

IN THE MATTER OF

FLOWERS INDUSTRIES, INC.

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 9148. Complaint, Dec. 12, 1980—Decision, Nov. 3, 1983

This consent order requires a Thomasville, Georgia food processor, among other things, to timely divest to a Commission-approved buyer, its bakery plants located in High Point, North Carolina and Gadsden, Alabama, together with specified assets. Further, under certain conditions, the company must transfer its rights to the Sunbeam, Buttermaid and Hometown tradenames and trademarks to a qualified acquirer or to another qualified baker. Pending divestiture, respondent must keep the bakeries in operation and use reasonable efforts to retain the respective shelf space and position of the Sunbeam, Buttermaid and Hometown tradenames and trademarks.

Appearances

For the Commission: *Arnold C. Celnicker, Chris M. Couillou and Sarah K. Walls.*

For the respondent: *Kent E. Mast, Hansell, Post, Brandon & Dorsey, Atlanta, Ga.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated and is now violating the provisions of Section 7 of the amended Clayton Act (15 U.S.C. 18) and Section 5 of the amended Federal Trade Commission Act (15 U.S.C. 45), 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 as follows:

DEFINITIONS

For the purposes of this complaint, the following definitions shall apply:

1. *Flowers* refers to the respondent, Flowers Industries, Inc., and its subsidiaries.
2. *Wholesale bakeries* refers to bakeries which sell at wholesale to other establishments, including grocery stores, restaurants, hotels and institutions. It does not refer to grocery chain bakeries.
3. *Grocery chain bakeries* refers to bakeries operated by grocery

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store companies who generally distribute their product through retail grocery stores owned by the same company. It does not include in-store bakeries.

4. *In-store bakeries* refers to bakeries operated by grocery store companies within their grocery stores.

RESPONDENT

5. Respondent, Flowers Industries, Inc., is a corporation with its principal place of business located in Thomasville, Georgia. Its mailing address is P. O. Drawer 1338, Thomasville, Georgia.

6. Respondent is a food processor operating its business in three divisions which produce: (1) bread and bread-type rolls; (2) snack foods; and (3) convenience foods.

7. Respondent had sales of approximately \$330,195,000 in the fiscal year ended June 30, 1979.

PRODUCT MARKET

8. The relevant product market for each acquisition described in Counts I through VI is the manufacture and sale of bread and bread-type rolls produced by wholesale bakeries, grocery chain bakeries, and in-store bakeries.

9. A relevant submarket for each acquisition described in Counts I through VI is the manufacture and sale of bread and bread-type rolls produced by wholesale bakeries and grocery chain bakeries.

10. A relevant submarket for each acquisition described in Counts II through VI is the manufacture and sale of bread and bread-type rolls produced by wholesale bakeries.

11. A relevant submarket for each acquisition described in Counts II through VI is the manufacture and sale of white pan bread and hamburger and hot dog buns produced by wholesale bakeries.

JURISDICTION

12. At all times relevant herein, respondent was engaged in the purchase or sale of products in or affecting commerce and was a corporation engaged in commerce or in activity affecting commerce as "commerce" is defined in the Clayton Act, as amended, and was a corporation whose business was in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

13. At all times relevant herein, the corporations described hereafter in Counts I through VI, from which Flowers acquired assets whose stock Flowers acquired, were engaged in the purchase or sale of products in or affecting commerce and were corporations engaged in commerce or in activity affecting commerce, as "commerce" defined in the Clayton Act, as amended, and were corporations who

businesses were in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

COUNT I

14. In August, 1977, Flowers acquired the assets of the bakery operated by The Grand Union Company (hereinafter "Grand Union") that was located in Miami, Florida.

15. Grand Union is a Delaware corporation with its principal office located in Elmwood Park, New Jersey.

16. The relevant geographic market for purposes of Flowers' acquisition of the assets of the bakery formerly operated by Grand Union in Miami is southern Florida including, but not limited to, the cities of Miami, Fort Lauderdale, West Palm Beach, Fort Pierce, and Fort Myers.

COUNT II

17. In December, 1978, respondent purchased the plant and assets of the bakery of American Bakeries Co. (hereinafter "American") that was located in Miami, Florida.

