

Complaint

IN THE MATTER OF

ALBERT GREENBERG AND P. D. BERGEN, DOING
BUSINESS AS ALLIED DISTRIBUTORS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5661. Complaint, June 1, 1949—Decision, June 17, 1952

Where an individual engaged in the manufacture and interstate sale of various kinds of push cards and punchboards, which, bearing explanatory legends or space therefor, were designed for and used only in the sale of merchandise to the consuming public through means of games of chance, under plans whereby purchasers who, by chance, selected certain specified numbers, received articles of merchandise without additional cost at much less than the normal retail price, others receiving nothing for their money other than the privilege of a push or punch—

Sold and distributed such devices to manufacturers of and dealers in candy, cigarettes, clocks, razors, jewelry, cosmetics, clothing and other articles, assortments of which, along with said devices, made up by dealers, were exposed and sold by the direct or indirect retailer purchasers to the purchasing public in accordance with aforesaid sales plans, involving a game of chance or the sale of a chance to procure articles at much less than their normal retail prices; and

Thereby supplied to and placed in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale and distribution of their merchandise, in violation of an established public policy of the United States Government;

With the result, because of the element of chance involved, that many members of the purchasing public were induced to trade or deal with such retailers, many retailers were induced to deal with suppliers of such assortments, and gambling among members of the public was taught and encouraged, to their injury:

Held, That such acts and practices under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair acts and practices.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. John F. Reynolds, of Portland, Oreg., for respondents.

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 Albert Greenberg and P. D. Bergen, individuals and copartners trading as Allied Distributors, hereinafter 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 and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Albert Greenberg and P. D. Bergen, are individuals and copartners trading and doing business as Allied Distributors, with their office and principal place of business located at 417 S. W. Twelfth Street, in the city of Portland, Oregon.

Respondents are now and for more than three years last past have been engaged in the manufacture of devices commonly known as push cards and punchboards, and in the sale and distribution of said devices to manufacturers of, and dealers in, various articles of merchandise in commerce between and among the various States of the United States, and in the District of Columbia, and to dealers in various articles of merchandise located within the several States of the United States and in the District of Columbia.

Respondents cause and have caused said devices when sold to be transported from their place of business in the State of Oregon to purchasers thereof at their points of location in the various States of the United States other than Oregon and in the District of Columbia. There is now and has been for more than three years last past a course of trade in such devices by said respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business as described in Paragraph One hereof, respondents sell and distribute, and have sold and distributed, to said manufacturers of and dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the push card or punchboard, and when a push or punch is made, a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified

numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, jewelry, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise, together with said push card and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan as described in Paragraph Two hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise, together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of

merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in said commerce.

The sale or distribution of said push card and punchboard devices by respondents as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms and corporations the means of, and instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondents as hereinabove alleged are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 1, 1949, issued and subsequently served its complaint in this proceeding upon the respondents Albert Greenberg and P. D. Beugen (erroneously named in the complaint as P. D. Bergen) charging said respondents with the use of unfair acts and practices in commerce in violation of the provisions of said Act. No answer having been filed to said complaint within the time permitted under the Commission's Rules of Practice, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, upon motion of counsel for respondent Albert Greenberg, the hearing examiner permitted said respondent to file his answer to said complaint. Said answer of respondent Albert Greenberg, which was filed subject to the condition that the Commission take no action herein until its final determination of the matter of Superior Products Company, Inc., Docket No. 5561, admits all of the material allegations of fact in said complaint and waives all intervening procedure, including the filing of a recommended decision by the hearing examiner, but specifically reserves the

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Findings

right of appeal from any decision entered by the Commission herein. Upon motion of counsel supporting the complaint, all of the testimony taken herein other than that relating to respondent P. D. Beugen was stricken from the record.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the answer of respondent Albert Greenberg, the testimony and other evidence, and the recommended decision of the hearing examiner as to respondent P. D. Beugen (the recommended decision as to respondent Albert Greenberg having been specifically waived, no briefs having been filed, and oral argument not having been requested, and the Commission in the meantime having issued its order to cease and desist in the matter of Superior Products Company, Inc.); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Albert Greenberg is an individual trading and doing business as Allied Distributors, with his office and principal place of business at 417 Southwest Twelfth Street, Portland, Oregon. Respondent P. D. Beugen (erroneously named in the complaint herein as P. D. Bergen), an individual residing at 3934 Northeast Fortieth Street, Portland, Oregon, was connected with the said business of respondent Albert Greenberg only in the capacity of an employee and in that capacity only for a portion of the year 1947. The Commission, therefore, being of the opinion that the allegations of the complaint should be dismissed as to P. D. Beugen, the term respondent as used hereinafter will refer to respondent Albert Greenberg only.

Respondent, for more than five years last past, has been engaged in the manufacture of devices commonly known as push cards and punchboards, and in the sale and distribution of said devices to manufacturers of, and dealers in, various articles of merchandise in commerce between and among the various states of the United States, and in the District of Columbia, and to dealers in various articles of merchandise located within the several states of the United States and in the District of Columbia.

Respondent causes said devices, when sold, to be transported from his place of business in the State of Oregon to purchasers thereof at their points of location in the various states of the United States other than Oregon, and in the District of Columbia. There has been for more than five years last past a course of trade in such devices by

said respondent in commerce between and among the various states of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, respondent sells and distributes to said manufacturers of and dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondent sells and distributes many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the push card or punchboard, and when a push or punch is made, a disc or printed number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondent on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance.

PAR. 3. Many persons, firms and corporations who sell and distribute candy, cigarettes, clocks, razors, jewelry, cosmetics, clothing,

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and other articles of merchandise in commerce between and among the various states of the United States and in the District of Columbia, purchase respondent's said push card and punchboard devices and pack and assemble assortments comprised of various articles of merchandise, together with said push card and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards by lot or chance. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise, together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of such devices in the manner above described involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public.

The sale or distribution of said push card and punchboard devices by respondent, as hereinabove found, supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise. The sale of merchandise by and through the use of a game of chance, gift enterprise or lottery scheme is a practice which is in contravention of an established public policy of the Government of the United States and this respondent, through the supplying of such means of selling merchandise, has assisted and participated in the violation of said policy.

CONCLUSION

The acts and practices of the respondent Albert Greenberg as herein found are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent

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Albert Greenberg admitting all of the material facts alleged therein and waiving all intervening procedure as to him, testimony and other evidence relating to the allegations of the complaint as to respondent P. D. Beugen, introduced before a hearing examiner of the Commission theretofore duly designated by it, and the hearing examiner's recommended decision as to the allegations of the complaint relating to respondent P. D. Beugen, and the Commission having made its findings as to the facts and its conclusion that respondent Albert Greenberg has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent Albert Greenberg, individually, and trading under the name Allied Distributors or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, push cards, punchboards, or other lottery devices which are to be used or which, due to their design, are suitable for use in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondent P. D. Beugen.

It is further ordered, That respondent Albert Greenberg shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Complaint

IN THE MATTER OF

ALLIED WEAVERS OF AMERICA ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5953. Complaint, Feb. 12, 1952—Decision, June 19, 1952

Where a corporation and its two officers, engaged in the interstate sale and distribution by mail of a study course designed to prepare students for work as commercial weavers; through advertisements in newspapers and other printed matter, and in radio broadcasts, directly and by implication—

- (a) Represented falsely that weaving is easy to learn and to do, and that after taking their course of instruction persons would become expert weavers; the facts being that a considerable amount of manual dexterity, which many people do not possess and cannot acquire, along with a substantial amount of practical experience are prerequisites to so qualifying;
- (b) Represented falsely that such persons would be able to earn \$10.00 a day in their spare time and \$15.00 and up a day for full time, and that from \$10.00 to \$12.00 was the usual charge for the type of weaving taught by them; The facts being the usual charge for their type of weaving was considerably less than aforesaid amount, and there was no particular demand for persons so trained; and
- (c) Falsely represented that their course was available only for a limited time; and
- (d) Represented falsely through their sales agents that they would assist their graduates in obtaining weaving work from dry cleaners in their neighborhood and would grant only a limited number of franchises in each neighborhood; when in fact they issued their so-called franchise to as many people in the same neighborhood as would buy and complete the course;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that such representations were true and thereby induce purchase of their said course:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair acts and practices in commerce.

