

IN THE MATTER OF
APPLIANCE DEALERS COOPERATIVE, ET AL.

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

Docket C-2969. Complaint, June 7, 1979 — Decision, June 7, 1979

This consent order, among other things, requires a Newark, N.J. appliance dealers cooperative, its executive director, 22 member companies, and five affiliated firms to cease harassing, intimidating or otherwise attempting to control or interfere with retailers' resale pricing; advertising; sale and distribution of consumer products; selection of customers; or their right to locate and operate businesses in any geographic area. The cooperative is further required to supply its members, on an equal and timely basis, with all relevant information relating to its purchase and sale of merchandise; and cause its by-laws to be adjusted so as to be consistent with the terms of the order.

Appearances

For the Commission: *Alfred J. Ferrogari and Henry R. Whitlock.*

For the respondents: *Basil J. Mezines, Stein, Mitchell & Mezines, Washington, D.C., Ephraim Frank Schwartz, Passaic, N.J., Marvin S. Goldklang, Cahill, Gordon & Reindell, New York City and Gerard C. Sims, Jr. and Allan Raven, Raven, Davis & Sweet, Adison, N.J.*

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 parties named in the caption hereof, hereinafter more particularly described and designated 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 Appliance Dealers Cooperative (hereinafter referred to as ADC) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. ADC maintains its home office and principal place of business at 84 Lockwood St., Newark, New Jersey. ADC operates as a buying cooperative for its shareholder-members, supplying these members with a variety of consumer appliances and products. Its members are corporate and non-corporate business enterprises which are engaged primarily in the retail sale of consumer appliances and products.

PAR. 2. Respondent Murray Gidseg (hereinafter sometimes referred to as Executive Director) is, and has been, for some time past, Executive Director of ADC and as such is, and has been, the chief executive officer of the corporation with all of the general powers and duties which are usually vested in the office of president of a corporation. As such, Murray Gidseg has charge of the administrative activities of ADC, helps conduct and actually participates in the meetings of the members of ADC and cooperates and acts together with other respondents to formulate, direct and control the policies, acts and practices of ADC, all in pursuance and furtherance of the establishing carrying out and maintaining of the policies, acts and practices hereinafter alleged. The business address of Murray Gidseg is the same as that of respondent ADC.

PAR. 3. The authority for formulation and management of policy with respect to all matters affecting the business of ADC is, and has been, vested in the ADC Board of Directors. The Board of Directors has at all times consisted of persons drawn from the companies who are members of ADC. From the inception of ADC in April 1972 until May 1974, all members of ADC were represented on its Board of Directors. From May 1974 until May 1975 one member was excluded from the ADC Board of Directors. From May 1975 until the next election of Board members in 1976, three additional members were excluded from the ADC Board of Directors. Except to the extent that decision making authority has been delegated by the Board of Directors to others, the Board has general overall supervision of all aspects of the business of ADC.

PAR. 4. Historically, since the inception of ADC in 1972, the Board of Directors has delegated much of its authority for formulation and management of policy to the Executive Director and certain officers and employees of the member companies who represent their respective firms at ADC membership meetings and who also serve on various ADC committees. Said persons, together with the Board of Directors and the Executive Director, formulated, directed and controlled the policies and activities of ADC and in doing so expressly or impliedly authorized, performed, adopted, acquiesced in or affirmed the policies, acts and practices herein alleged.

PAR. 5. Respondents Ace Electronic Service Co., Inc. (hereinafter Ace) and Solar Appliance Centers, Inc. (hereinafter Solar) are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Ace maintains its home office and principal place of business at 69 Highway 35, Neptune City, New Jersey. Solar maintains its home office and principal place of business at 2114 Route 88, Bricktown, New Jersey.

PAR. 6. Respondent Ajay Appliance Sales & Service, Inc. (hereinafter Ajay) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Ajay maintains its home office and principal place of business at 1021 Route 37 West, Toms River, New Jersey.

PAR. 7. Respondent Apex Appliance Distributors, Inc. (hereinafter Apex) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Apex maintains its home office and principal place of business at 700 Rahway Ave., Elizabeth, New Jersey.