18. American is a Delaware corporation with its principal place of business located in Chicago, Illinois.

19. The relevant geographic market for purposes of respondent's acquisition of the plant and assets of the bakery formerly operated by American in Miami is the same as that described in paragraph 16.

COUNT III

20. In January, 1977, respondent purchased the plant and assets of the bakery of Ward Baking Company, Inc. (hereinafter "Ward") that was located in High Point, North Carolina.

21. Ward is a Delaware corporation with its principal place of business located in New York City, New York.

22. The relevant geographic market for purposes of respondent's acquisition of the plant and assets of the bakery formerly operated by Ward in High Point is central North Carolina and central Virginia including, but not limited to, the cities of High Point, Winston-Salem, Greensboro, and Durham, North Carolina, and Charlottesville, Lynchburg, Roanoke, and Danville, Virginia.

23. A relevant geographic submarket of the foregoing market is central North Carolina including, but not limited to, the cities of High Point, Winston-Salem, Greensboro, and Durham.

COUNT IV

24. In January, 1978, Flowers acquired the plant and assets of a

bakery of Kern's Bakery of Virginia, Inc. (hereinafter "Kern's") that was located in Lynchburg, Virginia.

25. Kern's is a Virginia corporation with its principal place of business in Knoxville, Tennessee.

26. A relevant geographic market for purposes of Flowers' acquisition of the plant and assets of the bakery formerly operated by Kern's in Lynchburg is the same as that described in paragraph 22.

27. A relevant geographic submarket of the foregoing market is central Virginia including, but not limited to, the cities of Charlottesville, Lynchburg, Roanoke, and Danville.

COUNT V

28. In August, 1973, respondent acquired all of the stock of the McGough Bakeries Corporation (hereinafter "McGough"), an Alabama corporation.

29. McGough was a food processor operating bakery plants in Birmingham and Decatur, Alabama.

30. The relevant geographic market for purposes of Flowers' acquisition of the stock of McGough is northern and central Alabama including, but not limited to, the cities of Birmingham, Montgomery, Tuscaloosa, Huntsville, and Gadsden.

COUNT VI

31. In July, 1980, respondent acquired all of the stock of Schott's Bakery, Inc. (hereinafter "Schott's"), a Texas corporation.

32. Schott's was a food processor operating a bakery plant in Houston, Texas.

33. In July, 1980, respondent purchased the plant and assets of the bakery of American that was located in Houston, Texas.

34. Paragraph 18 is hereby incorporated by reference.

35. The relevant geographic market for purposes of respondent's acquisition of the plant and assets of the bakery formerly operated by American in Houston and of the stock of Schott's is the city of Houston and surrounding counties.

EFFECTS OF ACQUISITIONS

36. The effect of each of the acquisitions set forth in Counts I through VI may be to substantially lessen competition or to tend to create a monopoly in the relevant geographic and product markets or submarkets thereof, in the following ways, among others:

a) actual competition between Flowers and the acquirees has been eliminated;

- b) actual competition between competitors generally may be lessened;
- c) concentration has been increased;
- d) existing barriers to new entry may be increased substantially;
- and,
- e) additional acquisitions and mergers may be encouraged.

VIOLATIONS

37. Each acquisition described in Counts I through VI constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the amended Clayton Act and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Flowers Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Delaware, with its office and principal place of business located as P. O. Drawer 1338, in the City of Thomasville, State of Georgia.

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 the purposes of this Order, the following definitions shall apply:

(A) *Flowers* shall mean Flowers Industries, Inc., its divisions and subsidiaries; its officers, directors, agents and employees acting as such; and its successors and assigns.

(B) *Bakery* shall mean any concern, corporate or noncorporate, that is or was during any of the twelve (12) months preceding any event or transaction subject to this Order, engaged in whole or in substantial part in the business of baking Bread or Bread-type Rolls.

(C) *Bakery Plant* shall mean a facility that is or was during any of the twelve (12) months preceding any event or transaction subject to this Order, used by a Bakery in whole or in substantial part for the baking of Bread or Bread-type Rolls.