Before *Mr. John Lewis*, hearing examiner.

Mr. B. L. Williams and *Mr. B. G. Wilson* for the Commission.

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 Allied Weavers of America, a corporation, and Walter E. Powell and George Wallace, individually and as officers of said corporation, hereinafter 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 Allied Weavers of America is a corporation organized, existing and doing business under the laws of the State of California with its principal office and place of business located at 389 Valencia Street, San Francisco, California. Respondents Walter E. Powell and George Wallace are president, vice-president and secretary, respectively of said corporation. Said individual respondents as such officers formulate, control, and execute all of the business policies and practices of said corporation.

PAR. 2. Respondents are now and have been for more than one year last past, engaged in the sale and distribution in commerce, among and between the various States of the United States, of a course of study and instruction designed to prepare students for work as commercial weavers. Said course is pursued through the medium of the United States mails. Respondents, in the course and conduct of said business, cause their said course of study and instruction to be transported from their said place of business in the State of California, to the purchasers thereof located in other States of the United States. Respondents maintain and at all times mentioned herein have maintained, a substantial course of trade in said correspondence courses, in commerce, among and between the various States of the United States.

PAR. 3. Respondents, in soliciting the sale of and in selling their said course of study and instruction, in commerce, have made certain statements, representations, and claims respecting said course and the results which will be obtained by taking such course, in newspapers and other printed matter circulated or caused to be circulated by said respondents and in radio broadcasts. Typical of such statements, representations, and claims made by or through one or more of the said methods are the following:

. . . fascinating easy to do job.

With a few short, easy lessons at home, you can rapidly become an expert . . .

. . . by working in your spare time, you may be able to earn ten to twelve dollars or more every day.

Ten and twelve dollars is a common charge for this work.

RIGHT NOW there is a tremendous demand for persons skilled in invisible weaving.

LIMITED OFFER
LADIES
MAKE BIG MONEY AT HOME
Earn \$15.00 per day and up
WEAVERS WANTED
between ages of 21 and 60
FULL OR PART TIME
Complete low cost home study course including
all equipment of this trade . . .
THIS OFFER GOOD FOR A LIMITED TIME ONLY.

By means of oral statements and representations made by respondent's sales agents engaged in inducing the purchase of said course of study, the respondents have represented that they will assist graduates in obtaining work from dry cleaners in their neighborhoods and will grant only a limited number of franchises in each neighborhood.

PAR. 4. By means of the aforesaid statements respondents represented, directly and by implication, that weaving is easy to learn and do; that after taking their course of instruction, persons will become expert weavers and be able to earn from \$10 to \$12 a day in their spare time and \$15 and up a day for full time; that \$10 to \$12 is the usual and customary charge made for the type of weaving taught by them; that there is a great demand for persons trained through respondents' course of instruction; that said course of instruction will be available only for a limited time; that they will assist their graduates in obtaining weaving work from dry cleaners located in their neighborhoods and only a limited number of franchises will be granted in each neighborhood.

PAR. 5. The aforesaid statements are false, misleading and deceptive. In truth and in fact, weaving is neither easy to learn or to do. Many persons will not become expert weavers by completing respondents' course of instruction for the reason that to become an expert weaver, a considerable amount of manual dexterity is required which many people do not possess and cannot acquire. In addition a substantial amount of practical experience is required before one can qualify as an expert. The amount represented as probable earnings for both spare and full time is greatly exaggerated. The amount of \$10 to \$12 is considerably in excess of the usual and customary charge made for the type of weaving taught in respondents' course. There is no particular or great demand for persons trained through respondents' course. Respondents' offer of their course of instruction has never been limited in time but said course is available for purchase at any time. Respondents do not assist their graduates in obtaining weaving work from dry cleaners or any other persons and they issue their so-called franchises to as many people in the same neighborhood as will buy and complete their course.

PAR. 6. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations had the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondents' course of instruction.

PAR. 7. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated June 19, 1952, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 12, 1952, served its complaint in this proceeding upon respondents Allied Weavers of America, a corporation, and Walter E. Powell and George Wallace, individually and as officers of said corporation, charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. The "Notice" portion of said complaint provided that the failure of said respondents to file their answer within the time therein provided and the failure to appear at the time and place therein fixed for hearing would be deemed to authorize the Commission and the above-named hearing examiner, without further notice, to find the facts to be as alleged in the complaint and to issue an order to cease and desist in the form set forth in said notice. The said respondents failed to file an answer to the complaint herein and failed to appear at the time and place of hearing fixed in the aforesaid notice. At said hearing before the above-named hearing examiner, duly designated by the Commission, the attorney in support of the complaint moved that the respondents be found in default, and for the entry of an order to cease and desist in the form set forth in the "Notice" portion of the complaint. Said motion was granted and the hearing was thereupon closed. Thereafter, the proceeding regularly came on for final consideration by the said hearing examiner upon the complaint and said motion of the attorney in support of the complaint; and said hearing examiner having duly considered the record herein, finds that this proceeding is in the interest of the public and, pursuant to Rules V and VIII of the Rules of Practice of the Commission, makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Allied Weavers of America is a corporation organized, existing and doing business under the laws of the State of California with its principal office and place of business located at 389 Valencia Street, San Francisco, California. Respondents Walter E. Powell and George Wallace are president, vice-president and secretary, respectively, of said corporation, and as such officers formulate, control, and execute all of the business policies and practices of said corporation.

PAR. 2. Respondents are now and have been for more than one year last past, engaged in the sale and distribution in commerce, among and between the various States of the United States, of a course of study and instruction designed to prepare students for work as commercial weavers. Said course is pursued through the medium of the United States mails. Respondents, in the course and conduct of said business, cause their said course of study and instruction to be transported from their place of business in the State of California, to the purchasers thereof located in other States of the United States. Respondents maintain and at all times mentioned herein have maintained, a substantial course of trade in said correspondence courses, in commerce, among and between the various States of the United States.

PAR. 3. Respondents, in soliciting the sale of, and in selling, their said course of study and instruction, in commerce, have made certain statements, representations, and claims respecting said course and the results which will be obtained by taking such course, in newspapers and other printed matter circulated or caused to be circulated by said respondents and in radio broadcasts. Typical of such statements, representations, and claims made by or through one or more of the said media are the following:

. . . fascinating easy to do job.

With a few short, easy lessons at home, you can rapidly become an expert . . .

. . . by working in your spare time, you may be able to earn ten to twelve dollars or more every day.

Ten and twelve dollars is a common charge for this work.

RIGHT NOW there is a tremendous demand for persons skilled in invisible weaving.

LIMITED OFFER

LADIES

MAKE BIG MONEY AT HOME

Earn \$15.00 per day and up

WEAVERS WANTED

between ages of 21 and 60

FULL OR PART TIME

Complete low cost home study course including

all equipment of this trade . . .

THIS OFFER GOOD FOR A LIMITED TIME ONLY.

Respondents' sales agents, engaged in inducing the purchase of said course of study, have also made oral statements and representations that they will assist graduates in obtaining work from dry cleaners in their neighborhoods and will grant only a limited number of franchises in each neighborhood.

PAR. 4. By means of the aforesaid statements respondents represented, directly and by implication, that weaving is easy to learn and do; that after taking their course of instruction, persons will become expert weavers and be able to earn from \$10 to \$12 a day in their spare time and \$15 and up a day for full time; that \$10 to \$12 is the usual and customary charge made for the type of weaving taught by them; that there is a great demand for persons trained through respondents' course of instruction; that said course of instruction will be available only for a limited time; that they will assist their graduates in obtaining weaving work from dry cleaners located in their neighborhoods and will grant only a limited number of franchises in each neighborhood.

