

IN THE MATTER OF

GENSTAR LIMITED

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket C-3049. Complaint, Nov. 10, 1980—Decision, Nov. 10, 1980

This consent order requires, among other things, a Canadian corporation engaged in various business enterprises, including the manufacture and sale of portland cement and gypsum wallboard, to cease, for a prescribed period, from entering into or carrying out supply agreements with U.S. competitors that provide for the exchange of cost and pricing information and permit the firm to share in profits realized from the resale of its products in the United States. The firm is also prohibited, for a specified time, from selling or delivering to any "Cement Facility" for further processing or resale, products produced at company-owned cement manufacturing plants located outside the United States. Further, for each calendar year, beginning January 1, 1981 and ending December 31, 1984, respondent is required to make available for sale to manufacturers having cement facilities located in the "Northwest Cement Market," all cement or clinker produced at its plant at Tilbury Island, British Columbia, that is not sold to Canadian customers. Additionally, the firm is prohibited from acquiring, without prior Commission approval, any portland cement or gypsum wallboard manufacturing plant that is located within geographic areas set forth in the order.

Appearances

For the Commission: *Robert W. Mannix* and *Alfred J. Ferrogari*.

For the respondent: *Lucian C. Jones, Shearman & Sterling*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, as amended, and by virtue of the authority vested in it, the Federal Trade Commission, having reason to believe that Genstar Limited, a corporation subject to the jurisdiction of the Commission, has violated said Acts, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges as follows:

Complaint

96 F.T.C.

I.

DEFINITIONS

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

(a) *Portland cement* includes Types I through V of portland cement as specified by the American Society for Testing Materials.

(b) *Clinker* means a substance ranging in particle size from fine sand grains to walnut size which is formed by heating a properly proportioned mixture of raw materials containing calcium carbonate, silica, alumina and iron oxide in a kiln to a temperature at which fusion occurs. When ground and mixed with gypsum, clinker becomes portland cement.

(c) *Gypsum wallboard* includes gypsum lath, veneer base, gypsum sheathing, regular gypsum wallboard, type X gypsum wallboard, predecorated wallboard and other specialty gypsum wallboard items.

(d) The term *Northwest Cement Market* consists of Northern California, Western Oregon and Western Washington.

(e) The term *Northern California* refers to that part of California identified by the Bureau of Mines as Northern California (points north and west of the northern borders of San Luis Obispo and Kern Counties and the western borders of Inyo and Mono Counties).

(f) The term *Western Oregon* refers to all counties west of a dividing line following the eastern boundaries of Klamath, Lane, Linn, Marion, Clackamas and Hood River Counties and composed of the counties of Klamath, Lane, Linn, Marion, Clackamas, Hood River, Multnomah, Douglas, Jackson, Josephine, Curry, Coos, Benton, Lincoln, Yamhill, Tillamook, Washington, Clatsop, Polk and Columbia.

(g) The term *Western Washington* refers to all counties west of a dividing line following the eastern boundaries of Klickitat, Skamania, Lewis, Pierce, King, Snohomish, Skagit and Whatcom Counties and composed of the counties of Klickitat, Skamania, Clark, Cowlitz, Lewis, Pierce, King, Snohomish, Skagit, Whatcom, San Juan, Island, Kitsap, Mason, Thurston, Clallam, Jefferson, Grays Harbor, Pacific and Wahkiakum.

(h) The term *4-State Area* consists of Washington, Oregon, California and Nevada.

II.

GENSTAR LIMITED

2. Respondent Genstar Limited (hereinafter Genstar) is a Canadian corporation with principal offices at Suite 4105, One Place Ville Marie, Montreal, Quebec, Canada.

3. Genstar, through its divisions and subsidiaries, is engaged in the manufacture and sale of cement, including portland cement and gypsum wallboard. Genstar is also engaged in a variety of other business operations including substantial business operations in or affecting commerce of the United States.

III.

THE FLINTKOTE COMPANY

4. The Flintkote Company (hereinafter Flintkote) is a publicly held corporation, organized and existing under the laws of the State of Massachusetts with its principal office located at 1351 Washington Boulevard, Stamford, Connecticut.

