rich's advertises in media of interstate circulation to encourage purchases at its stores in the shopping centers in which Rich's operates a store.

PAR. 4. The movement of population, and particularly the higher income segment of the population, from the central city to the suburbs has precipitated the growth of shopping centers in suburban areas. In 1960, there were approximately 4,500 shopping centers in the United States; their number now exceeds 13,000. In 1972, retail sales in shopping centers amounted to approximately \$123.5 billion and accounted for approximately 44 percent of the total retail sales in the United States.

Regional shopping centers are the most economically significant type of shopping center. They reproduce to a substantial extent the retail facilities once available only in downtown business districts, and are displacing and replacing the central, downtown business district as primary outlets for retail distribution of goods and services. Department store operators, including respondent herein, have recognized the potential business opportunities presented by the expanding suburban markets and have, in recent years, taken steps to establish themselves in regional shopping centers.

PAR. 5. Except to the extent that competition has been hindered, frustrated and eliminated as set forth in this complaint, respondent, in the course and conduct of its business of offering for sale and selling household goods, home furnishings, apparels and services, has been and is in substantial competition with other corporations, individuals and partnerships in the retail sale of the same or comparable brands of merchandise carried and sold by respondent.

PAR. 6. In the course and conduct of its business, Rich's is and has been engaged in unfair methods of competition and unfair acts or practices in or affecting commerce, in that it has entered into leasing

agreements, operating agreements, or other agreements with shopping center developers, which agreements contain provisions which suppress, restrict, restrain, hinder, lessen, prevent and foreclose competition in the retail distribution of goods and services. Said provisions include, but are not limited to, the following:

- a. the right by respondent to disapprove certain tenant leases and other occupancy agreements;
- b. limitation on the floor space available to other tenants;
- c. prohibition against discount operations; and
- d. the power to exercise continuing control over the conduct of the business operations of other occupants or prospective occupants, including, but not limited to, discount advertising or discount selling of goods and services.

PAR. 7. The aforesaid provisions, the rights, powers and privileges thereby conferred on respondent as a major tenant in regional shopping centers, and its negotiation, utilization and enforcement thereof, have had and continue to have the tendency to restrain trade and commerce. Included among such restraints are the following effects:

- a. fixing, controlling and maintaining retail prices;
- b. allowing the respondent to select its competitors and to exclude actual and potential competitors;
- c. hindering and discouraging discount advertising, discount pricing, and discount selling; and
- d. restricting and hindering shopping center developers in their choice of potential tenants in shopping centers.

Said agreements and agreement provisions, respondent's acts, practices and methods of competition in connection therewith, and the adverse competitive effects resulting therefrom constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid

draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondent Rich's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 45 Broad St., S.W., Atlanta, Georgia.

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

ORDER

I.

- A. For purposes of this order, the following definitions shall apply:

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

2. 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.

3. The term "tenant" refers to any occupant or potential occupant of retail space in a shopping center which occupancy is for sale of merchandise or services to the public, whether said occupant leases or owns said space, but the term does not refer to an occupant of space within the store occupied by respondent, which occupant operates a department for respondent pursuant to a license from respondent.

4. The term "major tenant" refers to a tenant providing substan-

tial drawing power in a shopping center. A tenant which occupies at least 50,000 square feet of floor area will be deemed to provide substantial drawing power.

II.

A. *It is ordered*, That respondent, in its capacity as a tenant in a shopping center, cease and desist from obtaining, making, carrying out or enforcing, directly or indirectly, any agreement or provision of any agreement, whether applicable to the shopping center or to any expansion thereof, which:

1. grants respondent the right to approve or disapprove the entry into a shopping center of any other tenant;

2. prohibits the admission into a shopping center of any particular tenant or class of tenants, including, for purposes of illustration:

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

3. specifies that any tenant in any shopping center shall not be a discounter or sell merchandise or services at discount prices;

4. limits the types of merchandise or brands of merchandise or services which any other tenant in a shopping center may offer for sale;

5. specifies that any other tenant in a shopping center shall or shall not sell its merchandise or services at any particular price or within any range of prices;

6. grants respondent the right to approve or disapprove the location in a shopping center of any other tenant;

7. specifies or prohibits any type of advertising by any other tenant or grants respondent the right to approve or disapprove any advertising by any other tenant; and

8. grants respondent the right to approve or disapprove the amount of floor space that any other tenant may occupy in a shopping center.