PAR. 5. The aforesaid statements are false, misleading and deceptive. In truth and in fact, weaving is neither easy to learn or to do. Many persons will not become expert weavers by completing respondents' course of instruction for the reason that to become an expert weaver, a considerable amount of manual dexterity is required which many people do not possess and cannot acquire. In addition a substantial amount of practical experience is required before one can qualify as an expert. The amount represented as probable earnings for both spare and full time is greatly exaggerated. The amount of \$10 to \$12 is considerably in excess of the usual and customary charge made for the type of weaving taught in respondents' course. There is no particular or great demand for persons trained through respondents' course. Respondents' offer of their course of instruction has never been limited in time but said course is available for purchase at any time. Respondents do not assist their graduates in obtaining weaving work from dry cleaners or any other persons and they issue their so-called franchises to as many people in the same neighborhood as will buy and complete their course.

PAR. 6. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations had the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' course of instruction.

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CONCLUSION

The aforesaid acts and practices of the respondents, as hereinabove set out, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents Allied Weavers of America, a corporation, and its officers, and Walter E. Powell and George Wallace, individually and as officers of said corporation, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of courses of instruction in weaving in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that weaving is either easy to learn or to do;
2. Representing directly or by implication that persons, irrespective of manual dexterity, general aptitude or practical experience, will become expert weavers upon completion of respondents' course.
3. Representing directly or by implication that the earning potential of persons completing respondents' course is greater than said earning potential is in fact.
4. Representing directly or by implication that any specified amount is charged for performing the type of weaving services taught by respondents when said amount is in excess of the charges usually and customarily made for said type of weaving.
5. Representing directly or by implication that there is a great demand for persons who have completed respondents' course of instruction or representing in any manner that the opportunities for employment on the part of persons trained through respondents' course of instruction are greater than they are in fact.
6. Representing directly or by implication that any of respondents' offers are limited or restricted in point of time when such offers are in fact not so limited or restricted.
7. Representing directly or by implication that respondents assist persons who have completed their course in obtaining weaving work.
8. Representing directly or by implication that the number of persons to whom any franchise or other similar instrument of authority or recognition will be conferred by respondents is a limited number when such franchise or other instrument is given to all persons buying and completing such course.

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ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of June 19, 1952].

Complaint

IN THE MATTER OF

JAMES BERMAN AND BENJAMIN KRANE DOING BUSINESS AS KRANE-BERMAN CLOTHING COMPANY

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5955. Complaint, Feb. 13, 1952—Decision, June 21, 1952

Where two partners engaged in New York in the manufacture and interstate sale and distribution of wool products as defined in the Wool Products Labeling Act—

- (a) Misbranded certain wool products in that they were not stamped, tagged or labeled as required by said Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder;
- (b) Misbranded certain men's trousers in that, labeled as 100% wool, they contained substantial quantities of other fibers; and
- (c) Misbranded certain other trousers in that, labeled 40% wool and 60% rayon, they contained substantially less wool and substantially more rayon than so represented:

Held, That such acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and constituted unfair acts and practices in commerce.

Before *Mr. John Lewis*, hearing examiner.

Mr. Carlo J. Aimone for the Commission.

Mr. Meyer Schwartz, of New York City, for James Berman.

Mr. Paul M. Klein, of New York City, for Benjamin Krane.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that James Berman and Benjamin Krane, individually and as partners, doing business as Krane-Berman Clothing Company, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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. The respondents, James Berman and Benjamin Krane, are partners doing business as Krane-Berman Clothing Com-

pany, at 141 Fifth Avenue, New York, New York, where their office and principal place of business is located and maintained.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1950, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded in that they were not stamped, tagged or labeled as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form as prescribed by the Rules and Regulations promulgated under such Act.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of the said Act and the Rules and Regulations thereunder in that they were falsely and deceptively labeled with respect to the character and amount of the constituent fibers contained therein. Among the misbranded products aforementioned were men's trousers labeled as 100% wool, when in truth and in fact the trousers were not 100% wool but contained substantial quantities of fibers other than wool. Other of respondents' trousers were labeled as 40% wool and 60% rayon, when in truth and in fact such trousers contained substantially less woolen fibers and substantially more rayon fibers than represented.

PAR. 5. The acts and practices of the respondents as herein alleged were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated June 21, 1952, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said Acts, the Federal Trade Commission on

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February 13, 1952, issued and subsequently served its complaint in this proceeding upon the respondents, James Berman and Benjamin Krane, individually and as partners, doing business as Krane-Berman Clothing Company, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Acts. After the service of said complaint upon said respondents, each of said respondents entered into a separate stipulation as to the facts whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for the respective respondents and counsel in support of the complaint may be taken as the facts in this proceeding, and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto, and that the hearing examiner may proceed upon said statement of facts to make his Initial Decision, stating his findings as to the facts, including inferences which he may draw from the said stipulations of facts, and his conclusion based thereon, and enter his order disposing of the proceeding as to each of said respondents, without the filing of proposed findings and conclusions or the presentation of oral argument. Each of said stipulations further provides that the Commission may, if the proceeding comes before it upon appeal from the Initial Decision of the hearing examiner or by review upon the Commission's own motion, set aside the stipulations and remand the case to the hearing examiner for further proceedings under the complaint. Thereafter, this proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon the complaint and the aforesaid stipulations as to the facts, said stipulations having been approved and made part of the record by the hearing examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, James Berman and Benjamin Krane were, during the times herein mentioned, partners doing business as Krane-Berman Clothing Company, at 141 Fifth Avenue, New York, New York, where their office and principal place of business was located and maintained.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1950, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and

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offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded in that they were not stamped, tagged or labeled as required under the provisions of section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form prescribed by the Rules and Regulations promulgated under such Act.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of the said Act and the Rules and Regulations thereunder in that they were falsely and deceptively labeled with respect to the character and amount of the constituent fibers contained therein. Among the misbranded products aforementioned were men's trousers labeled as 100% wool, when in truth and in fact the trousers were not 100% wool but contained substantial quantities of fibers other than wool. Other of respondents' trousers were labeled as 40% wool and 60% rayon, when in truth and in fact such trousers contained substantially less woolen fibers and substantially more rayon fibers than represented.

CONCLUSION

The acts and practices of the respondents, as hereinabove found, were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, James Berman and Benjamin Krane, individually and as partners, doing business as Krane-Berman Clothing Company, or under any other name, names or designation, and said respondents' respective representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid Acts, of men's trousers or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing, "wool," "reprocessed wool," or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products by:

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(1) Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers therein;

(2) Failing to securely affix to or place on each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five per centum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentages of the total weight of such wool product of any non-fibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivering for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939, and

Provided further, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of June 21, 1952].

Complaint

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IN THE MATTER OF
PHILADELPHIA CHEWING GUM CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5970. Complaint, Mar. 18, 1952—Decision, June 23, 1952

Where a corporation engaged in the interstate sale and distribution of assortments of chewing gum so packed and assembled as to involve the use of a lottery scheme when sold and distributed to members of the consuming public, and including a box containing 160 individually wrapped pieces for sale under a plan whereby the consumer purchaser who by chance secured the only piece wrapped with the letter "G" and was thereby enabled, through the inclusion thereof with the letters contained in other packages, to make up the words "bubble gum", became entitled to the "decorated sweat shirt" therein described—

Sold such assortments to wholesale dealers and jobbers, whose retail dealer purchasers exposed and sold them to the purchasing public in accordance with the aforesaid sales plan; and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its product, contrary to an established policy of the United States Government;

With the result that many persons were attracted by the element of chance in said sales plans and were thereby induced to buy and sell its said gum:

Held, That such acts, practices and methods, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair acts and practices in commerce.

Before *Mr. James A. Purcell*, hearing examiner.
Mr. J. W. Brookfield, Jr. for the Commission.

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 Philadelphia Chewing Gum Corporation, a corporation hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating the charges in that respect as follows:

PARAGRAPH 1. Respondent Philadelphia Chewing Gum Corporation is a corporation organized and doing business under and by virtue of the laws of the State of Pennsylvania. Its office and principal place of business is located at Lawrence and Eagle Streets, Havertown, Pennsylvania. Respondent is now, and for more than three years last past has been, engaged in the sale and distribution of chewing gum,

including bubble gum, and has caused said products, when sold, to be transported from its place of business in Havertown, Pennsylvania, to purchasers thereof located in the various States of the United States other than Pennsylvania and in the District of Columbia. There is now, and has been for more than three years last past, a substantial course of trade in such chewing gum in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in Paragraph Two hereof, the respondent sells, and has sold to wholesale dealers and jobbers, assortments of chewing gum so packed and assembled as to involve the use of a lottery scheme when sold and distributed to members of the consuming public.

