

IN THE MATTER OF
BORG-WARNER CORPORATION, ET AL.

MODIFYING ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION
OF SECS. 5 AND 8 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9120. Final Order, June 23, 1983—Modifying Order, Sept. 22, 1983

On September 22, 1983, the Federal Trade Commission modified its Final Order issued against Borg-Warner Corporation on June 23, 1983 (101 F.T.C. 863). The modification alters the reporting requirements of the annual director screening provisions contained in Paragraph IV of the Order.

OPINION OF THE COMMISSION

BY BAILEY, *Commissioner*:

Pursuant to Commission rule 3.55, 16 CFR 3.55 (1982), respondents in this proceeding filed on August 11, 1983, a "Petition for Reconsideration" ("Petition") of the Commission's final order in this matter. Respondents also filed a "Motion for Order Staying Effective Date of Decision and Tolling Statutory Time Period for Seeking Appellate Review." On August 19, 1983, complaint counsel filed their "Opposition to Respondents' Petition for Reconsideration." On September 2, 1983, respondent Borg-Warner filed a "Motion for Leave to File Reply," and on September 6, 1983, the remaining respondents also sought to file a reply to complaint counsel.

In their petition, respondents ask that the Commission reconsider and withdraw its June 23, 1983, final order in this matter, or in the alternative that the order be modified "to eliminate errors and unnecessary ambiguities." In their separate motion for a stay of the order, respondents ask the Commission, pending resolution of the issues contained in their reconsideration petition, to toll the sixty (60) day period by which respondents must file any petition for review of the Commission's decision and final order.¹

Complaint counsel urge that the order not be withdrawn, but while they oppose some of the clarifying modifications proposed by respondent as unnecessary, complaint counsel do not oppose them all. Complaint counsel take no position on the issue of staying the order or tolling the running of the statutory period for review.

Respondent's main argument is that to justify the entry of its order

¹ Commission rule 3.55 states that petitioning for reconsideration of a decision or order does not affect the 60 day statutory period (running from, in this case, the July 22, 1983 service date) within which respondents may petition for federal court review, unless the Commission orders a stay of the effective date of a decision or order, or tolls the running of the statutory period for filing for judicial review.

in this matter, the Commission must demonstrate a "cognizable danger of a recurrent violation"² that is greater than that demonstrated in *TRW v. FTC* 647 F.2d 942 (9th Cir. 1981). [2] In *TRW*, the court, while affirming the finding of a Section 8 violation and rejecting respondent's *de minimis* commerce defense, set aside the proposed order as an abuse of the Commission's discretion. Respondents argue that the only element distinguishing the present case from *TRW* is the Commission's conclusion that the record does not show that respondents have a screening procedure to guard against future interlocking directorate possibilities, and that they have not offered assurances that they will comply in the future with the provisions of Section 8 of the Clayton Act. For the first time in this five year proceeding respondents now make the argument that respondent Borg-Warner established a formal Section 8 screening procedure in March 1979, the year *after* issuance of the Commission's complaint. Respondents add that this new procedure supplants an earlier one that had actually screened (and approved) the seating on respondent corporate boards of the two individual directors found liable in this case. With regard to the respondent Bosch corporations' Section 8 compliance, respondents offer no specific evidence of a formal screening procedure, but assure the Commission of sensitivity to Section 8 obligations on the part of the Bosch corporations, and note the availability of counsel should the unlikely need arise for Section 8 screening.

Rule 3.55 is quite specific as to what constitutes grounds for the Commission's reconsideration of a final order. It states in pertinent part: "Any petition filed under this subsection must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Commission."

Both complaint counsel's proposed draft order submitted to the ALJ in 1980 and the ALJ's proposed order in his initial decision contained screening procedure provisions similar to those adopted by the Commission. Yet, at no time in this proceeding heretofore has respondent Borg-Warner made known the existence of the screening procedure described in the Longtin affidavit, despite ample opportunity to do so, and despite numerous other written and oral submissions that did become part of the record of this proceeding.³ [3] Thus, at the very outset, respondents have failed to meet the requirements of the rule

² *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953).

