

Complaint

90 F.T.C.

IN THE MATTER OF
STANDARD OIL COMPANY (OHIO)

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

Docket 8910. Complaint, Jan. 18, 1973 — Decision, Nov. 2, 1977

This consent order, among other things, requires a Cleveland, Ohio, manufacturer of petroleum and automotive products, to cease prohibiting its dealers from obtaining non-gasoline products from independent sources or requiring them to deal exclusively with Sohio for automotive accessories. The order requires the firm to offer its lessee dealers new agreements which comply with the terms of the order, or give notice that agreements will not be offered. Additionally, it provides that where Sohio seeks to cancel an agreement prior to its expiration for "good cause," dealer may request that determination of good cause be submitted to arbitration.

Appearances

For the Commission: *Frank Lipson and Jonathan Gaines.*

For the respondent: *Rufus S. Day, Jr., David A. Nelson and James H. Bodurtha, Squire, Sanders & Dempsey, George J. Dunn and Richard M. Donaldson, all of Cleveland, Ohio.*

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 The Standard Oil Company (Ohio), a corporation, hereinafter sometimes referred to as respondent or as Sohio, 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 The Standard Oil Company (Ohio) is a corporation organized, existing and doing business under the laws of the State of Ohio. Its executive office and principal place of business is located at the Midland Building, Cleveland, Ohio.

PAR. 2. The Standard Oil Company (Ohio) and its subsidiaries (herein collectively referred to as Sohio) engage in all phases of the petroleum business, including exploration for and production of crude oil and natural gas and the manufacture, transportation and marketing of petroleum products. Sohio also markets automobile supplies and accessories through its retail outlets. In addition, Sohio produces and sells coal, manufactures and markets plastic products

and chemicals, and operates motor inns, restaurants and a vending business.

PAR. 3. Sohio is, and for many years has been, the leading marketer of gasoline and other refined petroleum products in Ohio under the Sohio brand name. Sohio also markets such products through subsidiaries in Central and Western Pennsylvania, Southeastern Michigan, in areas of Kentucky, West Virginia and Indiana adjacent to Ohio under the Boron brand name, and in the Eastern Seaboard States under the B-P brand name. Sohio presently supplies a total of about 11,500 retail outlets, of which approximately 5,000 are owned or leased by it. Sohio operates two refineries in Ohio, one in Pennsylvania and one in Texas, and approximately 600 bulk plants and terminals. Sohio's total sales for the year 1971 were approximately \$1,393,798,000.

PAR. 4. In the course and conduct of its business, Sohio has engaged in, and is presently engaged in, commerce as "commerce" is defined in the Federal Trade Commission Act. In addition to its own production, it purchases and exchanges crude oil and refined petroleum products and purchases tires, batteries and accessories from suppliers throughout the United States and causes such products to be transported from various states to other states for refining, distribution or resale by Sohio to retailers in various states.

PAR. 5. Sohio, in the course and conduct of its business as aforesaid, actively competes with other petroleum companies throughout the United States in the purchase for resale of petroleum products, tires, batteries and accessories. Sohio is also engaged in direct retail sales of petroleum products, tires, batteries and accessories, through the use of company operated retail outlets, in competition with its retail service station dealers as hereinafter defined, with other petroleum companies and their dealers, and other retailers of such products in the various States of the United States.

PAR. 6. In the course and conduct of its business as aforesaid, Sohio, in the sale of its gasoline and other refined petroleum products, tires, batteries and accessories at retail, commonly utilizes the following different methods of operation:

(1) "Company operated retail stations," including:

(a) Company operated, full facility retail stations with managers compensated by salary.

(b) Company operated, full facility retail stations with managers compensated by commission.

There are approximately 1,270 company operated, full facility retail

stations, from a total of some 3,500 Sohio retail stations in the State of Ohio and adjacent states, using the Sohio and Boron trade names.