5. Flintkote is engaged in the manufacture and sale of materials and products for the building and construction industries including, but not limited to, portland cement and gypsum wallboard.

IV.

JURISDICTION

6. At all times relevant herein, Genstar, through its divisions and subsidiaries, has been and is now engaged in interstate negotiations and transactions and has sold and shipped its products in interstate commerce. Genstar has engaged in "commerce" within the meaning of the Clayton Act and is a corporation whose business is in or affects commerce as "commerce" is defined in the Federal Trade Commission Act.

7. At all times relevant herein, Flintkote, through its divisions and subsidiaries, has been and is now engaged in interstate negotiations and transactions and has sold and shipped its product in interstate commerce. Flintkote has engaged in "commerce" within the meaning of the Clayton Act and is a corporation whose business is in or affects commerce as "commerce" is defined in the Federal Trade Commission Act.

Complaint

96 F.T.C.

V.

ACQUISITION

8. Between approximately June 1978 and September 1978, Genstar, through its indirectly wholly-owned subsidiary Dorster, Inc., purchased 1,450,000 shares of Flintkote Common Stock, \$5.00 par value, representing approximately 21.5% of the outstanding voting shares of Flintkote (based upon 6,719,107 shares of Common Stock authorized and issued on June 30, 1978). All of the purchases of such shares were effected in open-market and negotiated transactions on the New York Stock Exchange with a substantial number of holders. On October 18, 1979, Genstar proposed to the board of directors of Flintkote that Genstar make a cash tender offer for all of the remaining outstanding shares of Flintkote.

9. The cost of the acquisition of the shares purchased on the open market was approximately \$51,267,010.

10. Genstar's acquisition of approximately 21.5% of Flintkote's Common Stock gives it the power to: (a) influence and control Flintkote's business affairs; (b) influence the management of Flintkote in favor of a merger between the two companies; and/or (c) to provide a base from which to launch a tender offer.

VI.

TRADE AND COMMERCE

A. Portland Cement

11. A relevant line of commerce is the manufacture and sale of portland cement.

12. A relevant section of the country with respect to portland cement is the "Northwest Cement Market" as defined herein.

13. The manufacture and sale of portland cement in the Northwest Cement Market is concentrated. For the year 1978, total sales of portland cement, as defined herein, in the relevant market amounted to approximately 5.1 million tons. The four largest manufacturers had sales of approximately 3.5 million tons, or 69.6% of all sales; the eight largest manufacturers had sales of approximately 4.8 million tons, or 94.7% of all sales of portland cement.

14. Entry into the manufacture and sale of portland cement is difficult. A successful entrant must possess substantial financial resources, considerable technical expertise and a long-term supply of the necessary basic raw materials. An additional barrier to entry exists in the fact that existing environmental protection regulations

make it extremely difficult to obtain the necessary permits for new plant and terminal construction and operation as well as basic raw materials mining operations.

15. For the year 1978, Flintkote ranked third in sales of portland cement in the Northwest Cement Market with approximately 18.3% of all sales.

16. In 1978, Kaiser Cement and Gypsum Corporation (Kaiser), ranked first in sales of portland cement in the Northwest Cement Market and it accounted for approximately 24.4% of all sales.

17. In 1978, Lone Star Industries, Inc. (Lone Star) ranked second in sales of portland cement in the Northwest Cement Market with approximately 18.9% of all sales.

18. Flintkote is now, and has been, a significant competitor of Kaiser and Lone Star in the sale of portland cement in the Northwest Cement Market.

19. In late 1979 or early 1980, depending on when Genstar's newly constructed cement manufacturing facility at Tilbury Island, British Columbia achieves specified minimum production levels, executed long-term contracts for the sale of cement by Genstar to Kaiser and for the sale of clinker by Genstar to Lone Star will become effective.

20. The contract between Genstar and Kaiser calls for Kaiser to purchase 200,000 tons per year (TPY) of cement, substantially composed of portland cement, for ten years with an option exercisable by Kaiser to reduce volume by up to 40,000 TPY, in any of the last four years.