³ In Respondent's Joint Appeal Brief (RAB), filed September 2, 1980, respondents attacked the reporting provisions contained in the ALJ's initial decision, labeling them as "elaborate and burdensome" and "wholly inappropriate." Yet, respondents made no mention of the existence of the screening procedures outlined in the Longtin affidavit (RAB, 52). It is hard to see how the screening and reporting procedures that the Commission included in its final order present any truly "new" questions in the sense of rule 3.55.

under which they seek relief.⁴

But a further detailed consideration of respondent's main argument demonstrates the incorrectness of respondent's assertion that the Commission in this case is subject to the *TRW* precedent where the court declined to enter an order on that record. Contrary to the assertions of respondents, there are substantial differences both in the facts and in the orders of the two cases. Unlike the *TRW* situation, where the director in question discontinued one of the interlocked directorships "before being apprised of the FTC investigation," 647 F.2d 954, and seven months before issuance of the Commission's complaint, respondent Hans Merkle remains to this day an interlocked director between Borg-Warner and Bosch GmbH, the controlling parent of Bosch U.S. The Commission found this interlock in violation of Section 8 of the Clayton Act, and the continued existence of this interlock is itself a justification for some form of order. Moreover, Merkle was interlocked between Borg-Warner and its competitor Bosch U.S. until near the end of the trial in this case. The *TRW* court made it clear that the explicit circumstance of the director's early resignation was a major justification for the court's attitude towards relief. *Id.*

The question of further injunctive relief was carefully considered by the Commission in the majority decision.⁵ In several respects, the order is narrower than the order proposed by the ALJ in his initial decision (Slip Op. at 31) [101 F.T.C. at 942 (1983)]. Much of the relief in the Commission's order—including the resignation of respondent [4] Merkle—is not even triggered until and unless the competition found by the Commission is restored between the respondents. The screening procedure in the order is justified by the lack of record evidence of any timely response to the need for Section 8 screening procedures by any of respondents, unlike the facts of *TRW*. The order is applicable only to a limited line of automotive aftermarket parts, except with regard to interlocks between the named corporate respondents. In *TRW* the order extended to all products and services. While the ban against interlocks between the corporate respondents is without dollar limitations, interlocks between corporate respondents and other competing corporations require that any such interlocks involve at least \$5 million in commerce on the part of one of the

⁴ The decision of the Court of Appeals for the Ninth Circuit in *TRW*, *supra*, upon which respondents rest their main argument, was decided *after* briefing and oral argument in this case on appeal to the Commission. It might therefore be argued that respondent has had no opportunity earlier than now to argue the relevance of *TRW*. But on January 6, 1982, in a reply brief filed in connection with a motion to dismiss this proceeding, respondents discussed *TRW* in relation to another issue in this case. In choosing to wait until the present to add their thoughts on *TRW* to the remedy questions that have existed throughout this proceeding, respondents lack credence that they have had no opportunity heretofore to argue *TRW*.

⁵ Contrary to respondents' assertion that the Commission's decision is a "plurality opinion," both the decision and the order were issued by recorded 3-2 Commission vote.

corporate entities involved. No such dollar limitations were contained in the *TRW* order.⁶ Thus, the Commission has drawn a narrow order that is much more limited in effect than the order that was set aside in *TRW*.

The Commission's finding of a cognizable danger of recurrent violation turns on the combination of factors in this record that distinguishes it from *TRW*. Even with respondents' new filing, we have no way now of assuring that respondent Borg-Warner's "new" post-complaint screening procedures are any more effective than the alleged informal screening that failed to rule out the Bacher and Merkle interlocks, despite record evidence of corporate knowledge of the competitive products common to both Borg-Warner and Bosch U.S. The director involved in *TRW* had sought Section 8 counsel prior to the board membership in question, and had passed this screening because the particular competition in focus in that case did not even come into existence until well after the director had been seated. The *TRW* court was persuaded of the "sincerity and good faith" associated with the facts of the screening procedure there. 647 F.2d at 954. Here there is no assurance that the previously undisclosed Borg-Warner post-complaint screening procedures—apparently born of this litigation, although, ironically, never part of it until now—will long survive it. Nor has the "current efficacy" of these procedures been subject to the kind of scrutiny that the *TRW* court was able to give the pre-complaint screening procedures that were a part of the adjudicative record of that litigation. There is no evidence even now of any formal Bosch screening procedures, and the strongest indication of any Section 8 compliance program on the part of Bosch seems to date from November 1981 (Thompson affidavit).⁷ The existing Merkle interlock between Borg-Warner and Bosch GmbH, the persistence of the interlock with Bosch U.S. until late in this proceeding, and the [5] adoption of formal screening procedures after issuance of the Commission's complaint, all justify the Commission's very narrow order in this proceeding. Many of the arguments respondents have relied upon favoring withdrawal of the order are coincidental with the commencement of this litigation, a record of belated Section 8 sensitivity that itself establishes the need for some modest injunctive relief.