One of said assortments is composed of a box of 160 pieces of bubble gum of uniform size and shape. Said pieces of gum in said assortment are wrapped in individual wrappers and the outer wrapper is identical. Under the outer wrapper is an inner wrapper on which is printed one or more of the individual letters making up the words "bubble gum." The wrapper also bears the legend "Get this shirt with all the pictures on it. Save this wrapper. Collect all the letters and spell 'bubble gum.' Send wrappers to Philadelphia Chewing Gum Corporation, Havertown, Pennsylvania, for your decorated sweat shirt." Each assortment of gum contains numerous packages with the inner label carrying all of the letters to make up the words bubble gum except the letter "G." Only one of the wrappers in each box of 160 pieces of gum contains this letter. The printed letters on the inside of said wrappers are effectively concealed from the purchasers and prospective purchasers until the selection has been made and the particular wrapper removed.

When the consuming purchaser has procured wrappers bearing all the letters to spell out the words "bubble gum" he sends the wrappers to the respondent and is sent a sweat shirt.

The letters on each wrapper are effectively concealed until after the purchase has been made and the purchaser of a package of respondent's gum does not know what letter is on the wrapper, or if he has already purchased previous wrappers, he does not know whether the wrapper he will receive will bear the letter "G" until the purchase has been made and the letter on the wrapper disclosed. Respondent's merchandise is thus distributed to purchasers of chewing gum from said assortments wholly by lot or chance and said assortments are used to promote the sale of its merchandise by lot or chance.

The wholesale dealers and jobbers to whom respondent sells its assortments resell said assortments to retail dealers and said retail

dealers expose said assortments for sale, and sell said chewing gum to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth.

PAR. 3. The sale of said chewing gum to the purchasing public by the sales methods above described involves a game of chance or the sale of a chance to procure other articles of merchandise. The use by respondent of said methods or sales plans in the sale of its merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said sales plans or methods, is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of chewing gum or other merchandise to the purchasing public in the manner above alleged involves a game of chance to procure one of the said sweat shirts at less than the normal retail price thereof and thereby attracts purchasers and consumers of respondent's chewing gum. Many persons are attracted by said sales plans or methods used by respondent and the element of chance involved therein and thereby are induced to buy and sell respondent's chewing gum.

The use by respondent of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforementioned acts, practices and methods of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated June 23, 1952, the initial decision in the instant matter of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 18, 1952, issued and served

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its complaint in this proceeding upon the respondent, Philadelphia Chewing Gum Corporation, a corporation, charging it with the use of unfair acts and practices in commerce in violation of the provisions of said Act. On April 24, 1952, respondent filed its answer, in which it admitted all of the material allegations of facts set forth in said complaint, waived all intervening procedure and further hearing as to said facts, and consented that an order to cease and desist may issue in the form set forth in the "Notice" portion of the aforesaid complaint.

Thereafter, the proceeding regularly came on for final consideration by the above-named Hearing Examiner theretofore duly designated by the Commission upon said complaint and answer thereto, all intervening procedure having been waived and the right to submit Proposed Findings and Conclusions not having been reserved or requested; and said Hearing Examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Philadelphia Chewing Gum Corporation is a corporation organized and doing business under and by virtue of the laws of the State of Pennsylvania. Its office and principal place of business is located at Lawrence and Eagle Streets, Havertown, Pennsylvania.

PAR. 2. Respondent is now, and for more than three years last past has been, engaged in the sale and distribution of chewing gum, including "bubble gum," and has caused said products, when sold, to be transported from its place of business in Havertown, Pennsylvania, to purchasers thereof located in the various States of the United States, other than the State of Pennsylvania, and in the District of Columbia. There is now, and has been a substantial course of trade in such chewing gum in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent sells, and has sold, to wholesale dealers and jobbers, assortments of chewing gum so packed and assembled as to involve the use of a lottery scheme when sold and distributed to members of the consuming public.

One of said assortments is composed of a box of 160 pieces of bubble gum of uniform size and shape. Said pieces of gum in said assortment are wrapped individually, all outer wrappers being identical. Under the outer wrapper is an inner wrapper on which is printed one or

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more of the individual letters making up the words "bubble gum." The wrapper also bears the legend "Get this shirt with all the pictures on it. Save this wrapper. Collect all the letters and spell 'bubble gum.' Send wrappers to Philadelphia Chewing Gum Corporation, Havertown, Pennsylvania, for your decorated sweat shirt." Each assortment of gum contains numerous packages with the inner label carrying all of the letters to make up the words "bubble gum" except the letter "G." Only one of the wrappers in each box of 160 pieces of gum contains this letter. The printed letters on the inside of said wrappers are effectively concealed from the purchasers and prospective purchasers until the selection has been made and the particular wrapper removed.

When the consuming purchaser has procured wrappers bearing all of the letters required to spell out the words "bubble gum" he sends such wrappers to the respondent and receives therefor a sweat shirt.

The letters on each wrapper are effectively concealed until after the purchase has been made, so that the purchaser of a package of respondent's gum does not know what letter is on the wrapper, or if he has already acquired previous wrappers, he does not know whether the wrapper he will receive will bear the letter "G" until the purchase has been made and the letter on the wrapper disclosed. Respondent's merchandise is thus distributed to purchasers of chewing gum from said assortments wholly by lot or chance, and said assortments are used to promote the sale of its merchandise by lot or chance.

The wholesale dealers and jobbers to whom respondent sells its assortments resell said assortments to retail dealers and said retail dealers expose said assortments for sale, and sell said chewing gum to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth.

PAR. 4. The sale of said chewing gum to the purchasing public by the sales methods above described involves a game of chance or the sale of a chance to procure other articles of merchandise. The use by respondent of said methods or sales plans in the sale of its merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said sales plans or methods, is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 5. The sale of chewing gum or other merchandise to the purchasing public in the manner above found involves a game of chance to procure one of the said sweat shirts at less than the normal retail price thereof and thereby attracts purchasers and consumers of re-

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spendent's chewing gum. Many persons are attracted by said sales plans or methods used by respondent and the element of chance involved therein and thereby are induced to buy and sell respondent's chewing gum.

CONCLUSION

The aforesaid acts, practices and methods of respondent, as hereinabove found, are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent, Philadelphia Chewing Gum Corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of chewing gum or other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing, to jobbers and wholesale dealers or others, chewing gum or other merchandise so packed and assembled that the sales of such chewing gum or other merchandise to the general public are to be made, or are intended or designed to be made, by means of a lottery, gaming device or gift enterprise;
2. Packing or assembling in the same package or assortment of chewing gum, for sale to the public at retail, pieces of chewing gum contained within wrappers bearing various legends or letters, which wrappers, bearing particular legends or letters, when obtained in particular combinations, entitle the holder thereof to certain specified articles of merchandise as a prize;
3. Selling or distributing any assortments of chewing gum, or other merchandise, which are designed or intended to be used in the distribution of merchandise to members of the public by lottery or chance.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of June 23, 1952].

IN THE MATTER OF
HEALTH SPOT SHOE COMPANY ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5842. Complaint, Jan. 25, 1951—Decision, June 24, 1952

Abnormalities of the feet often result from systemic causes requiring medical treatment, or from abnormalities in the lower extremities such as bow-legs, knock-knees, sway-back, and other conditions requiring surgery, and no two feet may have like abnormalities.