(D) *Bread* shall mean white, wheat, rye, dark or variety baked bread products.

(E) *Bread-type Rolls* shall mean hamburger and hot dog rolls, brown and serve rolls, English muffins, hearth rolls, and similar products.

(F) *Eligible Person* shall mean any person, corporation, partnership or other entity approved by the Commission. No person shall be considered for status as an Eligible Person unless such person has the capacity and intention to operate the facilities acquired as a Bakery Plant.

(G) *Total Net Sales* shall mean sales of Bread and Bread-type Rolls, net of discounts, allowances and stale returns, regardless of the labels under which the Bread or Bread-type Rolls are sold.

(H) *High Point Bakery Plant* shall mean the Bakery Plant operated by Flowers Baking Co. of High Point, Inc., a wholly-owned subsidiary of Flowers, and located in High Point, North Carolina.

(I) *Gadsden Bakery Plant* shall mean the Bakery Plant operated by Flowers Baking Company of Gadsden, Inc., a wholly-owned subsidiary of Flowers, and located in Gadsden, Alabama.

(J) *High Point Trade Area* shall mean the area composed of the following counties: Alleghany, Surry, Wilkes, Yadkin, Alexander, Iredell, Davie, Cabarrus, Anson, Stanly, Rowan, Davidson, Forsyth, Stokes, Rockingham, Guilford, Randolph, Montgomery, Richmond, Scotland, Moore, Chatham, Alamance, Orange, Caswell, Person, Dur-

ham, Lee, Hoke, Robeson, Cumberland, Harnett, Wake, Johnston, Franklin, Nash, Vance, and Granville, North Carolina.

(K) *Gadsden Trade Area* shall mean the area composed of the following counties: Shelby, Jefferson, Walker, Winston, Cullman, Blount, St. Clair, Talladega, Clay, Randolph, Calhoun, Cleburne, Etowah, Cherokee, DeKalb, Marshall, Jackson, Madison, Morgan, LIMESTONE, and Lawrence, Alabama; Giles, Lincoln, Moore, Franklin, Marion, Sequatchie, Hamilton, and Bradley, Tennessee; Dade, Walker, Catoosa, Whitfield, Chattooga, Gordon, Pickens, Floyd, Bartow, Cherokee, Forsyth, Polk, Paulding, Cobb, Gwinnett, Haralson, Carroll, Douglas, Fulton, DeKalb, Rockdale, Henry, Clayton, Fayette, Coweta, and Heard, Georgia.

(L) *Full-line Wholesale Bakery* shall mean a Bakery that sells at wholesale to establishments, including retail grocery stores (other than bakery thrift stores) which are not owned, directly or indirectly, by the same company which owns the Bakery, and that during its most recent fiscal year derived at least fifteen percent (15%) of its Total Net Sales from the sale of white pan bread.

(M) *White Pan Bread* shall mean white bread baked in a pan but shall not include hamburger and hot dog buns, or breads such as French Bread and Italian Bread.

I

It is ordered, That:

(A) Within thirty (30) months from the date the Order becomes final, Flowers shall divest itself absolutely and in good faith of the High Point Bakery Plant to an Eligible Person including, without limitation, land, buildings, fixtures attached thereto, machinery and equipment.

(B) The purpose of the divestiture is the ongoing and continued use of the High Point Bakery Plant in the baking industry.

(C) The divestiture shall include trucks and other vehicles, depots or warehouses, and thrift stores utilized by the High Point Bakery Plant in connection with the sale of Bread or Bread-type Rolls to wholesale or retail customers of such plant to the extent desired by the acquirer and consistent with the purpose of the divestiture. Flowers need not divest trucks and other vehicles, depots or warehouses, and thrift stores which do not meet the above criteria because the Order contemplates circumstances that reasonably permit Flowers to continue as a competitor, to the extent practicable, in the baking industry with respect to the area served by the divested facility.