B. *It is further ordered*, That respondent, in its capacity as a tenant, shall not enter into or carry out any conspiracy, combination or arrangement with any other tenant to exclude any tenants from a shopping center or to grant respondent or another tenant any control over the admission of tenants to the shopping center.

III.

A. *It is further ordered*, That when respondent is the first major tenant to agree with a developer or landlord of a shopping center to

become a tenant in such center, this order shall not prohibit respondent from terminating its agreement to become a tenant in such center if such developer or landlord does not obtain the agreement of one other major tenant acceptable to respondent to operate a store in the center.

B. *It is further ordered*, That this order shall not prohibit respondent from entering into a reciprocal easement agreement or lease with respect to a shopping center which agreement or lease contains a provision which identifies in designated buildings respondent and those other major tenants which contemporaneously enter into such reciprocal easement agreement or lease with respect to such shopping center. The provisions of this Section III.B. shall not be interpreted as permitting respondent to approve or disapprove the entry into a shopping center of any other tenant (as prohibited by Section II.A.1. of this order) or to approve or disapprove the location in a shopping center of any other tenant (as prohibited by Section II.A.6. of this order).

C. *It is further ordered*, That this order shall not prohibit respondent from negotiating to include, including, carrying out or enforcing an agreement or provision in any agreement which:

1. requires that with respect to the selection of tenants in the shopping center by the developer the following objective shall be considered — maintaining a balanced and diversified grouping of retail stores, merchandise, and services;

2. requires that with respect to the selection of tenants in the shopping center, the developer shall select businesses which are financially sound and of good reputation;

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

4. requires that reasonable standards of appearance, signs, maintenance, and housekeeping be maintained in a shopping center;

5. establishes a layout of a shopping center for initial development or future expansion which layout may (a) designate respondent's store, (b) set forth the location, aggregate size and height of all buildings, but not the amount of floor space that any other tenant may occupy in the shopping center, and (c) locate parking areas, roadways, utilities, entrances, exits, walkways, malls, landscape areas and other common areas.

6. requires that any expansion of the shopping center not provided for in the initial layout:

- (a) shall not interfere with efficient automobile and pedestrian traffic flow into and out of the shopping center and between

respondent's store and perimeter and access roads, parking areas, malls and other common areas of the shopping center;

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

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

(d) shall not be undertaken unless any and all covenants, obligations and standards (for example, construction, architecture, operation, maintenance, repair, alteration, restoration, parking ratio, and easements) of the shopping center, not otherwise prohibited by this order, (i) shall be made applicable to the expansion area and (ii) shall be made prior in right to any and all mortgages, deeds of trust, liens, encumbrances, and restrictions applicable to the expansion area, and (iii) shall be made prior in right to any and all other covenants, obligations and standards applicable to the expansion area.

IV.

A. *It is further ordered*, That respondent shall:

1. within thirty (30) days after service of this order upon respondent, distribute a copy of this order to each of its operating divisions;

2. within thirty (30) days after service of this order upon respondent, notify each developer of shopping centers in which respondent is a tenant of this order by providing each such developer with a copy thereof by certified mail;

3. within sixty (60) days after service of this order upon respondent, file with the Commission a report showing the manner and form in which it has complied and is now complying with each and every specific provision of this order; and

4. notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other change in the corporation which may affect compliance obligations arising out of this order.

Complaint

87 F.T.C.

IN THE MATTER OF

ALL SEASONS AIR CONDITIONING CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS*Docket 9015. Complaint, Feb. 11, 1975—Decision, June 8, 1976*

Consent order requiring two affiliated North Miami, Fla., home improvement firms, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act. Further, respondents are required to cease failing to notify consumers of their right to a three-day cooling-off period and to cease initiating work on customers' homes prior to the end of said cooling-off period.

Appearances

For the Commission: *H. Marshall Korschun, Albert Posnick, and Edward J. Carnot.*

For the respondents: *Taylor, Brion, Baker & Breene, Miami, Fla.*

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that All Seasons Air Conditioning Corp., Mastercraft Industries, Inc., corporations, and Murray Weintraub, Raymond Swier, and Saul Wolf, individually and as officers and/or managers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and regulation, 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. Corporate respondent All Seasons Air Conditioning Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its principal office and place of business located at 17140 N.W. 2nd Court, North Miami, Florida.

Corporate respondent Mastercraft Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its principal office and place of business located at 17162 N.W. 2nd Court, North Miami, Florida.

Respondent Murray Weintraub is the sales and advertising manager of corporate respondent All Seasons Air Conditioning Corp. and an