21. The contract with Kaiser, among other things, provides Genstar with a continuing interest in the profitability at which cement purchased from it by Kaiser is resold by Kaiser in the Northwest Cement Market, because it uses a pricing formula which includes a profit sharing feature in addition to a minimum guaranteed return to Genstar. Other provisions of the contract include exchanges of cost and price information, advance estimation as to the price at which Kaiser will resell cement purchased from Genstar and a guaranty to Kaiser of the most favored price for cement or clinker purchased by any customer of Genstar for resale in the states of Washington and Oregon.

22. The contract between Genstar and Lone Star calls for Lone Star to purchase clinker in amounts of 250,000 TYP in the first two years and 275,000 TPY in the next three years. The Lone Star contract is renewable at Lone Star's option for a second five-year term and provides for minimum purchases of clinker at the rate of

200,000 TPY for the first four years of the renewal period and 175,000 tons during the last year of the renewal period.

23. The contract with Lone Star provides, among other things, that Genstar's price to Lone Star will be determined in accordance with the formula for determining Genstar's price to Kaiser (less \$1.50 per ton clinker allowance) and includes a minimum guaranteed return to Genstar equivalent to that provided by Kaiser. The Lone Star agreement also provides for inspection of the books and records of each party relating to any provision of the agreement, access to be given through independent auditors, with limited direct access in defined circumstances. Further, the contract defines events of hardship which, should any occur, the parties are in good faith obliged to attempt to resolve them, "even to the extent of sharing the economic burden occasioned by the hardship". The enumerated events of hardship include among other things, the failure of the contract price to afford Lone Star a minimum margin of U.S. \$4.50 per ton on cement purchased from Genstar and resold in the Northwest Cement Market, the experience of unusual, severe and unforeseen difficulties in the manufacture of clinker or cement by Genstar or of cement by Lone Star; the occurrence of adverse market developments in the area traditionally serviced by Lone Star's Seattle plant, which causes Lone Star to cease the manufacture of clinker at its Seattle plant for an uninterrupted period of thirty days or more (in which case Lone Star shall be entitled to a ratable reduction in the contract tonnage it is obliged to take from Genstar on condition that it does not avail itself of another source of supply). Lone Star is also guaranteed the most favored price for cement or clinker purchased by any customer of Genstar for resale in the States of Washington and Oregon.

24. The contracts between Genstar and Kaiser and Genstar and Lone Star, either individually or as they operate in conjunction with each other, would constitute contracts, combinations or conspiracies in restraint of trade, if Genstar were a direct competitor in the Northwest Cement Market.

B. Gypsum Wallboard

25. A second relevant line of commerce is the manufacture and sale of gypsum wallboard.

26. A relevant section of the country with respect to gypsum wallboard is the "4-State Area" as defined herein.

27. The manufacture and sale of gypsum wallboard in the 4-State Area is concentrated. For the year 1978, total sales of gypsum wallboard, as defined herein, in the 4-State Area amounted to

approximately 2,959,290 MSF (MSF = 1000 square feet). The four largest manufacturers had sales of approximately 2,065,036 MSF, or 69.7% of all sales; the eight largest manufacturers had sales of approximately 2,891,012 MSF, or 97.7% of all sales of gypsum wallboard.

28. Entry into the manufacture and sale of gypsum wallboard is difficult. A successful entrant must possess substantial financial resources, considerable technical expertise and a long-term supply of the necessary basic raw materials. An additional barrier to entry exists in the fact that existing environmental protection regulations make it extremely difficult to obtain the necessary permits for new plant construction and operation as well as basic raw materials mining operations.

29. For the year 1978, Genstar ranked ninth in sales of gypsum wallboard with approximately 2.1% of all sales. During the same year, Flintkote ranked fourth in sales of gypsum wallboard with 14.6% of all sales. A combined Genstar-Flintkote would have ranked second with 16.7% of all gypsum wallboard sales in 1978.

VII.