(D) Divestiture of the High Point Bakery Plant need not include any trademarks or trade names except as follows:

(1) If divestiture is to an entity which is eligible for and desires membership in Quality Bakers of America, Flowers shall transfer through QBA to the acquirer all rights and interests in trade names and trademarks owned by QBA, including without limitation "Sunbeam," for the license territory currently assigned by QBA to Flowers Baking Co. of High Point, Inc., and shall use all reasonable efforts to assist the acquirer in obtaining all rights and interests in trade names and trademarks owned by QBA for the license territory currently assigned by QBA to Flowers Baking Co. of High Point, Inc.

(2) If divestiture is to an entity which is not eligible for or does not desire membership in QBA, Flowers shall assign to the acquirer, if desired by the acquirer, a perpetual, royalty-free, exclusive license to use the Buttermaid trademark, design and trade dress in the High Point Trade Area, and Flowers shall cease using the Buttermaid trademark, design and trade dress in the High Point Trade Area when the licensee commences its use; *provided, however*, the license agreement may include appropriate provisions for the protection of the integrity of the trademark and for the termination of such license if, for a period of ninety (90) consecutive days, the licensee fails to make good faith and reasonable use of the Buttermaid trademark, design and trade dress for the purpose of selling bread products in the High Point Trade Area.

(3) If divestiture is to an entity which is not eligible for or does not desire membership in QBA, and which does not desire a license to use the Buttermaid trademark, design and trade dress, and if, within twelve (12) months after divestiture of the High Point Bakery Plant, an entity which is eligible for and desires membership in QBA, or is a member of QBA, desires to serve the license territory with products carrying the trade names and trademarks owned by QBA, Flowers shall divest itself of all rights and interests in trade names and trademarks owned by QBA, including without limitation "Sunbeam," for the territory currently assigned by QBA to Flowers Baking Co. of High Point, Inc. to such entity and shall use all reasonable efforts to assist such entity to obtain said QBA trade names and trademarks; *provided, however*, that if divestiture of the High Point Bakery Plant pursuant to this Paragraph I is to an Eligible Person that intends to operate the plant as a Full-line Wholesale Bakery, then this subpart (D)(3) of Paragraph I shall not apply.

(E) Flowers shall use all reasonable efforts to ensure an orderly transfer of an ongoing bakery to the acquirer and in that regard shall provide to the acquirer upon divestiture copies of all route books,

customer lists, and other records used by the High Point Bakery Plant in its day-to-day operation and which would reasonably be needed by the acquirer to carry on the operation with the assets or assets and trademarks referred to in subparts (A), (C), (D)(1), and (D)(2) of Paragraph I.

(F) In the event that Flowers is required to divest itself of QBA trademarks and trade names pursuant to subpart (D)(3) of Paragraph I, Flowers shall use all reasonable efforts to ensure an orderly transfer of such trademarks and trade names to the new licensee thereof and shall provide thereto copies of all customer lists and other records, including route books or portions thereof, of the High Point Bakery Plant which would be reasonably needed by the new licensee to identify and solicit sales of products bearing the QBA trademarks and trade names to customers in the territory currently licensed to Flowers Baking Co. of High Point, Inc.

II

It is further ordered, That:

(A) Within thirty (30) months from the date the Order becomes final, Flowers shall divest itself absolutely and in good faith of the Gadsden Bakery Plant to an Eligible Person including, without limitation, land, buildings, fixtures attached thereto, machinery and equipment.

(B) The purpose of the divestiture is the ongoing and continued use of the Gadsden Bakery Plant in the baking industry.

(C) The divestiture shall include trucks and other vehicles, depots or warehouses, and thrift stores utilized by the Gadsden Bakery Plant in connection with the sale of Bread or Bread-type Rolls to wholesale or retail customers of such plant to the extent desired by the acquirer and consistent with the purpose of the divestiture. Flowers need not divest trucks and other vehicles, depots or warehouses, and thrift stores which do not meet the above criteria because the Order contemplates circumstances that reasonably permit Flowers to continue as a competitor, to the extent practicable, in the baking industry with respect to the area served by the divested facility.

(D) Divestiture of the Gadsden Bakery Plant need not include any trademarks or trade names except as follows:

(1) Flowers shall grant to the acquirer, if desired by the acquirer, a perpetual, royalty-free, assignable, exclusive license to use the Hometown trademark, design and trade dress in the Gadsden Trade Area, and Flowers shall cease using the Hometown trademark, design

and trade dress in the Gadsden Trade Area when the licensee commences its use in the Gadsden Trade Area.