PAR. 8. Respondent Bell Appliance Co., Inc. (hereinafter Bell) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Bell maintains its home office and principal place of business at Highway 22, Union, New Jersey.

PAR. 9. Respondent Paul Bergman is an individual trading and doing business as Brown's Appliance Co. (hereinafter Brown's) with its home office and principal place of business located at 276 Main St., Paterson, New Jersey.

PAR. 10. Respondent Charles Stein is an individual trading and doing business as Economy Stove & Plumbing Supply Co. (hereinafter Economy) with its home office and principal place of business located at 1047 Elizabeth Ave., Elizabeth, New Jersey.

PAR. 11. Respondent Flynn Appliances, Inc. (hereinafter Flynn) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Flynn maintains its home office and principal place of business at 44 Grand Ave., Englewood, New Jersey.

PAR. 12. Respondent Frank Schwartz is an individual trading and doing business as Franks Sales & Service Co. (hereinafter Franks) with its home office and principal place of business located at 739 Main Ave., Passaic, New Jersey.

PAR. 13. Respondents Goldklang's Appliance City, Inc. (hereinafter Goldklang's) and Town Appliance, Inc. (hereinafter Town), are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Goldklang's maintains its home office and principal place of business at 462 Broadway, Bayonne, New Jersey. Town maintains its home office and principal place of business at Route 46, Rockaway, New Jersey.

PAR. 14. Respondent Harvey's of New Milford, Inc. (hereinafter Harvey's) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Harvey's

maintains its home office and principal place of business at 690 River Road, New Milford, New Jersey.

PAR. 15. Respondent Karl's Sales & Service Co., Inc. (hereinafter Karl's) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Karl's maintains its home office and principal place of business at 111 Washington Ave., Belleville, New Jersey.

PAR. 16. Respondent Keystone Appliance Co., Inc. (hereinafter Keystone) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Keystone maintains its home office and principal place of business at 4237 Bergen Turnpike, North Bergen, New Jersey.

PAR. 17. Respondent Lichtman Bros. Inc. (hereinafter Lichtman) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Lichtman maintains its home office and principal place of business at 101-105 Smith St., Perth Amboy, New Jersey.

PAR. 18. Respondent Mrs. G. Inc. (hereinafter Mrs. G.) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Mrs. G. maintains its home office and principal place of business at 2960 Brunswick Pike, Trenton, New Jersey.

PAR. 19. Respondent Paul's Home Furnishings Co., Inc. (hereinafter Paul's) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Paul's maintains its home office and principal place of business at 121 New York Ave., Newark, New Jersey.

PAR. 20. Respondent Rooney Appliance, Inc. (hereinafter Rooney) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Rooney maintains its home office and principal place of business at 500 Market St., Saddle Brook, New Jersey.

PAR. 21. Respondent Schenck Appliance Corporation (hereinafter Schenck) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Schenck maintains its home office and principal place of business at Route 88 and Laurelton Circle, Bricktown, New Jersey.

PAR. 22. Respondent Summerton Appliance, Inc. (hereinafter Summerton) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Summerton maintains its home office and principal place of business at 300 Route 9, Englishtown, New Jersey.

PAR. 23. Respondent Les Turchin, Inc. (hereinafter Les Turchin) is

a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Les Turchin maintains its home office and principal place of business at 98-100 Albany St., New Brunswick, New Jersey.

PAR. 24. Respondent Tru-Home Sales Co. Inc. (hereinafter Tru-Home) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Tru-Home maintains its home office and principal place of business at 321-16th Ave., Newark, New Jersey.

PAR. 25. Respondents Turchin's Department Stores, Inc. (hereinafter Turchin's) and Turchin's-Rex, Inc. (hereinafter Turchin's-Rex) are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Turchin's maintains its home office and principal place of business at 116 N. Wood Ave., Linden, New Jersey. Turchin's-Rex maintains its home office and principal place of business at 2385 Kennedy Boulevard, Jersey City, New Jersey.