As an alternative to withdrawal of the Commission's June 23, 1983 order, respondent seeks various order modifications, some of which are unopposed by complaint counsel. First, respondents argue that

⁶ In addition to these differences between the Commission's order and the one issued by the ALJ, the Commission limited the term of the ALJ's perpetual order to ten years.

⁷ Bosch U.S.'s screening procedure, for instance, amounts to "counseling current and potential directors to avoid outside directorships which might come within the proscription of Section 8." "Respondents Robert Bosch GmbH's, Robert Bosch Corporation's and Hans L. Merkle's Reply to the Opposition to Petition for Recommendation," September 6, 1983 at 2-3.

the annual director screening provision contained in paragraph IV of the order does not track the requirements of order paragraphs I(b) and II(b), to the effect that future interlocks between corporate respondents and other corporations be barred only in the event of a volume of competitive commerce in automotive parts for the aftermarket exceeding \$5 million on either leg of any such prospective interlock. These dollar limitations on proscribed director interlocks are not applicable to interlocks between Borg-Warner and any Bosch corporation in any competitive line of commerce, which are subject to an outright ban. Respondents rely on language in the Commission's opinion (Slip Op. at 31) [101 F.T.C. at 942] to the effect that some dollar amount limitation relative to annual screening of directors is appropriate in the order relative to paragraphs I(b) and II(b).

There are, therefore, distinctly two different situations the order's reporting requirements need guard against. It was the Commission view that the existing reporting requirement of paragraph IV, which required the reporting of all products and services of all common corporate directorships, was the simplest survey approach to insure against either kind of offending overlap. However, complaint counsel do not oppose a modification of the reporting requirements that more specifically tracks the narrower order proscription alluded to in the Commission's opinion. Therefore, the annual director screening provisions of the order will be modified with respect to that portion of the annual reports dealing with directors of named respondents who are also directors of other corporations.⁸ It will be respondents' obligation to assure that directors are screened so as to record only those interlocks with other corporations 1) where both the interlocked respondent firm and the other corporation produce automotive parts for the aftermarket, and 2) where the amount of annual sales of such parts by either such other corporation or Borg-Warner or Bosch corporate respondent exceed \$5 million. [6]

Respondents' second major argument for modification of the order is that its coverage be limited to interlocks involving competition between companies in sales in the United States. Respondents' concern is that order paragraphs I(b) and II(b) do not make clear that the proscribed interlocks between corporate respondents and other corporations are confined to competitive products produced or sold in the United States. The Commission's opinion generally speaks of commerce in the United States in discussing the law violations found in the case, although the final order reaches corporations that do not sell in the United States if they substantially control subsidiaries that do.

⁸ The modification bifurcates the old paragraph IV of the June 23, 1983 order into a new paragraph IV, applicable only to respondent Borg-Warner, and a new paragraph V, applicable to respondent Bosch Corporations. (Old order paragraphs V and VI are accordingly renumbered VI and VII, respectively).

In addition to the context of the opinion, we believe the order's definition of competition, both when it speaks of a corporation's "business and location" in competition with another firm and when it speaks of such an interlock's potential to violate a U.S. antitrust law further clarifies the necessary competitive product coverage of the order as commerce in the United States, even if such commerce is that of a controlled subsidiary of a foreign parent. The Commission's order may be construed by reference both to the Commission's complaint and the findings of fact accepted in its decision. *Ostler Candy Co. v. FTC*, 106 F.2d 962, 966 (10th Cir. 1939) *cert. denied* 309 U.S. 675 (1940).