(2) "Retail service station dealers," including:

(a) "Lessee dealers" who are either DR's (dealer rented) who operate under a one-year lease with Sohio and who purchase gasoline and other products from Sohio; or motor fuel consignment dealers who have a continuing agreement cancellable on thirty (30) days' notice, who obtain their gasoline, for payment purposes only, on consignment and who purchase other products outright from Sohio. All lessee dealers operate full facility retail stations.

(b) "Authorized dealers" who sell Sohio products using the Sohio or Boron trade names in retail outlets which they own or lease from a lessor other than Sohio in Ohio and adjacent states. These include full facility retail stations, outlets which sell motor fuel only, automobile dealers and marinas.

There are approximately 2,230 dealers, from a total of some 3,500 Sohio retail stations in the State of Ohio and adjacent states, using the Sohio and Boron trade names.

These different methods of operation of Sohio retail gasoline stations place Sohio's company operated retail stations in competition with Sohio's retail service station dealers in the sale of gasoline, other refined petroleum products, tires, batteries and accessories.

PAR. 7. It is now, and has been for a period of time, the policy of Sohio to grant to certain of its retail service station dealers temporary competitive allowances credited to the regular tankwagon price of its gasolines. The granting of such allowances generally occurs in market areas where there is a price disturbance, usually in the nature of a local or area price war.

PAR. 8. Beginning on or about March 1970, and at different times thereafter, Sohio entered into a combination, planned common course of action, agreement or understanding with certain of its retail service station dealers in the Dayton, Columbus and Lima areas and other Ohio areas, and in Pennsylvania under the terms and conditions of which the aforesaid temporary competitive allowance policy of Sohio was placed into effect, maintained, and carried out.

PAR. 9. Pursuant to, and in furtherance of, the aforesaid combination, planned common course of action, understanding or agreement, Sohio, acting together and in combination with certain of its retail service station dealers, and as both a supplier and a competitor, agreed to fix and maintain, and did fix and maintain, the retail price at which gasolines were sold or were to be sold at said retail service stations, and further agreed to, and adhered to, certain

discounts, rebates, allowances, terms and conditions, upon which said gasoline would be sold to said retail service station dealers and to the purchasing public.

PAR. 10. The policy of granting such allowances is conditioned upon the retail service station dealer's agreement to accept such assistance and, in conjunction therewith, to post such prices as Sohio stipulates to correspond with the level of assistance agreed upon. Failure or refusal on the part of the retail service station dealer to post such stipulated prices is regarded by Sohio as a sufficient basis not to grant or continue such allowance or, in those cases where it has been granted, to terminate such allowance even though such allowance was then still being given to other retail service station dealers in the same competitive area.

PAR. 11. In addition, in the course and conduct of its business as aforesaid, Sohio, by the use of coercion, intimidation or threats such as, but not limited to, canceling or threatening to cancel, terminating or refusing to renew Sohio's lease with its lessee dealers, compels, and has compelled, certain of its retail service station dealers to: carry trading stamps, engage in various promotional activities, purchase exclusively or preferentially tires, batteries and accessories sold or sponsored by respondent and to adhere to required hours of operation. The effect of these practices is to make many, if not all, of such dealers subservient to Sohio as to price, hours of operation and promotional activities, or to carry, exclusively or preferentially, certain products sold by Sohio. In addition, approximately one-third (1/3rd) of the Sohio branded outlets are owned and operated by Sohio as company operated retail stations in close proximity to its retail service station dealers; and in many metropolitan areas, Sohio owns and operates in the range of forty to sixty percent (40% to 60%) of the total Sohio branded stations. Since Sohio has complete control of the hours of operation, resale prices of petroleum products, tires, batteries and accessories, promotional activities and use of trading stamps in its company operated retail service stations, the location and concentration of the company operated retail stations gives Sohio a further means of influencing, intimidating and coercing its retail service station dealers.