PAR. 26. Respondents Uneeda Appliance Co., Inc. (hereinafter Uneeda), Uneeda Brook's Inc. (hereinafter Uneeda Brook's), and Uneeda Appliance Company of Bayonne, Inc. (hereinafter Uneeda Bayonne) are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Uneeda maintains its home office and principal place of business at 2973 Kennedy Boulevard, Jersey City, New Jersey. Uneeda Brook's maintains its home office and principal place of business at 9 West Main Street, Somerville, New Jersey. Uneeda Bayonne maintains its home office and principal place of business at 432 Broadway, Bayonne, New Jersey.

PAR. 27. Respondents Ace, Solar, Ajay, Apex, Bell, Brown's, Economy, Flynn, Franks, Goldklang's, Town, Harvey's, Karl's, Keystone, Lichtman, Mrs. G., Paul's, Rooney, Schenck, Summerton, Les Turchin, Tru-Home, Turchin's, Turchin's-Rex, Uneeda, Uneeda Brook's, Uneeda Bayonne (sometimes referred to as "respondent retailers") are now, and for some time past, have been engaged in the purchasing, offering for sale, sale and distribution of consumer appliances and products to the public at retail.

With the exception of Solar, Town, Turchin's-Rex, Uneeda Brook's and Uneeda Bayonne, (hereinafter sometimes referred to as respondent non-members) each of the remaining respondent retailers is, and has been, for some time past, a member of respondent ADC (hereinafter sometimes referred to as respondent members). Respondent non-members are affiliated with certain of respondent members through common ownership or otherwise. Respondent members

purchase a substantial amount of consumer appliances and products from respondent ADC. Certain respondent members resell or transfer a substantial amount of said consumer appliances and products to their affiliated respondent non-members. In that manner respondent non-members derive many of the benefits of membership in respondent ADC.

PAR. 28. In the course and conduct of their respective businesses, various respondent retailers purchase for resale a substantial amount of consumer appliances and products from suppliers located in various States of the United States. Such respondents cause these products, when purchased, to be transported from the place of manufacture, storage or purchase in various States of the United States across state lines to their places of business. In the further course of their respective businesses, such respondents cause and for some time past have caused, said consumer appliances and products, when sold by them, to be shipped from their places of business located in the State of New Jersey to customers, many of whom are located in the States of the United States other than the states where said respondents' businesses are located and states other than the states where said products were originally manufactured, stored or purchased. Such respondent retailers are and were, during the several years past, engaged in a substantial course of trade in consumer appliances and products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 29. Except to the extent that competition has been hampered, restrained, lessened or restricted by reason of the practices hereinafter described, each of the respondent retailers described in Paragraph Twenty-Seven hereof is, and has been, in substantial competition with one or more of the other respondent retailers therein described and with other retailers of consumer appliances and products.

PAR. 30. In the course and conduct of its business, as aforesaid, respondent ADC purchases for resale a substantial amount of consumer appliances and products from suppliers located in various States of the United States. Respondent ADC causes these products, when purchased by it, to be transported from the place of manufacture, storage or purchase in various States of the United States across state lines to its place of business. In the course and conduct of its business, respondent ADC has caused said consumer appliances and products, when sold by it, to be shipped from its place of business located in the State of New Jersey to purchasers located in other States of the United States.

In the course and conduct of its business, as aforesaid, respondent

ADC has caused checks, bills, invoices, letters and other documents to be mailed through the facilities of the United States mail, from its place of business located in the State of New Jersey to purchasers located in other States of the United States.

Accordingly, respondent ADC has maintained, and now maintains a substantial course of trade in consumer appliances and products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 31. For several years past, respondent ADC, respondent Executive Director and certain respondent retailers have been, and are, engaged in unfair acts and practices and unfair methods of competition in or affecting commerce, as herein described, which have the purpose, tendency and effect of lessening, restricting and suppressing competition among and between said respondent retailers, and among and between said respondent retailers and others, in the offering for sale, sale and distribution of consumer appliances and products.