EFFECTS OF THE ACQUISITION

30. The effect of Genstar's acquisition of Flintkote, a direct competitor of Kaiser and Lone Star, may be to create a combination in restraint of trade, which may substantially lessen competition or tend to create a monopoly in the Northwest Cement Market in the following ways:

(a) Actual price and other competition among Flintkote, Kaiser and Lone Star in the manufacture and sale of portland cement may be substantially reduced;

(b) Cooperation among Flintkote, Kaiser and Lone Star with respect to the production, distribution, pricing and/or sale of portland cement may be increased to the detriment of competition generally and/or have the effect of fixing, stabilizing or maintaining prices and/or have the effect of allocating markets or customers or restricting available supplies of portland cement in the Northwest Cement Market or sections thereof.

(c) Actual competition among competitors generally in the manufacture and sale of portland cement may be lessened.

31. The effect of Genstar's acquisition of Flintkote may be substantially to lessen competition or to tend to create a monopoly in

the manufacture and sale of gypsum wallboard in the 4-State Area in the following ways:

- (a) By eliminating actual and potential competition between Genstar and Flintkote in the manufacture and sale of gypsum wallboard;
- (b) Actual and potential competition among competitors generally in the manufacture and sale of gypsum wallboard may be lessened;
- (c) The previously existing level of concentration in the manufacture and sale of gypsum wallboard in the 4-State Area will be increased and the possibilities of eventual deconcentration may be diminished.

VIII.

VIOLATION

32. Genstar's acquisition of 21.5% of the Common Stock of Flintkote constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

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 New York 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 Clayton Act; and

The respondent, its attorney, and counsel for the Commission having hereafter 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 Acts, and that complaint should be issued 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules and the recommendations of its staff, and respondent having consented by letter from its counsel, dated September 29, 1980, to a modification of the agreement containing consent order dated November 27, 1979, and the Commission having considered and accepted said modification, 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 Genstar Limited is a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its office and principal place of business located at One Place Ville Marie, Montreal, Quebec, Canada.
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

For purposes of this order, each of the following terms shall have the meaning ascribed thereto below:

A cement-equivalent short ton means: (i) in the case of finished cement, one short ton (2,000 pounds) and (ii) in the case of clinker, the product obtained by multiplying one short ton times 1.05.

Cement Facility means a cement manufacturing plant or a cement terminal, as the case may be, located in the States of Washington, Oregon, California or Nevada, and owned at the time by Flintkote or Genstar.

Cement Market Area means (i) the area included within the States of Washington, Oregon, California and Nevada or (ii) the area in the United States within a 300-mile radius of the cement manufacturing plant presently owned by Flintkote and located at Kosmosdale in Kentucky or (iii) the area in the United States within a 300-mile radius of the cement manufacturing plant presently owned by Flintkote and located at Glens Falls in New York, as the case may be, but in each case only for so long as there is located in that area a Product manufacturing plant owned by Genstar.

Dedicated Product for a particular calendar year means that quantity of Product manufactured at the Tilbury Plant by which (i) the total quantity of Product actually produced at the Tilbury Plant

during that year exceeds (ii) the quantity of Product so produced during that year and sold to buyers located in Canada except that the total quantity of Product actually produced at the Tilbury Plant in any year for purposes of this definition shall in no event exceed 982,000 cement-equivalent short tons.

Flintkote means The Flintkote Company, a Massachusetts corporation, its subsidiaries and affiliates.

Genstar means Genstar Limited and those persons, partnerships, subsidiary or related corporations or other legal entities acting on its behalf, their successors and assigns, including but not limited to Dorster, Inc.

Gypsum Market Area means (i) the area included within the States of Washington, Oregon, California and Nevada or (ii) the area in the United States within a 300-mile radius of the gypsum wallboard manufacturing plant presently owned by Flintkote and located at Florence in Colorado or (iii) the area in the United States within a 300-mile radius of the gypsum wallboard manufacturing plant presently owned by Flintkote and located at Sweetwater in Texas or (iv) the area in the United States within a 300-mile radius of the gypsum wallboard manufacturing plant presently owned by Flintkote and located at Savannah in Georgia or (v) the area in the United States within a 300-mile radius of the gypsum wallboard manufacturing plant presently owned by Flintkote and located at Camden in New Jersey, as the case may be, but in each case only for so long as there is located in that area a gypsum wallboard manufacturing plant owned by Genstar.

Independent Buyer means a company other than Flintkote or Genstar which owns a cement manufacturing plant or a cement terminal located in Washington, Oregon or California.