Where a corporation and two officers thereof, engaged in the interstate sale and distribution of their "Health Spot Shoes," made in sizes for men, women and children, and sold by retail stores to all who desired them; through statements on labels and in advertisements in newspapers and periodicals of general circulation, and through folders, circulars, and radio continuities, directly and by implication—

- (a) Represented falsely that their shoes possessed features and characteristics which would prevent and correct all common foot ailments, and that use thereof would prevent weak feet, weak ankles, inrolling ankles, and weak and broken-down arches and faulty posture, and would correct such conditions where they existed;
- (b) Represented falsely that they would promote proper foot and postural development in children, provide natural support to the feet and arches, and needed support in cases of ankle pronation;
- (c) Represented falsely that they would insure comfort to the user and provide foot and body balance; and
- (d) Represented falsely that they possessed natural curved insoles which conformed accurately to the contour of the bottom of the foot, and that they would eliminate foot fatigue, keep the ankles straight and strong, hold the heel in normal position, prevent the development of abnormalities and deformities, and correct all disorders of the feet and keep them healthy;

The facts being that their said products were stock shoes, and while they contained certain features not found in some other stock shoes, their effect upon the feet, either in the prevention or correction of common foot ailments, was insignificant and in some cases harmful;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that such misrepresentations were true and thereby induce the purchase of substantial quantities of their said products;

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. B. G. Wilson and *Mr. J. M. Doukas* for the Commission.

Graham & Spivey, of Danville, Ill., for respondents.

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 Health Spot Shoe Company, a corporation, and George E. Musebeck and Willard A. Andrews, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the 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. The respondent, Health Spot Shoe Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois. Individual respondents, George E. Musebeck and Willard A. Andrews, are president and secretary-treasurer of the corporate respondent, respectively. The individual respondents formulate, direct and control the policies, acts and practices of the corporate respondent. The office and principal place of business of the corporate respondent and the individual respondents is located at Forest and Westover Streets, Oconomowoc, Wisconsin.

PAR. 2. The respondents are now, and have been for more than two years last past, engaged in the sale and distribution of shoes designated by them as "Health Spot Shoes." The said shoes are made in sizes for men, women and children. They are sold by retail stores to any and all persons who desire them for their use.

PAR. 3. The respondents cause and have caused their said "Health Spot Shoes" when sold to be transported from their place of business in the State of Wisconsin to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a course of trade in their said shoes in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in the sale of said shoes in commerce is and has been substantial.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of their said shoes, the respondents have made various statements and representations concerning the nature and usefulness of their said shoes by means of labels attached to said shoes, labels attached to the cartons in which the shoes are contained, advertisements in newspapers and magazines of general circulation, by means of folders and circulars and by radio continuities broadcast from radio stations. Among and typical of such statements and representations are the following:

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Health Spot Shoes * * * incorporate all the desirable features needed for the prevention and correction of common foot ailments.

Men—Women—Children, step out of foot trouble into foot health.

Weak foot conditions can cause fatigue, * * *

In many instances Health Spot Shoes have given weak, tired feet a "new lease on life."

It's because your ankles roll inward. In rolling heels and ankles are considered the major cause of most foot troubles. Try Health Spot Shoes and see what this principle of foot support will do for you.

A great deal of pain in the feet or elsewhere in the body, caused by weakened or broken down arches, can be reduced or completely removed.

* * * helps * * * promote proper foot and body posture * * *.

Health Spot Shoes help young feet grow strong.

* * * it is imperative that shoes be so designed that they * * * insure proper foot balance.

* * * special built-in heel wedge and steel shank give not only normal foot support but body balance as well.

* * * scientifically constructed with curved insole and built up heel wedge to give young feet natural support.

* * * Health Spot Shoe provides just the support needed in the management of ankle pronation.

* * * give you absolute foot protection and comfort * * *.

* * * say goodbye to working foot fatigue * * *.

These objectives can be attained only by making the shoe conform accurately to the contour of the bottom of the foot.

Health Spot Shoes Keep Your Ankles Straight and Strong.

Their primary purpose is to keep normal feet normal.

PAR. 5. Through the use of the words "Health Spot" to describe and designate their shoes and also the word "health" in connection therewith, respondents have represented and now represent that their said shoes are constructed in such a manner that their use will prevent and cure diseases and abnormalities of the feet, will keep the feet healthy, prevent the development of abnormalities and deformities of the feet and correct all disorders of the feet which may be present.

PAR. 6. The said representations are false, misleading and deceptive. In truth and in fact, the use of respondents' shoes will not prevent or cure diseases or abnormalities of the feet, keep the feet healthy, prevent the development of abnormalities or deformities or correct any disorder of the feet. Said shoes cannot be properly or truthfully represented or designated as health shoes or as possessing health features.

PAR. 7. Through the use of the additional statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that their shoes possess features and characteristics which prevent and correct all common foot ailments; that the use of their shoes will prevent weak feet, weak ankles, in rolling ankles, weak and broken down

arches and faulty posture and will correct such conditions when they exist; that in the case of children they will promote proper foot and postural development, provide natural support to the feet and arches and needed support in cases of ankle pronation; that said shoes will assure comfort to the user, provide foot and body balance, possess natural curved insole which conforms perfectly to the contour of the bottom of the foot, will eliminate foot fatigue, keep the ankles straight and strong, and because of the manner of their construction will hold the heel in normal position.

PAR. 8. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, respondents' shoes are stock shoes and while they contain features not found in some other stock shoes, the effect of these features upon the feet either in the prevention or correction of common foot ailments is insignificant. The wearing of respondents' shoes will not prevent weak feet, weak ankles or arches, in rolling ankles, broken down arches, or faulty posture nor will they correct such conditions when they exist. They will not promote proper foot and postural development in the case of children. The feet of children do not ordinarily require any particular kind of support and in cases where support is necessary respondents' shoes cannot be relied upon to furnish the support needed to meet the requirements of the individual case. Such support as may be provided cannot be properly characterized as natural. In many instances such shoes will not provide the necessary support in cases of ankle pronation. There is no assurance that respondents' shoes will be comfortable to the wearer or that they will provide foot or body balance. The insole of said shoes will not in many cases conform to the contour of the bottom of the foot. There is no assurance that the wearing of said shoes will eliminate foot fatigue or that they will hold the heel in a normal position.

PAR. 9. The use by respondents of the foregoing false, deceptive and misleading designations, statements and representations with respect to their shoes have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce the purchase of substantial quantities of respondents' said shoes because of such erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated June 24, 1952, the initial decision in the instant matter of hearing examiner Webster Ballinger, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WEBSTER BALLINGER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 25, 1951, issued and subsequently served its complaint in this proceeding upon respondents Health Spot Shoe Company, a corporation, and George E. Museback and Willard A. Andrews, individually and as officers of said corporation, charging them and each of them with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. Respondents answered and after reasonable notice, hearings were held by the above-named hearing examiner theretofore duly designated by the Commission, at which testimony, documents and a stipulation were offered on behalf of both parties to this proceeding by their respective counsel and admitted in evidence, which said evidence was duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answers thereto, testimony and other evidence, requested findings, conclusion and form of order submitted by counsel for the complaint, oral argument being waived; and said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Health Spot Shoe Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois. Individual respondents, George E. Musebeck is President and Willard A. Andrews was until recently Secretary-Treasurer, and is now Vice-President, of the corporate respondent. The individual respondents formulate, direct and control the policies, acts and practices of the corporate respondent. The office and principal place of business of the corporate respondent and the individual respondents is located at Forest and Westover Streets, Oconomowoc, Wisconsin.

PAR. 2. The respondents are now, and have been for more than two years last past, engaged in the sale and distribution of shoes designated by them as "Health Spot Shoes." The said shoes are made in sizes for men, women and children. They are sold by retail stores to any and all persons who desire them for their use.

PAR. 3. The respondents cause and have caused their said "Health Spot Shoes," when sold, to be transported from their place of business in the State of Wisconsin to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a course of trade in their said shoes in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in the sale of said shoes in commerce is and has been substantial.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of their said shoes, the respondents have made various statements and representations concerning the nature and usefulness of their said shoes by means of labels attached to said shoes, labels attached to the cartons in which the shoes are contained, advertisements in newspapers and magazines of general circulation, by means of folders and circulars and by radio continuities broadcast from radio stations. Among and typical of such statements and representations are the following:

Health Spot Shoes * * * incorporate all the desirable features needed for the prevention and correction of common foot ailments.

Men—Women—Children, step out of foot trouble into foot health.