PAR. 32. In the course and conduct of its business, respondent ADC, acting through respondent Executive Director and various ADC committees with the cooperation and/or acquiescence of the majority of respondent members, engaged in the following acts and practices:

(a) Respondent Executive Director and representatives of various respondent members acting as ADC committees and serving as common agents of all respondents have met with, and continue to meet with, suppliers of ADC for the purpose of ascertaining and negotiating the prices, terms and conditions of sale of consumer appliances and products offered by said suppliers. Subsequent to said discussions, regular meetings of respondent members are held under the auspices of ADC at which respondent Executive Director and representatives of various respondent members acting as ADC committees and serving as common agents of all respondents, relate to, and discuss with respondent members, the prices, terms and conditions of sale which they obtained from suppliers as well as their own suggestions and wishes with respect to the pricing, marketing and sales of said products by respondent retailers. Further suggestions and directions with respect to the pricing, marketing and sale of said products are communicated to respondent retailers by respondent ADC through the medium of news bulletins which are written by respondent Executive Director. At the ADC meetings and in the news bulletins, statements, admonitions, suggestions and threats of fines and penalties are made by respondent Executive Director and representatives of various respondent members acting

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as ADC committees, which are designed to induce and persuade, and did induce and persuade, the respondent retailers named herein to comply with the suggestions, wishes and directives made with respect to the pricing, marketing and sale of consumer appliances and products by said respondent retailers.

(b) Respondent ADC, with the knowledge, consent and approval of respondent Executive Director and the majority of respondent members, has, with regard to certain consumer appliances and products, withheld and continues to withhold from respondent retailers, knowledge of the amounts of certain rebates or allowances due them from respondent ADC for purchases made from, or through ADC, thus making it difficult or impossible for respondent retailers to determine their net cost for those certain items at the time of purchase. Cost is a significant factor in pricing merchandise for resale, thus, the purpose and effect of the "undisclosed holdback" practice is to prevent, discourage or inhibit respondent retailers from lowering their resale price by all or part of the amount of the undisclosed holdback and thus establish, maintain, raise, tamper with, control or stabilize the prices at which said products are advertised, offered for sale, or sold by respondent retailers. Additionally, the same undisclosed holdback practice has the effect of preventing, discouraging or inhibiting the resale of said products by respondent retailers to other retailers, a practice known as transshipping.

PAR. 33. Pursuant to, and by means of the acts and practices described in Paragraph Thirty-Two (a) and (b) above, respondent ADC, acting through respondent Executive Director, various committees of ADC, and certain respondent members performed and did persuade, induce and coerce other respondent members and respondent retailers to acquiesce in the performance of unlawful acts and practices among which are the following:

1. Maintain, establish, raise, tamper with or stabilize the prices at which certain consumer appliances and products are advertised, offered for sale or sold by respondent retailers.
2. Prevent, limit or inhibit respondent retailers from reselling certain consumer appliances and products purchased from respondent ADC, to other retail establishments, a practice commonly known as transshipping.
3. Refrain from locating and operating retail stores for the sale of consumer appliances and products in the geographic area or territory which is occupied and serviced by another respondent retailer.
4. For the purpose of effectuating the unlawful acts and practices

herinbefore described: harass, intimidate or coerce certain respondent retailers not conforming to the agreements or understandings herinbefore described through the use or threat of; fines, penalties, price discriminations, refusals to deal, suspension or termination of membership in ADC, refusal or failure to make timely payment of debts or obligations owing to members or resigning members of ADC, removal or exclusion of members of ADC from membership on or participation in, the activities of the Board of Directors, committees or subgroups of ADC, discriminatory treatment of members of ADC, failure to provide full and fair prior notice of all meetings which any member of ADC was permitted to attend and failure to provide members of ADC with an opportunity to attend and participate in such meetings.

PAR. 34. The acts, practices and methods of competition engaged in, followed, approved or acquiesced in by respondents, as hereinabove alleged, have the purpose, tendency and effect of hindering, lessening and restraining price and other competition between and among respondent retailers and between and among respondent retailers and other retailers, in the offering for sale, sale and distribution of consumer appliances and products.

PAR. 35. The acts, practices and methods of competition of respondents and the adverse competitive effects resulting therefrom as hereinabove set forth, are to the injury and prejudice of the public and of respondents' competitors and thus constitute unfair acts and practices and unfair methods of competition in or affecting commerce within the intent and meaning 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 New York 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, having thereupon 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 by interested persons pursuant to § 2.34 of its Rules, 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. Proposed respondent Appliance Dealers Cooperative is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its home office and principal place of business located at 84 Lockwood St., Newark, New Jersey.