Product means finished portland cement or clinker, as the case may be.

Tilbury Plant means the cement manufacturing plant located at Tilbury Island, British Columbia, for so long as the same is owned by Genstar.

Independent Manufacturer means a company which is engaged in the manufacture and sale of Product in competition in the United States with Flintkote or Genstar.

I.

It is ordered, That respondent Genstar, a Canadian corporation, through its officers, directors, agents, representatives, employees, successors and assigns, directly or through any corporation, subsid-

iary, division or other device, in connection with the manufacture and sale of Product shall forthwith until January 31, 2000, cease and desist from establishing, entering into, continuing, carrying out, enforcing or cooperating or acquiescing in any contract, agreement, combination, understanding, arrangement or common course of action, whether express or implied, with any Independent Manufacturer doing business in the United States which has the effect of:

1. Respondent Genstar sharing in the profit realized by any Independent Manufacturer from the resale in the United States of Product purchased from Genstar.

2. Providing for the price of Product sold by respondent Genstar to any Independent Manufacturer to vary in relation to the selling price or margin or net realization of the Independent Manufacturer on its resale in the United States of said Product.

3. Respondent Genstar furnishing to, or receiving from any Independent Manufacturer to which respondent Genstar has sold or contracted to sell Product any information pertaining to:

- (a) the cost of production of Product or sale of Product or any component thereof for either party;

- (b) the sale price or the price realized by the Independent Manufacturer from the resale in the United States of Product purchased from Genstar.

II.

It is further ordered, That during the period commencing on the date this order becomes final and ending on January 31, 1990, respondent Genstar shall not, without the prior approval of the Federal Trade Commission, directly or indirectly sell or otherwise transfer or deliver to any Cement Facility for further processing or for resale any Product made by Genstar at any Product manufacturing plant located outside the United States and owned at the time by Genstar.

III.

It is further ordered, That for each calendar year during the period commencing on January 1, 1981 and ending on December 31, 1984, and for so much of the year 1980 as this order may be in effect, Genstar shall make available for sale to one or more Independent Buyers the Dedicated Product for that calendar year for delivery F.O.B. Genstar's Tilbury Plant during that year at a reasonable

market price (as determined during the relevant Offering Period described below) in accordance with the following procedures:

A. Except for the year 1980, Genstar shall, during or before the four (4) months immediately preceding such calendar year (which four (4) months shall be called the "Offering Period" for that calendar year), solicit orders at a reasonable market price from one or more Independent Buyers for delivery during that calendar year of all of the projected Dedicated Product for that year.

B. Except for the year 1980, to the extent that Genstar shall not, by November 1 during the Offering Period, have agreed to sell all of the projected Dedicated Product for that calendar year to Independent Buyers, Genstar shall within ten (10) business days thereafter notify each Independent Buyer in writing that Genstar is offering to sell, subject to prior agreements to sell to others, all or any portion of the then uncommitted Dedicated Product for that year for delivery during that year at a reasonable market price.

C. An Independent Buyer wishing to purchase any Dedicated Product offered pursuant to B. above shall submit to Genstar either a written acceptance of Genstar's offer or a written offer expressing the Independent Buyer's willingness to purchase during that year a specified quantity of such Dedicated Product at a specified price. Any such acceptance or offer must be submitted by December 1 during the Offering Period. Genstar shall enter into final agreements seriatim to sell to one or more of those Independent Buyers at a reasonable market price all Dedicated Product so offered for which Genstar received either such acceptances or such offers to buy at a reasonable market price. Genstar shall not in any event be obligated to enter into any agreement with any Independent Buyer to sell more Dedicated Product in a particular year than the portion thereof which Genstar has not committed to sell to others at the time at which the agreement to sell under this provision C. is entered into with that Independent Buyer.

D. Genstar shall be in complete compliance with the provisions of this Part III for 1980 if Genstar in fact sells to one or more Independent Buyers all of the Dedicated Product produced during that period of the year when this order may be in effect.

IV.