PAR. 12. Through its control of the lease terms and the use of one-year DR leases and a thirty (30) day termination provision in the motor fuel consignment dealer leases, Sohio disciplines many of its lessee dealers, forcing adherence to Sohio's resale prices, offer trading stamps, participate in promotions or keep the retail stations open during required hours of operation.

PAR. 13. The acts and practices alleged above, particularly those

set forth in Paragraphs Seven through Ten hereof, have had the additional effect of disciplining other gasoline suppliers and dealers which are in competition with Sohio and its dealers, and discouraging such suppliers and dealers from reducing gasoline retail prices and engaging in price competition with Sohio. All of the acts and practices as alleged above are to the prejudice of the public and constitute unfair methods of competition and unfair acts and practices within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint charging that the respondent named in the caption hereof has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; and

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

The Commission having thereafter accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25 of the Commission Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent The Standard Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business located at Midland Building, Cleveland, Ohio.

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

ORDER

I

For purposes of this order only, the following definitions shall apply:

- A. The term "*Automotive Service Station*" or "*Station*" means a retail

service station having one, two or three service bays in operation, and engaged in the business of selling automotive gasoline, lubricants, tires, batteries, automotive accessories, and mechanical service to the motoring public.

B. The term "*Dealer*" means the operator of an *Automotive Service Station* on premises owned by SOHIO or leased by SOHIO from someone other than the *Dealer*. The term "*Dealer*" does not include employees of SOHIO; jobbers or wholesale distributors of gasoline, lubricants, tires, batteries or automotive accessories; persons who own their *Stations* or lease *Stations* from jobbers or wholesale distributors or other third parties; aviation fixed base operators, truck stop operators; or marina operators.

C. The term "*Dealership Agreement*" means all agreements (including leases and operating agreements) between SOHIO and a *Dealer* under which the *Dealer* operates an *Automotive Service Station* in the State of Ohio, or under which the *Dealer* operates an *Automotive Service Station* in any other state under the trade name "Boron" or under any successor trade name thereto.

D. The term "TBA" refers to automotive tires and tubes, automotive batteries and automotive accessories, including, but not limited to, spark plugs, oil filters, fan belts, auto lamps, fuses, windshield wipers and blades, antifreeze preparations, waxes, polishes, automotive lubricants and other items used on or in the servicing or repairing of highway automotive vehicles.

E. The term "*Effective Date of This Order*" refers to the date of issuance of the Commission's decision and order with respect to this matter.

F. The term "SOHIO" means respondent, The Standard Oil Company, an Ohio corporation, and its subsidiaries.

II

It is ordered, That SOHIO, its successors or assigns to all or substantially all of its assets, and SOHIO's officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device shall not insofar as its marketing activities are conducted in commerce or affect commerce, as "commerce" is defined in the Federal Trade Commission Act:

A. Enter into, renew or initiate an offer to enter into or renew a *Dealership Agreement* for a term of (a) less than five years if the *Dealer* has been a *Dealer* for at least the preceding three years, with the immediately preceding year being at the *Station* to which the *Dealership Agreement* relates, or (b) less than three years, if the *Dealer* has been the *Dealer* at the *Station* to which the *Dealership*

Agreement relates for at least the preceding year, or (c) less than one year in other cases, *provided, however,*

(1) that where any *Station* premises are held by SOHIO as lessee and not as owner for a period less than that required by this Paragraph II A, the term offered to the *Dealer* need not exceed the term of such underlying lease, and

(2) that in any *Dealership Agreement* the *Dealer* shall have the option to cancel such *Dealership Agreement* upon 60 days written notice to SOHIO;

B. Prohibit *Dealers*, through coercion or otherwise, from purchasing TBA products from non-SOHIO sources, or require, by contract, agreement, understanding, course of dealing, or by any means whatsoever, that *Dealers*:

(1) deal exclusively in TBA products manufactured, sold, distributed or sponsored by SOHIO or maintain any specified minimum stock of such TBA products; *provided, however,* SOHIO may require *Dealers* to maintain on the premises a representative amount of SOHIO trademarked or trade named lubricants or motor oils, or

(2) refrain from handling TBA products obtained from non-SOHIO sources, or from placing such products in such locations and in such quantities as is customary in service stations operated by SOHIO;

C. Prohibit the display on the pump island and on peripheral lamp posts, or elsewhere except in such locations as SOHIO may reasonably specify shall not be used for this purpose, of signs showing the *Dealer's* acceptance of non-SOHIO credit cards.