Proposed respondent Murray Gidseg is Executive Director of Appliance Dealers Cooperative and as such is the chief executive officer of the corporation. He cooperates and acts together with other respondents to formulate, direct and control the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

Proposed respondents Ace Electronic Service Co., Inc. (hereinafter Ace) and Solar Appliance Centers, Inc. (hereinafter Solar) are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Ace maintains its home office and principal place of business at 69 Highway 35, Neptune City, New Jersey. Solar maintains its home office and principal place of business at 2114 Route 88, Bricktown, New Jersey.

Proposed respondent Ajay Appliance Sales & Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 1021 Route 37 West, Toms River, New Jersey.

Proposed respondent Apex Appliance Distributors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 700 Rahway Ave., Elizabeth, New Jersey.

Proposed respondent Bell Appliance Co., Inc. is a corporation organized, existing and doing business under and by virtue of the

laws of the State of New Jersey, with its home office and principal place of business at Highway 22, Union, New Jersey.

Proposed respondent Paul Bergman is an individual trading and doing business as Brown's Appliance Co. with its home office and principal place of business located at 276 Main St., Paterson, New Jersey.

Proposed respondent Charles Stein is an individual trading and doing business as Economy Stove & Plumbing Supply Co. with its home office and principal place of business located at 1047 Elizabeth Ave., Elizabeth, New Jersey.

Proposed respondent Flynn Appliances, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 44 Grand Ave., Englewood, New Jersey.

Proposed respondent Frank Schwartz is an individual trading and doing business as Franks Sales & Service Co. with its home office and principal place of business located at 739 Main Ave., Passaic, New Jersey.

Proposed respondents Goldklang's Appliance City, Inc. (hereinafter Goldklang's) and Town Appliance, Inc. (hereinafter Town), are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Goldklang's maintains its home office and principal place of business at 462 Broadway, Bayonne, New Jersey. Town maintains its home office and principal place of business at Route 46, Rockaway, New Jersey.

Proposed respondent Harvey's of New Milford, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 690 River Road, New Milford, New Jersey.

Proposed respondent Karl's Sales & Service Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 111 Washington Ave., Belleville, New Jersey.

Proposed respondent Keystone Appliance Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 4237 Bergen Turnpike, North Bergen, New Jersey.

Proposed respondent Lichtman Bros. Inc. is a corporation organized, existing and doing business under and by virtue of the laws of

the State of New Jersey, with its home office and principal place of business at 101-105 Smith St., Perth Amboy, New Jersey.

Proposed respondent Mrs. G. Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 2960 Brunswick Pike, Trenton, New Jersey.

Proposed respondent Paul's Home Furnishings Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 121 New York Ave., Newark, New Jersey.

Proposed respondent Rooney Appliance, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 500 Market St., Saddle Brook, New Jersey.

Proposed respondent Schenck Appliance Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at Route 88 and Laurelton Circle, Bricktown, New Jersey.

Proposed respondent Summerton Appliance, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 300 Route 9, Englishtown, New Jersey.

Proposed respondent Les Turchin, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 98-100 Albany St., New Brunswick, New Jersey.

Proposed respondent Tru-Home Sales Co. Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 321-16th Ave., Newark, New Jersey.

Proposed respondents Turchin's Department Stores, Inc. (hereinafter Turchin's) and Turchin's-Rex, Inc. (hereinafter Turchin's-Rex) are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Turchin's maintains its home office and principal place of business at 116 N. Wood Ave., Linden, New Jersey. Turchin's-Rex maintains its home office and principal place of business at 2385 Kennedy Boulevard, Jersey City, New Jersey.

Proposed respondents Uneeda Appliance Co., Inc. (hereinafter Uneeda), Uneeda Brook's, Inc. (hereinafter Uneeda Brook's) and Uneeda Appliance Company of Bayonne, Inc. (hereinafter Uneeda

Bayonne) are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Uneeda maintains its home office and principal place of business at 2973 Kennedy Boulevard, Jersey City, New Jersey. Uneeda Brook's maintains its home office and principal place of business at 9 West Main St., Somerville, New Jersey. Uneeda Bayonne maintains its home office and principal place of business at 432 Broadway, Bayonne, New Jersey.

