

Complaint

90 F.T.C.

IN THE MATTER OF

S. S. KRESGE COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT*Docket C-2901. Complaint, Sept. 22, 1977 — Decision, Sept. 22, 1977*

This consent order, among other things, requires a Troy, Mich. general merchandise retailer, to cease authorizing or instituting credit collection suits in counties other than where a defendant resides or signed the relevant contract. Further, where such suits have already been initiated, the firm is required to terminate them, vacate any rendered judgments, and give notice to concerned parties that such action has been taken.

*Appearances*For the Commission: *Eddie W. Correia.*For the respondent: *J. Wallace Adair, Howrey & Simon, Washington, D.C.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that certain acts and practices used by attorneys engaged by collection agencies with whom respondent S. S. Kresge placed retail credit accounts for collection violated Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues this complaint:

PARAGRAPH 1. S. S. Kresge Company is a Michigan corporation with its principal office located at 3100 West Big Beaver, Troy, Michigan.

PAR. 2. Respondent is a general merchandise retailer, engaged in the advertising, offering for sale, sale and distribution of clothing, household goods, appliances, tools and various other articles of merchandise.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes the sale, ships and distributes its merchandise to purchasers located in various States of the United States. Therefore, respondent maintains a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of its business, respondent extended credit to holders of its credit card (herein referred to as retail credit accounts) for the purpose of facilitating consumers' purchases of respondent's merchandise.

PAR. 5. In the course of attempting to collect allegedly delinquent

retail credit accounts, respondent placed some such accounts with collection agencies or other parties for collection. If informal collection efforts were unsuccessful, the collection agency or other party in some instances initiated legal proceedings in the name of respondent. In some such proceedings, attorneys retained by collection agencies commenced suit in a court located in a county other than the county where the purchaser defendant resided or signed the underlying obligation. Although respondent may not have had knowledge of nor authorized this practice, it had not specifically required such parties to initiate the legal proceedings in counties where the defendant resided or signed the contract sued upon. Courts located in the counties where the defendants resided or signed the contracts sued upon were available for these suits. The distance, cost and inconvenience of defending such suits placed a burden on defendants and, thus, effectively deprived some defendants of the opportunity to appear, answer and defend.

PAR. 6. The above acts and practices were all to the prejudice and injury of the public and constituted unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Cleveland 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; 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 the 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 S. S. Kresge Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 3100 West Big Beaver, in the City of Troy, State of Michigan.

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

*It is ordered,* That proposed respondent, S. S. Kresge Company, a corporation, and its successors, assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection of retail credit accounts in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from authorizing the institution of or instituting retail credit collection suits other than in the county where the defendant resides at the commencement of the action, or in the county where the defendant signed the retail credit contract sued upon. Institution of suit in the county appearing from proposed respondent's business records to be defendant's last known address shall be compliance, unless proposed respondent otherwise knows of a more current address. This provision shall not preempt any rule of law which further limits choice of forum or which requires, in actions *quasi in rem* or involving real property or fixtures attached to real property, that suit be instituted in a particular county. The term "county" includes any equivalent political subdivision known by some other term.

##### II

*It is further ordered,* That as to any retail credit collection suit instituted in the name of proposed respondent by collection agencies or other parties subsequent to the date of this order, outside the county where the defendant resides or signed the contract sued upon and which is not required by rule of law to be instituted in some other county, such suit shall be terminated and any default judgment entered thereunder vacated forthwith after proposed respondent

learns of such suit or judgment. In all such cases, clear notice shall be provided to the defendants to these actions, to each "consumer reporting agency," as such term is defined in the Fair Credit Reporting Act (15 U.S.C. 603) which proposed respondent knows or has reason to know recorded the suit or judgment in its files, and to any other person or organization upon request of the defendant.

## III

*It is further ordered,* That proposed respondent shall forthwith deliver a copy of this order to each of its subsidiaries and operating divisions dealing with consumer credit and to each agency with whom proposed respondent currently places its retail credit accounts for collection, and to any other agency prior to referral of proposed respondent's retail credit accounts for collection. Proposed respondent shall obtain and preserve for two (2) years after it terminates its business relationship with any agency with regard to the collection of retail credit accounts, a signed and dated statement from each agency acknowledging receipt of the order and willingness to comply with it.

## IV

*It is further ordered,* That proposed respondent notify the Commission at least thirty 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, including the creation or dissolution of subsidiaries, which may affect compliance obligations arising out of the order.

*It is further ordered,* That proposed respondent shall, within sixty (60) days and at the end of six (6) months after the effective date of the order served upon it, file with the Commission a report in writing, signed by proposed respondent setting forth in detail the manner and form of its compliance with this order.

Complaint

90 F.T.C.

IN THE MATTER OF

FLAGG INDUSTRIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT*Docket C-2903. Complaint, Sept. 27, 1977 — Decision, Sept. 27, 1977*

This consent order, among other things, requires a Los Angeles, Calif. land sales company to cease misrepresenting the size and extent of their business and assets; the resale opportunities, potential profits and soundness of land investments; and the advent of industry and the availability of employment. Respondents are prohibited from using deceptive sales plans, and required to make affirmative disclosures, including risks involved in land purchase, and the buyers' rights to cancellation and refunds. Further, the provisions of the order require respondents to provide the three primary subdivisions, Cordes Lakes, Verde Village, and Valle Vista, with the improvements, amenities and facilities described in the HUD Property Reports, and for a period of five years, to properly distribute \$20,000 into three separate trust funds, for use by the three respective property owners' associations.

*Appearances*For the Commission: *Howard Manning, Jr.*For the respondents: *W. Reece Bader, Orrick, Herrington, Rowley & Sutcliffe*, San Francisco, Calif.

## 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 Flagg Industries, Inc., a corporation, and Queen Creek Land and Cattle Company, a corporation, (hereinafter sometimes referred to as "respondents") have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Flagg Industries, Inc. (hereinafter sometimes referred to as "Flagg") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 10960 Wilshire Boulevard, Los Angeles, California.

PAR. 2. Respondent Queen Creek Land and Cattle Company (hereinafter sometimes referred to as "Queen Creek") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of