III

It is further ordered, That:

A. At any time within 180 days following the *Effective Date of This Order*, a *Dealer* who is operating under a *Dealership Agreement* may in writing request SOHIO to notify him whether or not he will be offered a new *Dealership Agreement*. SOHIO shall give such notice in writing within 90 days of such request. *Dealership Agreements* consistent with the terms of this order shall be offered to all such *Dealers* who have received notice of SOHIO's intent to offer them new *Dealership Agreements* and to all such *Dealers* who have received no notice whose *Dealership Agreements* are in effect 180 days after the *Effective Date of This Order*. Such agreements shall be offered within 180 days following the *Effective Date of This Order*.

B. Not more than 120 days prior to the expiration of a *Dealership*

Agreement, if the *Dealer* has not yet received notice from SOHIO as to whether or not SOHIO intends to offer the *Dealer* a new *Dealership Agreement*, the *Dealer* may request in writing such notice. If such request is made, within 60 days after receipt thereof, SOHIO shall either notify the *Dealer* that a new *Dealership Agreement* will not be offered or offer to the *Dealer* a new *Dealership Agreement* consistent with the terms of this order. The requesting *Dealer* shall be entitled to remain in the premises under the existing *Dealership Agreement* until the expiration thereof or 60 days following receipt of SOHIO's response to his request, whichever is later.

IV

It is further ordered, That:

A. During the effective period of this order, SOHIO may revoke a notice of intent to offer a new *Dealership Agreement* or cancel a *Dealership Agreement* prior to the expiration thereof only upon not less than 60 days advance written notice and for good cause. Material noncompliance by the *Dealer* with the *Dealership Agreement* shall constitute "good cause" as used in this order. Notwithstanding the provisions of this paragraph, SOHIO may cancel a *Dealership Agreement* without notice (except as provided in subparagraphs (6), (7) and (8) herein), without any right of arbitration, and without any further showing of good cause, upon the occurrence of the following events:

- (1) death or legal incompetency of the *Dealer*;
- (2) the institution of insolvency, bankruptcy, or receivership proceedings by or against the *Dealer*, the taking advantage by the *Dealer* of any law for the benefit of debtors, the filing of a tax lien, or the institution against the *Dealer* of lien proceedings which interfere with operation of the dealership;
- (3) vacancy, abandonment of the *Station* premises, or failure to open the *Station* for the sale of gasoline, for a continuous period of 120 hours;
- (4) condemnation or other taking for public purposes of the premises or a sufficient portion thereof to prevent use as an *Automotive Service Station*, including any voluntary conveyance or assignment in lieu of such condemnation or taking;
- (5) any involuntary destruction of the *Station*;
- (6) a decision by SOHIO to close or raze the *Station*, or sell its interest in the *Station* premises, provided that the *Dealer* is given not less than 90 days advance written notice of such decision;

(7) a decision by SOHIO to change the use of the site in such a way that it will no longer be operated as an *Automotive Service Station* provided that the *Dealer* is given not less than one year advance written notice of such decision;

(8) not less than 30 days advance written notice by SOHIO of its intention to cancel the *Dealership Agreement* in connection with divestiture made in compliance with the Final Judgment in *United States v. Standard Oil Co.*, No. C69-854 (N.D. Ohio);

(9) conviction of the *Dealer* of a misdemeanor committed in the course of or related to the *Dealer's* use or occupancy of the *Station*, or conviction of any felony;

(10) failure of the *Dealer* to keep in force the insurance coverage required in the *Dealership Agreement*; or

(11) failure of the *Dealer* to pay any past due indebtedness to SOHIO, after not less than 30 days written demand for payment has been made, to the extent that any such indebtedness exceeds any sum owing from SOHIO to the *Dealer*.