Weak foot conditions can cause fatigue, * * *

In many instances Health Spot Shoes have given weak, tired feet a "new lease on life."

It's because your ankles roll inward. In rolling heels and ankles are considered the major cause of most foot troubles. Try Health Spot Shoes and see what this principle of foot support will do for you.

A great deal of pain in the feet or elsewhere in the body, caused by weakened or broken down arches, can be reduced or completely removed.

* * * helps * * * promote proper foot and body posture * * *.

Health Spot Shoes help young feet grow strong.

* * * it is imperative that shoes be so designed that they * * * insure proper foot balance.

* * * special built-in heel wedge and steel shank give not only normal foot support but body balance as well.

* * * scientifically constructed with curved insole and built up heel wedge to give young feet natural support.

* * * Health Spot Shoe provides just the support needed in the management of ankle pronation.

* * * gives you absolute foot protection and comfort * * *.

* * * say goodbye to working foot fatigue * * *.

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These objectives can be attained only by making the shoe conform accurately to the contour of the bottom of the foot.

Health Spot Shoes Keep Your Ankles Straight and Strong.
Their primary purpose is to keep normal feet normal.

PAR. 5. By and through the representations referred to and set forth in the preceding paragraph respondents have directly and by implication represented, and now represent, to the public that their said shoes possess features and characteristics which prevent and correct all common foot ailments; that the use of their shoes will prevent weak feet, weak ankles, inrolling ankles, weak and broken down arches and faulty posture and will correct such conditions where they exist; that in the case of children they will promote proper foot and postural development, provide natural support to the feet and arches and needed support in cases of ankle pronation; that said shoes will assure comfort to the user, provide foot and body balance, possess natural curved insole which conforms accurately to the contour of the bottom of the foot, will eliminate foot fatigue, keep the ankles straight and strong, will hold the heel in normal position, and will prevent the development of abnormalities and deformities and correct all disorders of the feet that may exist and keep them healthy.

PAR. 6. No two feet may have like abnormalities. In many cases there is a disorder on one foot and occasionally an entirely different disorder on the other foot. Abnormalities of the feet often result from systemic causes requiring medical treatment, or from abnormalities in the lower extremities, such as bowlegs, knock-knees, sway-back and other conditions requiring surgery. Respondents' shoes are stock shoes and while they contain certain features not found in some other stock shoes, the effect of these features upon the feet either in the prevention or correction of common foot ailments is insignificant and in some cases harmful. Each and every representation made by respondents and which they are now making to the public, as set forth in the preceding paragraph, has been and is now misleading, deceptive and false.

PAR. 7. The use by respondents of the foregoing false, deceptive and misleading designations, statements and representations with respect to their shoes have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce the purchase of substantial quantities of respondents' said shoes because of such erroneous and mistaken belief.

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CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents Health Spot Shoe Company, a corporation, its officers, agents, representatives and employees, and George E. Musebeck and Willard A. Andrews, individually and as officers of said corporation, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their shoes now designated by them as "Health Spot Shoes," or any other shoe of similar construction, do forthwith cease and desist from :

1. Using the name "Health Spot Shoe Company" or any name in which the word "Health" appears in ordinary business transactions unless in immediate conjunction therewith there appear clearly and conspicuously the words "a corporate and trade name only."

2. Using in any advertisement of respondents' shoes the word "Health" or any other word importing a like or similar meaning, alone or in combination with any other word or words, to designate, describe or refer to respondents' shoes, or representing in any manner that the wearing of respondents' shoes will prevent or correct abnormalities of the feet, keep the feet healthy, prevent the development of abnormalities or deformities or will correct any disorder of the feet.

3. Representing, directly or by implication, that the use of their shoes will prevent weak feet, weak ankles, inrolling ankles, weak and broken down arches, faulty posture, or will correct such conditions where they exist.

4. Representing, directly or by implication, that their shoes possess features and characteristics which will prevent or correct any common foot ailment.

5. Representing, directly or by implication, that the use of their shoes in the case of children will promote proper foot and postural development or provide the necessary support to the feet and arches in cases of ankle pronation.

6. Representing, directly or by implication that the use of their shoes will assure comfort to the user, provide foot and body balance,

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eliminate foot fatigue, keep the ankles straight and strong or will hold the heel in normal position.

It is further ordered, That the foregoing Paragraphs One and Two insofar as they relate to labels in or on shoes manufactured or in process of manufacture on the date this order is issued, and cartons or containers in which said shoes are now or may be packaged, and existing supplies used for business and not advertising purposes such as letterheads, envelopes, cards, sales books, and checks, shall become effective on and after six months from the date this order is issued.

It is further ordered, That the marketing by respondent of any of said shoes, manufactured or in process of manufacture when this order is issued and on hand and unsold at the expiration of the six months' period referred to in the preceding paragraph, under a new name and with the words "Formerly Health Spot Shoes" appearing clearly and conspicuously and in immediate conjunction therewith shall not be construed as a violation of this order.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of June 24, 1952].

Complaint

IN THE MATTER OF
**SOLOMON L. CORUSH D. B. A. AMERICAN COMMERCIAL
 TRAVELER**

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
 OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5942. Complaint, Jan. 18, 1952—Decision, June 24, 1952

Where an individual engaged in the publication and interstate distribution of a directory in which were listed advertisements of hotels and motor courts, designated as "American Commercial Traveler"; in soliciting advertisements for paid publication therein, directly and through his sales agents, through oral statements—

- (a) Represented that he could and would assist his advertisers in obtaining listing with the American Automobile Association; when in fact he was not connected in any way with it and exercised no influence upon its selection of approved hotels, motor courts, and other overnight accommodations;
- (b) Falsely represented that he had established a commercial relationship with many businesses as a result of which they directed or requested their salesmen to patronize hotels and motor courts listed in his directory;
- (c) Represented that advertisers would be granted exclusive listings within a prescribed area; the facts being that he granted listings to as many hotels and auto courts as would purchase them;
- (d) Represented that specific numbers of persons would patronize advertisers weekly or monthly by reason of advertisements placed in his directory; when in fact he had no basis for making such representations and many advertisers received no benefit whatsoever from such advertisements;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that such representations were true and thereby induce it to purchase listings in his said directory:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. B. L. Williams and *Mr. J. J. McNally* for the Commission.

Hahn, Ross & Saunders, of Los Angeles, Calif., for respondent.

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 Solomon L. Corush, an individual, doing business as American Commercial Traveler, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it

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in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Solomon L. Corush, is an individual doing business as American Commercial Traveler, with his office and principal place of business located at 319 South Robertson Boulevard, Beverly Hills, California. The respondent is now, and since April 1950 has been, engaged in the solicitation and sale of advertisements of hotels and motor courts located in various States of the United States and the publication and distribution of a directory of hotels and motor courts, designated as American Commercial Traveler, in which said advertisements are listed.

PAR. 2. In connection with said business, respondent engages in commercial transactions, in commerce, with both customers and prospective customers including the transmission of letters, proofs of advertisements, contracts and checks. Respondent causes his directory to be transported from the place of publication in the State of California to advertisers and to subscribers of said publication located in various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said publication in commerce between and among the various States of the United States.

PAR. 3. Respondent and his sales agents in soliciting advertisements for paid publication have made oral representations to the effect: that respondent can and will assist his advertisers in obtaining listings with the American Automobile Association; that respondent has established a commercial relationship with many businesses as a result of which said businesses direct or request their salesmen to patronize hotels and auto courts listed in respondent's directory; that advertisers will be granted exclusive listings within a prescribed area; and that specified numbers of persons will patronize advertisers weekly or monthly by reason of advertisements placed in said directory.

PAR. 4. The aforesaid statements are false, misleading and deceptive. In truth and in fact respondent is not connected in any way with the American Automobile Association, and exercises no influence whatsoever upon the selection of approved hotels, auto courts and other overnight accommodations by said Association. Respondent does not have working agreements with any business firms whereby said firms instruct their salesmen to patronize the advertisers listed in his directory. Respondent does not grant exclusive listings to his advertisers. On the contrary, respondent will grant listings to as many hotels and auto courts as will purchase such listings. Respondent has no basis for representing to advertisers that a specific number of persons will

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patronize said advertisers within any prescribed period of time as a result of a listing in his directory. In fact many advertisers have not received any benefit whatsoever from advertisements inserted in respondent's directory.