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 Appliance Dealers Cooperative, a corporation, (hereinafter referred to as ADC) and respondent Murray Gidseg, individually and as Executive Director of ADC and said respondents' agents, representatives, employees, successors and assigns, directly or indirectly, through any corporate or other device in connection with the advertising, offering for sale, sale or distribution of consumer appliances and products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, cease and desist from either individually doing, engaging in or performing any of the following acts, practices or policies or entering into, carrying out, cooperating or acquiescing in any common course of action, understanding, agreement or combination, whether express or implied, between said respondents or between any one or more of them and any other person or firm to do or perform any of the following:

1. Establish, tamper with, maintain, raise, stabilize or control the prices at which consumer appliances and products may be advertised, offered for sale or sold by any retailer.
2. Restrict, limit or otherwise interfere with the right of any retailer of consumer appliances and products to sell such products to any other person or firm.
3. Agree with any other person or firm to refuse to resell consumer appliances and products to any member of ADC unless the member is approved, authorized or franchised by suppliers to receive their merchandise.
4. Restrict, limit or otherwise interfere with the right of any

retailer to locate and operate retail stores in any geographic area or territory.

5. Harass, intimidate, coerce or otherwise interfere with any person or firm if an actual or potential effect of such conduct would be to cause or permit any of the acts, practices or policies prohibited by paragraphs one (1) through four (4) of this order.

6. Knowingly withhold or hold back from members or other customers of ADC any purchase price information or any information relating to the amounts of rebates, allowances or discounts due said members or other customers of ADC for merchandise purchased from or through ADC, or take or withhold any other action which has, or may have, the effect of impeding or preventing members or other customers of ADC from determining their net cost for consumer appliances and products at the time of purchase.

7. Communicate, circulate or exchange any information or material which has the purpose or effect of causing any of the acts, practices or policies prohibited by paragraphs one (1) through six (6) of this order.

II

It is further ordered. That Ace Electronic Service Co., Inc., Solar Appliance Centers, Inc., Ajay Appliance Sales & Service, Inc., Apex Appliance Distributors, Inc., Bell Appliance Co., Inc., Paul Bergman an individual trading and doing business as Brown's Appliance Co., Charles Stein an individual trading and doing business as Economy Stove & Plumbing Supply Co., Flynn Appliances, Inc., Frank Schwartz an individual trading and doing business as Franks Sales & Service Co., Goldklang's Appliance City, Inc., Harvey's of New Milford, Inc., Karl's Sales & Service Co., Inc., Keystone Appliance Co., Inc., Lichtman Bros. Inc., Mrs. G. Inc., Paul's Home Furnishings Co., Inc., Town Appliance, Inc., Rooney Appliance, Inc., Schenck Appliance Corporation, Summerton Appliance, Inc., Les Turchin, Inc., Tru-Home Sales Co. Inc., Turchin's Department Stores, Inc., Turchin's-Rex, Inc., Uneeda Appliance Co., Inc., Uneeda Brook's, Inc., Uneeda Appliance Company of Bayonne, Inc. (hereinafter referred to as respondent retailers) and said respondent retailers' successors, assigns, officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the offering for sale, sale or distribution of consumer appliances and products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, shall not, either individually or collectively:

Engage in, carry out, cooperate, or acquiesce in any act, practice or policy or any common course of action, understanding, agreement or combination between any two or more of said respondent retailers or between any one or more of them and respondent ADC or respondent Murray Gidseg, their representatives, agents, designees, successors and assigns, if an effect would be to restrict, interfere, or tamper with the purchase, advertising, pricing, offering for sale, sale or distribution of consumer appliances and products, the selection of customers, or the location of places of business by any person or firm, or between any one or more of said respondent retailers and any other person or firm, if an effect would be to restrict, interfere, or tamper with the purchase, advertising, or pricing of consumer appliances and products, or the location of places of business by any person or firm.

III

It is further ordered, That respondent ADC, either directly or through its representatives, designees, successors and assigns, shall disclose to ADC members on an equal and timely basis all material matters considered and actions taken at all board, committee, membership and subgroup meetings or by the membership, or any board, committee or subgroup which affect, or may affect, the business of ADC including, without limitation, all information relating to the purchase or sale by ADC of consumer appliances and products purchased or to be purchased by or on behalf of ADC, its agents, representatives or designees.