B. Except as specified in Paragraph IV A of this order, upon receipt of the requisite notice of intent to cancel the *Dealership Agreement*, either party may elect to invoke arbitration pursuant to the Commercial Arbitration Rules and the Procedures of the American Arbitration Association (AAA) for the purpose of determining whether good cause exists or existed for the cancellation.

C. The arbitration pursuant to Paragraph IV B of this order shall be as follows:

(1) The party invoking arbitration shall give the other party written notice of its intent to invoke arbitration within 15 days from the receipt of the notice of intent to cancel the *Dealership Agreement*, setting forth the basis for such invocation and filing two copies of said notice with the Regional Office of AAA closest to the *Dealer's* residence. If such written notice of intention to arbitrate is not made within such 15 day period, arbitration shall be deemed to have been waived. If arbitration is invoked by either party, such arbitration shall be exclusive and in lieu of any other common law rights. The locale for arbitration shall be fixed by the AAA and shall be selected from the standby facilities maintained by the AAA for arbitration. It is understood and anticipated that such locale shall be the closest available to the *Dealer's* residence.

(2) The arbitrator shall be selected by the parties from the panel of arbitrators of the AAA, and shall be appointed within 30 days from receipt by AAA of the notice of intent to invoke arbitration. The arbitrator shall be empowered to determine whether good cause for

cancellation exists or existed under the terms of the *Dealership Agreement*, to decide, in accordance with such determination, which party shall have possession of the premises, and to assess the costs of arbitration, excluding attorneys' fees (except as provided in Paragraph IV C(6)), on a just and equitable basis. The decision of the arbitrator shall be final and binding upon the parties, and judgment thereon may be entered in any court of competent jurisdiction. In the event of a default by either party in appearing before the arbitrator, pursuant to advance written notice, the arbitrator is authorized to render a decision upon the evidence of the party appearing. Within 45 days after his appointment, the arbitrator shall render a written decision on the evidence before him, which decision shall include the arbitrator's findings of fact.

(3) Subject to the provision of Paragraph IV A of this order, the *Dealer* may elect to remain in possession of the *Station* premises pending the decision of the arbitrator, and for an additional fifteen days in the event the decision of the arbitrator is against the *Dealer*; *provided, however*, that upon a showing by SOHIO under a motion made at any time during the arbitration that the *Dealer* has discontinued or substantially curtailed normal operations, or is disparaging SOHIO, its products, or its trademarks, the arbitrator shall be empowered to order that SOHIO may take immediate peaceable possession of the *Station* premises.

(4) The arbitrator shall have no authority except as explicitly set forth in this Paragraph IV C and shall have no power or jurisdiction to add to, subtract from, alter or modify any of the terms of a *Dealership Agreement*. If the arbitrator finds that good cause for cancellation does not or did not exist, the sole remedy he has jurisdiction and authority to award is a decision allowing the *Dealer* to continue as a *Dealer* under the terms and conditions of the existing *Dealership Agreement*. The arbitrator has no jurisdiction or authority to award monetary damages or other affirmative relief beyond deciding which party is entitled to possession of the *Station*.

(5) At any time during the arbitration proceedings, the arbitrator, upon motion by either party, shall be empowered to order the other party to post bond with a reputable bondsman or surety company or otherwise provide security to the arbitrator in an amount sufficient to cover any costs of arbitration to be borne by the parties as hereinafter provided and to cover any losses in rent, reimbursement for supplies or other damage to the leasehold during the period following the invoking of arbitration. The arbitrator shall not be empowered to make any award under the bond, but the party

protected thereby may assert his rights under the bond in any court of competent jurisdiction.