Respondent's third request is to ask for a change in the use of the term "board of management" in the order so that it applies only to respondent Bosch GmbH, whose board of management is approximate to the U.S. term "board of directors." Respondents argue that the Commission's use of terms other than "boards of directors" invites confusion, unless confined to Bosch GmbH's "board of management," since a variety of technical terms similar to "board of management" are typical of foreign corporate structures, and yet are not truly equivalents of the U.S. term, "boards of directors." It is simply the Commission's intention to extend the order's coverage to boards of directors of U.S. corporations or their functional equivalents in foreign corporate structures. While the use of a single term or even two terms may not exhaust the lexicon of "board" synonyms, we believe the intent of the law and of the Commission's decision make the context of the Commission's order clear. Nevertheless, the Commission will insert into the order a new definitional phrase for "boards of directors" that seeks to clarify this point. References to "board of management" will be deleted in the order except in the definitional section, where specific reference to "board of management" is confined to Bosch GmbH. [7]

Other minor changes sought by respondents will also be made by the Commission, including deletion of the second use of the term "any individual" in the prefatory language in paragraph II of the order, use of corrected cross-references to substantive order paragraphs I and II appearing in the annual director screening provisions of the order, and deletion of references to "service" markets in paragraphs I(b) and II(b) of the order.

The modifications of the Commission's order in this proceeding obviate the need for further consideration of respondent's motion for a stay of the final order or for a tolling of the time within which to file for federal court review of this matter pursuant to 15 U.S.C. 45(c). The order, as herein modified, shall be reissued as of this date. Completion of service of this modified order will therefore recommence the statutory time within which respondents may seek judicial review.

As stated in the above opinion, respondents' Petition for Reconsideration is granted in part and denied in part. In all other respects, the Commission denies respondents' requested relief.

DISSENTING STATEMENT OF CHAIRMAN JAMES C. MILLER III¹

When the Commission issued its original order in this matter, I dissented on several grounds. In sum, I urged the Commission to remand the case to the Administrative Law Judge for an expedited hearing on the issues of whether any likely anticompetitive effects of the challenged interlock were more than *de minimis* in nature, whether the proceeding was legally moot, and whether complaint counsel had successfully borne its burden of showing that injunctive relief was warranted. Subsequently, respondents filed a motion for reconsideration, alleging that the Commission's initial order was based on the erroneous premise that the corporate respondents had no effective director screening programs to guard against Section 8 violations.²

None of the arguments or alleged facts in the motion for reconsideration and the accompanying affidavits have altered my original position. Indeed, they have strengthened my belief that remand is the appropriate course here.

The motion for reconsideration, together with complaint counsel's response and the majority's opinion, add yet another unsettled issue to those requiring further administrative hearings. Hence, I would now add the existence and effectiveness of the corporate respondents' director screening programs to those issues on which remand is necessary.³ [2]

I regret to find that the Commission majority has decided to issue an order on the basis of even greater uncertainty than was apparent when I filed my previous dissent in this matter.

ORDER MODIFYING FINAL ORDER

An opinion and final order in this matter having been issued on June 23, 1983 [101 F.T.C. 863 (1983)]; respondents having been served by mail with the said opinion and order on July 22, 1983; respondents

¹ Commissioner George W. Douglas joins in this statement.

² In the alternative, respondents moved that the Commission clarify, correct, and narrow the Commission's original order in various ways. I do not dissent from those portions of today's majority opinion that grant certain of those changes. If an order must issue, this modified order is certainly an improvement. However, I dissent because I believe it inappropriate for the Commission to issue *any* order against these respondents, given the uncertain and sparse state of the current record.

³ While the existence of an effective director screening process is obviously a relevant issue, I am not content simply to accept as fact the assertions made on this issue in the respondents' motion for reconsideration and in the accompanying affidavits. I believe prudence would dictate further evidentiary hearings on the point.

having petitioned for reconsideration of said opinion and order on August 11, 1983; and the Commission, for the reasons stated in the accompanying opinion, having determined to grant in part, and deny in part, respondents' petition for reconsideration;

It is ordered, That the final order to cease and desist be, and hereby is, modified as follows:

MODIFIED FINAL ORDER

This matter has been heard by the Commission upon the appeals of respondents and complaint counsel from the initial decision, and upon briefs and oral argument in support of and in opposition to the appeals. For the reasons stated in its opinion issued June 23, 1983 [101 F.T.C. at 919 (1983)], the Commission has determined to deny the appeal as to respondents and as to complaint counsel. The Commission further has determined to grant in part but to deny in part respondents' petition for reconsideration of this order. Accordingly, [2]

It is further ordered, That the findings of fact and initial decision of the Administrative Law Judge be adopted insofar as not inconsistent with the findings of fact and conclusions of law contained in the June 23, 1983 opinion.