(2) If the acquirer of the Gadsden Bakery Plant does not desire a license to use the Hometown tradename, design and trade dress, and, if within twelve (12) months after divestiture of the Gadsden Bakery Plant an entity desires and intends to use said license in the Gadsden Trade Area, Flowers shall grant a perpetual, assignable, exclusive license to use the Hometown trademark, design and trade dress in the Gadsden Trade Area to such entity and Flowers shall cease using the Hometown trademark, design and trade dress in the Gadsden Trade Area when the licensee commences its use in the Gadsden Trade Area; *provided, however*, that if divestiture of the Gadsden Bakery Plant pursuant to Paragraph II is to an Eligible Person that intends to operate the plant as a Full-line Wholesale Bakery, then this subpart (D)(2) of Paragraph II shall not apply.

(3) The license agreement entered into pursuant to subparts (D)(1) or (D)(2) of Paragraph II may include appropriate provisions for the protection of the integrity of the trademark and for the termination of such license if, for a period of ninety (90) consecutive days, the licensee fails to make good faith and reasonable use of the Hometown trademark, design and trade dress for the purpose of selling bread products in the Gadsden Trade Area.

(E) Flowers shall use all reasonable efforts to ensure an orderly transfer of an ongoing bakery to the acquirer and in that regard shall provide to the acquirer upon divestiture copies of all route books, customer lists, and other records used by the Gadsden Bakery Plant in its day-to-day operation and which would reasonably be needed by the acquirer to carry on the operation with the assets or assets and trademark referred to in subparts (A), (C), and (D)(1) of Paragraph II.

(F) In the event that Flowers is required to license the Hometown trademark, design and trade dress pursuant to subpart (D)(2) of Paragraph II, Flowers shall use all reasonable efforts to ensure the orderly transfer of such trademark to the licensee and shall provide to such licensee copies of all customer lists and other records, including route books or portions thereof, of the Gadsden Bakery Plant which would be reasonably needed by the licensee to identify and solicit sales of products bearing the Hometown trademark, design and trade dress in the Gadsden Trade Area.

III

It is further ordered, That Flowers shall not be required to divest

any plant that, as a result of events beyond the control of Flowers, has ceased to exist.

IV

It is further ordered, That all divestiture and licensing required by Paragraphs I and II shall be subject to the prior approval of the Federal Trade Commission.

V

It is further ordered, That an Eligible Person may give and Flowers may accept and enforce any bona fide lien, mortgage, deed of trust or other form of security on all or any portion of any one or more of the assets or businesses divested subject to the terms and provisions of this Order. If a security interest is accepted, in no event should such security interest be interpreted to mean that Flowers has a right to participate in the operation or management of such assets. In the event that Flowers, as a result of the enforcement of any bona fide lien, mortgage, deed of trust or other form of security interest, reacquires possession of the assets divested, then Flowers shall divest the reacquired assets and business in accordance with the terms of this Order within eighteen (18) months of such reacquisition.

VI

It is further ordered, That:

(A) Pending the divestiture required by the Order, Flowers shall not cause or permit, and shall use all reasonable efforts to prevent, the deterioration of the assets and properties specified in Paragraphs I and II in a manner that impairs the viability or marketability of any such assets and properties, normal use, wear and tear excepted. Flowers may but shall not be required to make capital expenditures for the improvement of any such assets and properties or for the reconstruction or repair of material destruction thereof resulting from events beyond the control of Flowers.

(B) Pending the licensing of trademarks by Flowers and/or QBA contemplated by the Order, Flowers shall use all reasonable efforts to retain the shelf space and position currently provided for Bread and Bread-type Rolls sold under the trademarks referenced in Paragraphs I and II, with the exception of shelf space and position for Bread and

Bread-type Rolls distributed by Flowers' bakery plants in Alabama other than the Gadsden Bakery Plant.