PAR. 5. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations had the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase listings in respondent's directory.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated June 24, 1952, the initial decision in the instant matter of hearing examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 18, 1952, issued and subsequently served its complaint in this proceeding upon the respondent Solomon L. Corush, an individual doing business as American Commercial Traveler, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. The "Notice" portion of said complaint provided that the failure of said respondent to file his answer within the time therein provided and the failure to appear at the time and place therein fixed for hearing would be deemed to authorize the Commission and the above-named hearing examiner, without further notice, to find the facts to be as alleged in the complaint and to issue an order to cease and desist in the form set forth in said notice. The said respondent failed to file an answer to the complaint herein but, on the contrary, stated in a letter that he did not intend to file an answer, and failed to appear at the time and place fixed for the hearing. At said hearing before the above-named hearing examiner, duly designated by the Commission, the attorney in support of the complaint moved that the respondent

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be found in default, and for the entry of an order to cease and desist in the form set forth in the "Notice" portion of the complaint. Said motion was granted and the hearing was closed. Thereafter, the proceeding regularly came on for final consideration by the said hearing examiner upon the complaint and said motion of the attorney in support of the complaint; and said hearing examiner having duly considered the record herein, finds that this proceeding is in the interest of the public and, pursuant to Rules V and VIII of the Rules of Practice of the Commission, makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Solomon L. Corush is an individual doing business as American Commercial Traveler, with his office and principal place of business located at 319 South Robertson Boulevard, Beverly Hills, California. The respondent is now, and since April 1950 has been, engaged in the solicitation and sale of advertisements of hotels and motor courts located in various States of the United States and the publication and distribution of a directory of hotels and motor courts, designated as American Commercial Traveler, in which said advertisements are listed.

PAR. 2. In connection with said business, respondent engages in commercial transactions, in commerce, with both customers and prospective customers including the transmission of letters, proofs of advertisements, contracts and checks. Respondent causes his directory to be transported from the place of publication in the State of California to advertisers and to subscribers of said publication located in various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said publication in commerce between and among the various States of the United States.

PAR. 3. Respondent and his sales agents in soliciting advertisements for paid publication have made oral representations to the effect: that respondent can and will assist his advertisers in obtaining listings with the American Automobile Association; that respondent has established a commercial relationship with many businesses as a result of which said businesses direct or request their salesmen to patronize hotels and auto courts listed in respondent's directory; that advertisers will be granted exclusive listings within a prescribed area; and that specified numbers of persons will patronize advertisers weekly or monthly by reason of advertisements placed in said directory.

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PAR. 4. The aforesaid statements are false, misleading and deceptive. In truth and in fact respondent is not connected in any way with the American Automobile Association, and exercises no influence whatsoever upon the selection of approved hotels, auto courts and other overnight accommodations by said Association. Respondent does not have working agreements with any business firms whereby said firms instruct their salesmen to patronize the advertisers listed in his directory. Respondent does not grant exclusive listings to his advertisers. On the contrary, respondent will grant listings to as many hotels and auto courts as will purchase such listings. Respondent has no basis for representing to advertisers that a specific number of persons will patronize said advertisers within any prescribed period of time as a result of a listing in his directory. In fact many advertisers have not received any benefit whatsoever from advertisements inserted in respondent's directory.

PAR. 5. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase listings in respondent's directory.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent, Solomon L. Corush, an individual, trading as American Commercial Traveler, or trading under any other name or trade designation, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of hotel or auto court directories or other publications, do forthwith cease and desist from representing, directly or by implication, in the solicitation of advertising for such directories or publications:

(1) That the respondent is connected in any manner with the American Automobile Association or is able to obtain the approval of

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or the listing of hotels, auto courts or other accommodations with the American Automobile Association.

(2) That the respondent has a working agreement with any business firm as a result of which such firm instructs its salesmen to patronize the advertisers listed in the respondent's publication.

(3) That advertisers in the respondent's publication are granted exclusive listings within a prescribed area.

(4) That any specific number of persons will patronize the advertisers in the respondent's publication.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of June 24, 1952].

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

HENRY S. BORDEN TRADING AS BORDEN NOVELTY Co. Complaint, July 12, 1950. Order, May 16, 1951.¹ (Docket 5795.)

CHARGE: Advertising falsely or misleadingly and misbranding or mislabeling as to composition and manufacture and preparation of product; in connection with the manufacture and sale of gold covered watch bands or bracelets.

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 Henry S. Borden, individually and trading as Borden Novelty Co., hereinafter referred to as respondent, has violated the provisions of the 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, Henry S. Borden, is an individual trading as Borden Novelty Co. with his office and principal place of business located at 128 East 28th Street, New York, N. Y.

PAR. 2. The respondent is now and for more than 2 years last past has been engaged in the manufacture, sale, and distribution of gold covered watch bands or bracelets.

In the course and conduct of such business respondent caused his said products, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondent maintained, and at all times mentioned herein has maintained a course of trade in said products in commerce among and between the various States of the United States. His volume of business in such commerce is substantial.

PAR. 3. Respondent is, and was during all times mentioned herein, in substantial competition in commerce with other individuals and with corporations, firms, and partnerships engaged in the sale of gold covered, and other kinds of, watch bands. Among such competitors are many who truthfully mark their products as to gold content and otherwise observe the standards adopted by the industry.

¹ Commission order announcing the fruition of said initial decision, was issued on December 3, 1951.

PAR. 4. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his said watch bands in commerce as "commerce" is defined in the Federal Trade Commission Act, the respondent caused certain of the bands sold by him to be stamped with the marking "1/20-12K" and caused said bands to be attached to cards bearing the markings "1/20-12K" GOLD FILLED" and "1/20-12KT. G. F. Top."

PAR. 5. The industry engaged in the manufacture and sale of gold covered articles adopted and put into effect many years ago certain standards and definitions applying to such articles, except watch cases. Such standards provide that a karat is one twenty-fourth part by weight of fine gold in the gold alloy portion of an article and that the weight of the alloyed gold to the weight of the entire metal of the article is expressed by fractions. Said standards also provide that an article having an alloyed gold content of less than one-twentieth shall not be marked "Gold Filled."

PAR. 6. Through the use of the aforesaid printings and markings respondent represented that the gold alloy covering of said bands was one-twentieth of the total weight of the entire metal of said bands, that said bands were gold filled or had gold filled tops, and that the gold alloy covering was of 12 karat fineness.

PAR. 7. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, the gold alloy with which said bands were covered did not constitute one-twentieth of the total weight of the entire metal of the bands and such bands were improperly designated as "Gold Filled" and "Gold Filled Tops." The gold alloy covering of said bracelets was substantially less than of 12 karat fineness.

PAR. 8. The use by the respondent of the aforesaid false, deceptive, and misleading markings has had and now has the tendency and capacity to mislead and deceive a substantial number of wholesalers, retailers, and members of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and caused numbers of the purchasing public to purchase substantial quantities of respondent's products because of such erroneous and mistaken belief. As a result substantial trade has been unfairly diverted to respondent from his competitors and injury has been done by respondent to competition in commerce.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner did, on the 16th day of May, 1951, become the decision of the Commission.

INITIAL DECISION BY WEBSTER BALLINGER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 12, 1950, issued and subsequently served its complaint in this proceeding upon respondent Henry S. Borden, an individual trading as Borden Novelty Co., charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly filed and recorded in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, the answer thereto, testimony and other evidence, all intervening procedure before the examiner being waived; and said trial examiner, having duly considered the record herein finds that this proceeding is not in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Henry S. Borden, is an individual trading as Borden Novelty Co. with his office and principal place of business located at 128 East 28th Street, New York, N. Y.

PAR. 2. The respondent is now and for more than 2 years last past has been engaged in the manufacture, sale and distribution of wrist-watch or bracelet bands, the surface covering of which is composed of gold alloy.