The following definitions shall apply in this order:

Bosch Corporation means Robert Bosch Corporation (Bosch U.S.), Robert Bosch GmbH (Bosch GmbH), their controlled subsidiaries, or the successors or assigns of either corporation.

Competitor means a corporation that by virtue of its business and location is in competition with the subject corporation, so that elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws.

Board of Directors means the board of directors of any United States corporation, the board of management of Bosch GmbH, or the functional equivalent of a board of directors of any other foreign corporation.

I

It is ordered, That respondent Borg-Warner and its successors and assigns shall forthwith cease and desist from having, and in the future shall not have, any individual serve as a director who

(a) serves at the same time on the board of directors of any Bosch Corporation as long as such corporation is a competitor in the production or sale of any product or service with Borg-Warner; or

(b) serves at the same time on the board of directors of any corporation as long as such corporation is a competitor of Borg-Warner in the production or sale of automotive parts for the aftermarket, and as long as the revenues of either corporation derived from the product market or markets in which they are competitors exceed five million dollars; or

(c) fails to submit to Borg-Warner any statement required by paragraph IV of this order.

The requirements of this paragraph shall be effective for a period of ten (10) years from the effective date of this final order.

II

It is further ordered, That respondents Bosch GmbH and Bosch U.S. and their successors and assigns shall forthwith cease and desist from having, and in the future shall not have, any individual serve on their board of directors who [3]

(a) serves at the same time on the board of directors of Borg-Warner, as long as Borg-Warner is a competitor in the production or sale of any product or service with the Bosch Corporation on whose board the director sits; or

(b) serves at the same time on the board of directors of any corporation as long as such corporation is a competitor of the Bosch Corporation on whose board the director serves in the production or sale of automotive parts for the aftermarket, and as long as the revenues of either corporation derived from the product market or markets in which they are competitors exceed five million dollars; or

(c) fails to submit to Bosch GmbH or Bosch U.S. any statement required by paragraph V of this order.

The requirements of this paragraph shall be effective for a period of ten (10) years from the effective date of this final order.

III

It is further ordered, That respondent Hans L. Merkle shall forthwith cease and desist from serving, and in the future shall not serve, as a director both of Borg-Warner and of any Bosch Corporation that is a competitor of Borg-Warner. The requirements of this paragraph shall be effective for a period of ten (10) years from the effective date of this final order.

IV

It is further ordered, That within thirty (30) days of the effective date of this order, and prior to each election of directors or prior to the solicitation of proxies for such election, whichever is earlier, respondent Borg-Warner shall obtain a written, certified statement from each member of its board of directors (except directors whose terms expire at the next election and who are not standing for reelection) and from each nominee for a directorship or seat on the board of directors (who is not then a director) showing

(a) the name and home mailing address of each director or nominee; and

(b) in the case of any director who then serves as a director, or has been nominated to serve as a director at the time of the statement, of any Bosch Corporation, the name and principal office mailing address of such Bosch Corporation, and a listing of each product produced or sold by such Bosch Corporation. [4]

(c) in the case of any director who then serves as a director, or has been nominated to serve as a director at the time of the statement, of any other corporation that produces or sells automotive parts for the aftermarket, as defined by the Commission in its opinion, the name and principal office mailing address of each such other corporation, and a listing of each such automotive aftermarket part product, *provided* that the revenue derived from the production or sale of such product by either such other corporation(s) or Borg-Warner exceeds five million dollars.

The requirements of this paragraph shall not apply to elections of directors occurring after ten (10) years from the effective date of this final order.

Nothing in this paragraph shall be construed to relieve respondents of their obligations under paragraph I(a) above due to any error or omission contained in any written statement received pursuant to this paragraph.