VII

It is further ordered, That:

(A) For a period of ten (10) years from the date the Order becomes final, Flowers shall cease and desist from acquiring, or acquiring and holding, directly or indirectly, through subsidiaries or otherwise, without prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital, assets, routes, or any other interest in any Bakery;

(B) *Provided, however,* That prior approval of the Commission will not be required if:

(1) Flowers' nearest Bakery Plant is outside a radius of 200 miles measured from the selling Bakery Plant;

or

(2) Flowers had, for the twelve (12) months preceding the acquisition, combined Total Net Sales of less than \$700,000 on those routes which served at least one customer location that the selling Bakery Plant also served within one year prior to the acquisition;

or

(3) The selling Bakery Plant distributes its products primarily by a route system of distribution and the selling Bakery Plant had, for the twelve (12) months preceding the acquisition, combined Total Net Sales of less than \$700,000 on those routes which served at least one customer location that Flowers also served within one year prior to the acquisition;

or

(4) The selling Bakery Plant distributes its product primarily by a distribution system other than routes and the selling Bakery Plant had, for the twelve (12) months preceding the acquisition, combined Total Net Sales of less than \$475,000 to customer locations that Flowers also served within one year prior to the acquisition;

or

(5) The acquisition includes only used equipment and the Bakery Plant from which the equipment is acquired remains in the bakery business;

(C) *Provided further, however,* That if the selling Bakery Plant sells

only to restaurants, subparts (B)(2), (B)(3) and (B)(4) of Paragraph VII shall not apply.

VIII

It is further ordered, That nothing in this Order shall be deemed or construed to affect or modify any rights of Flowers to confidential treatment of documents or information provided to the Commission by Flowers as provided by the Commission's Rules, the Federal Trade Commission Improvements Act of 1980, or other statute.

IX

It is further ordered, That Flowers shall, within ninety (90) days from the date the Order becomes final, and every ninety (90) days thereafter until Flowers has accomplished the divestitures and licensing required by Paragraphs I and II of this Order, submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which Flowers intends to comply, is complying, or has complied with Paragraphs I, II, III, IV and VI of the Order. All such reports shall include, among other things that may be from time to time required, a summary of all contacts or negotiations with anyone for the specified assets, the identity of all such persons, and copies of all written communications to and from such persons.

X

It is further ordered, That annually on the anniversary of the date the Order becomes final, for a period of ten (10) years, Flowers shall submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which Flowers intends to comply, is complying, or has complied with Paragraphs V and VII of the Order.

XI

It is further ordered, That for a period of ten (10) years from the date on which the Order becomes final, Flowers shall notify the Federal Trade Commission at least thirty (30) days prior to any change in the organization, corporate structure or business operation of Flowers which may affect compliance with the obligations arising from this Order.

IN THE MATTER OF
EMERGENCY DEVICES, INC., ET AL.

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

Docket C-3123. Complaint, Nov. 3, 1983—Decision, Nov. 3, 1983

This consent order requires a San Francisco, Ca. corporation and two corporate officers, among other things, to cease disseminating advertisements which represent that the "Extra Margin Emergency Escape Mask" provides protection from carbon monoxide gas; will permit a person to breathe normally, or for an express amount of time; or has been endorsed or approved by any municipal, state or federal agency, unless such claims are true and are substantiated by competent and reliable scientific evidence. Any representation that an emergency escape mask will protect a person from the hazards associated with fire must be accompanied by the statement, "The mask does not filter carbon monoxide—a lethal gas associated with fire." Additionally, should the company continue to market any emergency escape mask in its current packaging, it is required to affix to such packaging a permanent adhesive label advising users of the mask's inability to filter out lethal carbon monoxide gas. Further, respondents must retain documentation substantiating or contradicting advertising claims for a period of three years; notify the Commission of any change in their business status; and provide all present and future sales, advertising and policy-making personnel with a copy of the order and an acknowledgement form.

Appearances

For the Commission: *Wendy Kloner.*

For the respondents: *Richard B. Satz, Lurie and Satz, San Francisco, Ca.*

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 Emergency Devices, Inc., a corporation, Steven Weiss, individually and as an officer of said corporation, and Michael Weiss, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Emergency Devices, Inc., is a corpora-