IV

It is further ordered, That respondent ADC, either directly or through its representatives, designees, successors and assigns, shall provide adequate and equal prior notice to each ADC member, of all meetings (except as to meetings of committees or subgroups provided for in paragraph V below) at which merchandise matters are to, or may, be discussed or considered. If any member of ADC shall be permitted to attend any such meeting, then all members of ADC shall be provided with an opportunity to attend and participate in such meeting and related discussions and matters.

V

It is further ordered, That the officers and directors of ADC, annually, shall appoint the representatives of members of ADC to serve as members of committees or subgroups, including committees

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and subgroups involved in dealings with manufacturers, distributors or suppliers. Such appointments shall be made on a fair, impartial and non-discriminatory basis, shall be determined on the basis of the trade experience and expressed desires of the respective members of ADC and shall not be determined, directly or indirectly, on the basis of the size or volume of purchases of any member or such member's status as an officer or director of ADC. If any member of ADC has expressed a desire to have its representative serve as a member of a committee or subgroup involved in dealings with manufacturers, distributors or suppliers and has been denied such membership for a particular year, such member shall have the right to have a representative attend, in a non-voting capacity, all meetings and activities of such committee or subgroup, and shall be entitled to receive timely notices thereof to the extent possible in the normal course of business. All notices of meetings and activities shall be communicated on an equal basis to all members of ADC which are entitled to have a representative attend such meetings or activities.

VI

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

VII

It is further ordered, That at the next meeting of the Board of Directors of respondent ADC, which shall in no event be later than thirty (30) days from the date of service of this order, said Board of Directors shall cause the by-laws of ADC to be amended to include each of the paragraphs of this order and shall terminate and cancel any rule, article, resolution, regulation or by-law of ADC which is contrary to or inconsistent with any provision of this order.

VIII

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.

IN THE MATTER OF
PROPOSED TRADE REGULATION RULE FOR THE
HEARING AID INDUSTRY

Docket 215-44. Interlocutory Order, June 7, 1979

ORDER DENYING MOTION OF THE NATIONAL HEARING AID
SOCIETY

The National Hearing Aid Society (NHAS) by motion of May 22, 1979 has moved that *ex parte* communications between the Commission, any individual Commissioner, or any advisor of a Commissioner, and the FTC staff members assigned to the Proposed Trade Regulation Rule for the Hearing Aid Industry proceeding, Public Record No. 215-44, or the Director of the Bureau of Consumer Protection be prohibited in the above-described proceeding. NHAS further moves that any *ex parte* communications which have already occurred since the initiation of this proceeding if written be placed on the rulemaking record subject to judicial review, or if oral, with a summary thereof. For the reasons set forth below, the Commission denies the motion.

The basic premise underlying the motion is the claim of inherent unfairness in the Commission's procedures which restrict the ability of interested outside parties to communicate with the Commission, but permit unfettered staff contact. Thus, NHAS argues, while the Commission's recently amended Rule 1.18(c) permits outside communications at some stages of a rulemaking proceeding, it fails to subject staff contacts to similar restrictions. NHAS argues that the failure to recognize staff's role as adversarial results in inherent unfairness, thereby denying the procedural due process rights of all other parties participating in the proceeding.

The Commission, as you know, recently reconsidered this issue in amending Rule 1.18(c) of its Rules of Practice, and found that no change in its current practice is required with regard to staff communications. In so doing, the Commission specifically rejected proposals that staff members who participated in rulemaking proceedings be prohibited from communicating with any individual Commissioner or Commissioners' advisors. *See also* 42 F.R. 6056 (Nov. 28, 1977). It was the Commission's belief that the Administrative Procedure Act's (APA) provisions concerning separation functions and *ex parte* communications do not apply to Magnus Moss rulemaking. The court in *Hercules, Inc. v. EPA*, No. 77-1 (D.C. Cir., Nov. 3, 1978), noted that the APA has long been construed as "allowing the agencies staff to assist agency administrator