It is further ordered, That, for so long as the contract or contracts described below remain in force and effect, the provisions of Part III of this order shall be of no force or effect whatsoever if Genstar and

one or more Independent Buyers execute supply contracts pursuant to which Genstar shall become obligated to deliver F.O.B. the Tilbury Plant Product manufactured at the Tilbury Plant to such buyer or buyers, as the case may be, in amounts not less than 200,000 cement-equivalent short tons for 1980 and 300,000 cement-equivalent short tons for each of 1981, 1982, 1983 and 1984 provided that no such supply contract contains any terms (i) which provide for one party to furnish to the other data regarding either party's costs of production or sale, or profits on sales, of Product or (ii) which provide for the price of Product sold by Genstar to such buyer to vary in relation to the selling price or margin or net realization of the buyer with respect to resales of that Product or (iii) entitle Genstar to comply with the terms of such contract by supplying Product from any Cement Facility. Such a supply contract shall satisfy the requirements of this Part IV notwithstanding the fact that Genstar's obligation to supply under the contract may be subject to (i) force majeure, (ii) rights to reduce the quantity to be purchased which are exercisable by the Independent Buyer, and (iii) rights of Genstar to prorate Product among its customers if cement and clinker manufactured by it are short of the quantities required to supply its customers' requirements.

V.

It is further ordered, That respondent Genstar maintain adequate records, to be furnished upon request of the staff of the Federal Trade Commission, which evidence compliance with the provisions of this order, including, but not limited to records showing: the total quantity of product produced at the Tilbury Plant in the calendar year 1979 and each subsequent year for five (5) years up to and including the year 1984; the total quantity of Product so produced during each such year that was sold to buyers in Canada including the names and addresses of said buyers; copies of notices mailed to Independent Buyers in the United States soliciting orders for the Dedicated Product; copies of acceptances and sales agreements with said Independent Buyers and the names, addresses and the amount of Product purchased by each Independent Buyer in the United States.

VI.

It is further ordered, That Genstar's obligations under this order shall terminate if the following two conditions are met: (i) Genstar shall not prior to October 31, 1980 purchase any additional voting

securities issued by Flintkote and (ii) Genstar shall have divested prior to October 31, 1980 all interests it presently holds, directly or indirectly, in voting securities issued by Flintkote.

VII.

It is further ordered, That prior to January 31, 1985 Genstar shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of:

A. any equity securities in excess of three (3) percent of the outstanding shares of such securities issued by any company, corporation or partnership which is engaged in either (i) the manufacture of Product in any Cement Market Area or (ii) the manufacture of gypsum wallboard in any Gypsum Market Area; or

B. any Product manufacturing plant or distribution terminal located in any Cement Market Area other than a Product distribution terminal which has not been used as such for at least three (3) months immediately preceding such acquisition; or

C. any gypsum wallboard manufacturing plant located in any Gypsum Market Area.

VIII.

It is further ordered, That Genstar, within sixty (60) days after service upon it of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IX.

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

Commissioner Pitofsky did not participate.

IN THE MATTER OF
AMERICAN ART CLAY CO., INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3050. Complaint, Nov. 12, 1980—Decision, Nov. 12, 1980

This consent order requires, among other things, an Indianapolis, Ind. manufacturer of art materials to cease fixing the prices of its products. The firm is required to establish an interest-bearing escrow account for the purpose of making restitution to consumers for purchases of certain school art materials. Further, the firm is required to distribute consumer redress funds to any state institutions which purchased said products; the FTC, with the cooperation of the State Attorneys General, will distribute the respective funds in lump-sum amounts to each of the states which satisfy the application requirements for receiving the money.

Appearances

For the Commission: *Suzan L. Belman.*

For the respondent: *Joseph W. Burns, Lovejoy, Wasson, Lundgren & Ashton, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated the Federal Trade Commission Act, and that a proceeding by it in respect thereof would be in the public interest, issues this complaint.

Respondents

1. Respondent American Art Clay Co., Inc. is an Indiana corporation, with its principal office located at 4717 West 16th St., Indianapolis, Indiana.
2. At all times relevant to this complaint, respondent has been engaged in the manufacture, offering for sale, sale, and distribution of chalks, crayons, watercolors, or tempera paints.

Commerce

3. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices alleged in the complaint, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, *as amended*.