(6) In all instances each party shall bear its own attorneys' fees, except that if the arbitrator shall find that good cause for cancellation does not or did not exist, the arbitrator shall award *Dealer* a reasonable attorney's fee.

D. No *Dealership Agreement* shall require a *Dealer* to agree that any acts or omissions shall constitute material non-compliance with the *Dealership Agreement*.

V

It is further ordered, That the *Dealer's* right to elect arbitration for the purpose of determining whether good cause exists or existed for cancellation, including *Dealer's* time limitations, *Dealer's* remedies, AAA's headquarter's address and the Regional Office of AAA closest to the *Dealer's* residence as then known, shall be conspicuously noted in all *Dealership Agreements*, that express reference to the *Dealer's* right to elect arbitration shall appear on all notices of cancellation subject to the provisions of this order, and that the *Dealer's* right to request notice of whether a new *Dealership Agreement* will be offered, as provided in Paragraph III B of this order, including the actual earliest date such request may be made, shall be conspicuously noted in each *Dealership Agreement*.

VI

It is further ordered, That SOHIO shall, within 30 days after the *Effective Date of This Order*, serve upon all *Dealers* having a *Dealership Agreement* a letter by certified mail, signed by a responsible official binding SOHIO and on official SOHIO stationery, which shall include the following statement in its first paragraph:

Sohio and the Federal Trade Commission have agreed on a consent decree which provides, among other things, for longer term dealership agreements, cancellation of which would be subject to arbitration under certain circumstances. Sohio has also agreed that its dealers will not be required to deal exclusively in TBA products sold by Sohio, to maintain any specified minimum stock of such products, or to refrain from dealing in TBA products sold by others. The relevant provisions of the consent decree are enclosed.

The relevant provisions of this order which shall be enclosed in such letters to such *Dealers* are Paragraphs I-IV hereof. The second paragraph of such letter shall contain the following statement:

You have the right to request in writing notice from Sohio as to whether or not

you will be offered a new dealership agreement in accordance with the consent decree, and Sohio must give such notice within 90 days after receipt of your request. All dealership agreements in effect as of (insert the 180th day after *Effective Date of This Order*) must be brought into conformity with the order.

VII

It is further ordered, That SOHIO shall forthwith distribute a copy of this order to each of its marketing sales divisions and regions.

VIII

It is further ordered, That SOHIO shall notify the Commission at least 30 days prior to any proposed change in corporate organization which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

IX

It is further ordered, That SOHIO shall, within 210 days after service upon it of this order, and thereafter annually at the anniversary date of the order for a period of five years, file with the Commission a written report setting forth in detail the manner and form in which it has complied and will comply with this order.

X

It is further ordered, That unless altered, modified or set aside in accordance with Sections 3.71 and 3.72 of the Commission's Rules or such similar rules as may be in effect from time to time, this order shall remain in effect for 10 years after its *Effective Date*.

Interlocutory Order

90 F.T.C.

IN THE MATTER OF

CENTURY 21, COMMODORE PLAZA, INC., ET AL.

Docket 9088. Interlocutory Order, Nov. 2, 1977

Denial of motion for reconsideration of prior decision to deny leave to intervene.

ORDER DENYING MOTION FOR RECONSIDERATION

On October 19, 1977 the Commission denied Mr. Unterberg's appeal from the decision of the Administrative Law Judge that Mr. Unterberg be denied permission to intervene.

On the same date Mr. Unterberg filed a pleading styled "Reply to Complaint Counsel's Response to Application of David Unterberg for Review of Administrative Law Judge Parker's Order." The Commission's Rules give no right to file such a pleading. The Commission construes this pleading as a motion for reconsideration of its earlier decision, and so construed,

It is ordered, That Mr. Unterberg's motion be, and it hereby is, denied.