V

It is further ordered, That within thirty (30) days of the effective date of this order, and prior to each election of directors or prior to the solicitation of proxies for such election, whichever is earlier, respondents Bosch GmbH and Bosch U.S. shall obtain a written, certified statement from each member of their board of directors (except directors whose terms expire at the next election and who are not

standing for reelection) and from each nominee for a directorship or seat on the board of directors (who is not then a director) showing

(a) the name and home mailing address of each director or nominee, and

(b) in the case of any director who then serves as a director, or has been nominated to serve as a director at the time of the statement, of Borg-Warner Corporation, a statement that the director serves on such corporation, and a listing of each product produced or sold by Borg-Warner Corporation.

(c) in the case of any director who then serves as a director, or has been nominated to serve as a director at the time of the statement, of any other corporation that produces or sells automotive parts for the aftermarket, as defined by the Commission in its opinion, the name and principal office mailing address of each such other corporation, and a listing of each such automotive aftermarket part product, *provided* that the revenue derived from the production or sale of such product by either such other corporation(s) or Bosch Corporation exceeds five million dollars. [5]

Provided, however, That in complying with the provisions of paragraph V(b) or (c), the information to be furnished to Bosch GmbH concerning its directors may be limited to those corporations engaged in commerce within the United States and those products sold or offered for sale by such corporations within the United States.

The requirements of this paragraph shall not apply to elections of directors occurring after ten (10) years from the effective date of this final order.

Nothing in this paragraph shall be construed to relieve respondents of their obligations under paragraph II(a) above due to any error or omission contained in any written statement received pursuant to this paragraph.

VI

It is further ordered, That within forty-five (45) days of the effective date of this final order, and annually for a period of ten (10) years thereafter, respondents Borg-Warner, Bosch GmbH, and Bosch U.S. shall file with the Commission separate, written reports setting forth in detail the manner and form in which each has complied with this order. Copies of the statements obtained pursuant to paragraphs IV and V of this order shall be submitted to the Commission as part of the reports of compliance required by this paragraph.

VII

It is further ordered, That respondents Borg-Warner, Bosch GmbH, and Bosch U.S. shall notify the Commission at least thirty (30) days prior to any change in the corporations or in their relationships to each other such as dissolution, assignment, or sale resulting in the emergence of successor corporations, the creation or dissolution of subsidiaries, or any other change in the corporations which may affect compliance obligations arising out of this order. The requirements of this paragraph shall be effective for a period of ten (10) years from the effective date of this final order.

Chairman Miller and Commissioner Douglas dissented.

Complaint

102 F.T.C.

IN THE MATTER OF

MASSACHUSETTS FURNITURE AND PIANO MOVERS
ASSOCIATION, INC.FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9137. Complaint, June 12, 1980—Final Order, Sept. 28, 1983*

This order requires a Massachusetts association of common carriers certified to move household goods and office equipment, among other things, to cease entering into, maintaining or adhering to any agreement or plan to fix rates charged for the intrastate transportation of goods and equipment; and to cease providing non-public information relating to changes in any carrier's transportation rates to competing firms. The order also bars the association from knowingly preparing or filing tariff provisions containing collective rates for transportation services; influencing member carriers to file or adhere to any existing or proposed tariff provision affecting intrastate transportation rates; and maintaining a tariff committee or similar entity to consider, pass upon or discuss intrastate transportation rate proposals. Additionally, respondent is required to cancel all tariffs and tariff supplements presently in effect or on file with the Massachusetts Department of Public Utilities; terminate all previously executed powers of attorney and agreements with carriers utilizing its services; cancel provisions in its articles of incorporation, by-laws, policy statements and other relevant documents that do not conform with the terms of the order; and amend its by-laws to require members to observe provisions of the order as a condition of membership.

Appearances

For the Commission: *Harold F. Moody, Charles E. Yon and Janet H. Gilbert.*

For the respondent: *David Brodsky and James C. McMahon, Jr., Brodsky, Linett, Altman & Schechter, New York City and Thomas E. Andresen, Jr., Salem, Mass.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. 41, et seq.) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Massachusetts Furniture and Piano Movers Association, Inc., (hereinafter sometimes referred to as "respondent," "Mass. Movers" or the "Association"), a corporation, has violated and is now violating the provisions of Section 5 of said Act, and it appearing to the Commission