In the course and conduct of his business respondent caused his said products, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in various other States of the United States, and at all times mentioned herein has maintained a course of trade in said products in commerce among and between the various States of the United States. The volume of his said business in such commerce is and has been substantial.

PAR. 3. Respondent is, and was during all times mentioned herein, in substantial competition in commerce with other individuals and

with corporations, firms and partnerships engaged in the sale of wristwatch or bracelet bands surfaced with gold alloy.

PAR. 4. Respondent's watch and bracelet bands are all flexible, and a part expandable; the lower or bottom part of the expandable bands is of stainless steel, constructed of separate cross links, each link being in two or more separate parts, tied or pinned together in the center so as to permit expansion. Immediately above the bottom steel part are metallic springs extending the full length of the band which maintain the entire bracelet assembly, when on the arm, in a closed or contracted state. Above the springs and corresponding in shape to the lower links are caps or crowns, made of base metal, surfaced by a thin layer of gold alloy. The non-expandable watch and bracelet bands are composed of separate pieces of base metal linked or tied together to provide flexibility, surfaced on the top by a thin layer of gold alloy.

PAR. 5. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his said wristwatch or bracelet bands in commerce as "commerce" is defined in the Federal Trade Commission Act, the respondent caused certain of said bands sold by him to be advertised as, and stamped on the metal ends with the marking "1/20-12K" and caused said bands to be advertised as, and mounted on cards bearing the markings "1/20-12 KT. GOLD FILLED" and "1/20-12 KT. G. F. Top."

PAR. 6. Three of said bands respondents sold in commerce were tested at the Bureau of Standards of the United States Department of Commerce to determine the gold content of their top surface coverings. For the purposes of this test, the surface coverings of end pieces and portions, but not all, of the surface coverings were made, the portions selected being believed to be fairly representative of the entire gold alloy surface coverings. The top surface of the gold alloy on one watch band was found to consist of only approximately one-fortieth of 12 karat gold and thirty-nine fortieths base metal. The tests of the remaining two disclosed that the top surface of one contained one-twentieth of 12 karat gold, and the top surface of the third contained slightly in excess of one-twentieth of 12 karat gold.

PAR. 7. In 1933, at the instance of interested manufacturers, a general conference of representative manufacturers, distributors, and users of gold filled and rolled gold plate articles, other than watch cases, adopted a Commercial Standard for those articles, which was in 1934 promulgated by the Department of Commerce as Commercial Standard CS47-34. Those members of the industry who were willing to conform thereto executed a paper entitled "Acceptance of Commercial Standard CS47-34." Those who participated in the

conference and accepted the standard, with but few exceptions, operated in the New England and Atlantic Coast States extending south to and including New Jersey and in which territory the great bulk, but not all, of the gold filled jewelry was then manufactured. The respondent did not participate in the conference nor execute an acceptance of the standard. There was no statutory authority under which the agreement was entered into or promulgated, of which fact the examiner takes judicial notice. It was purely a voluntary arrangement between the industrial participants in the conference and other members of the industry who voluntarily consented to conform thereto. In 1934 and at the time the commercial standard was promulgated expansion wristwatch bands were not manufactured but were in use for bracelets. The standard thus promulgated provided *inter alia* under the heading "Nomenclature and Definitions," as follows:

"6. A karat is $\frac{1}{24}$ th part by weight of fine gold in the gold alloy portion of the article. For example, '10-Karat Gold Filled' means that the gold alloy used on the surface or surfaces contains 10/24ths by weight of fine gold."

Under the heading "Quality Marks";

"10. * * * No article having an alloyed gold content of less than 1/20 shall be marked 'Gold Filled.' * * *"

PAR. 8. Two manufacturers of metallic wrist bands, who subscribed to the commercial standard referred to in the preceding paragraph, testified that, in their opinion, said standard was generally accepted by the industry; that respondent's markings did not conform to said standard in that the letters "GT" meaning "Gold Top," referred to the entire top crown or shell, whereas the top crown or shell of respondent's wrist bands was composed of base metal surfaced on the top with a thin covering of gold alloy which did not constitute one-twentieth of the total weight of the entire metal in the band as required by the Standard. These two manufacturers conform to the commercial standard and make the entire top piece of wrist bands made and sold by them of gold alloy. They place no markings on the metal bands but print on a card upon which the band is mounted the name of the company, or its trade-mark and "1/20-12K. Gold Filled." To what extent this practice is now or has in recent years been followed in the industry is not disclosed, but the evidence of other witnesses clearly indicates that today many manufacturers of metallic bands in the New York area (condition in other areas not being shown) follow the same form of manufacture and markings used by the respondent, and that the commercial standard, set in 1934, by reason of changed conditions in the industry during the last 17 years is not regarded by many as applicable to or controlling the marking of gold alloyed surfaces of wrist bands.

CONCLUSION

The complaint charges a violation of commercial standard adopted in 1933 by those who voluntarily participated in a conference to standardize gold filled or gold surfaced jewelry, other than watches. Adherence to the standard was purely voluntary. Refusal or failure of the respondent to subscribe or conform to the standard was not a violation of law and formed no basis for the charge that respondent had engaged in unfair methods of competition or unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the complaint be, and the same is hereby, dismissed.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Daniel & Bernard Jacobson, of New York City, for respondent.

JOSEPH GOLDSTONE AND ESTHER GOLDSTONE TRADING AS IMPERIAL PEARL SYNDICATE ET AL. Complaint, June 30, 1945.¹ Order, July 11, 1951. (Docket 5348.)

¹ The Commission on April 28, 1947, issued an order amending complaint, as follows:

This matter comes on to be heard by the Commission upon the request of counsel supporting the complaint, that the complaint herein be amended by including the Imperial Pearl Syndicate, an Illinois corporation with its office and principal place of business at No. 5 North Wabash Avenue, Chicago, Ill., as a party respondent, charging such corporation with the same acts and practices charged against the original respondents herein. It appears that respondents Joseph Goldstone and Ester Goldstone are officers of and do now, and have during the period of time mentioned in the complaint herein, controlled the business policies and practices of said corporation, and that the respondents, Joseph Goldstone and Esther Goldstone and the said Imperial Pearl Syndicate, a corporation, have consented and agreed that the said corporation be made a party respondent in the matter and charged with the same acts and practices charged against the original respondents herein, without the issuance and service of formal amended complaint or notice with respect thereto, and that the answer interposed in behalf of Joseph Goldstone and Esther Goldstone be deemed to be the answer of the said Imperial Pearl Syndicate, a corporation, and have further consented and agreed that the testimony taken in this case shall apply to and have the same force and effect as if the said corporation had been named a party respondent in the first instance and had been duly served with a copy of complaint and given due notice of all hearings and other proceedings in the matter, and the Commission having duly considered the matter and the record herein and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, amended by including the Imperial Pearl Syndicate, an Illinois corporation with its office and principal place of business at No. 5 North Wabash Avenue, Chicago, Ill., as a party respondent in this proceeding, and charging said corporation with all the acts and practices charged against the respondents Joseph Goldstone and Ester Goldstone, copartners trading as Imperial Pearl Syndicate;

It is further ordered, That the answer interposed in behalf of respondents Joseph Goldstone and Esther Goldstone be deemed to be and hereby is accepted as the answer of the added respondent, Imperial Pearl Syndicate, a corporation;

It is further ordered, That all testimony taken in the case shall apply to the said Imperial Pearl Syndicate, a corporation, and have the same force and effect as if it had been named a party respondent in the first instance and had been duly served with a copy of complaint and given due notice of all hearings and other proceedings in the matter.

CHARGE: Neglecting, unfairly or deceptively, to make material disclosure as to product being of Japanese or foreign origin; in connection with the wholesale distribution and sale of imported merchandise, including necklaces and other jewelry products made from cultured pearls.

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 Joseph Goldstone and Esther Goldstone, copartners trading as Imperial Pearl Syndicate, hereinafter 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 Joseph Goldstone and Esther Goldstone are copartners trading as Imperial Pearl Syndicate, with their office and principal place of business located at 5 North Wabash Avenue, Chicago, Ill.

PAR. 2. The respondents are now, and for several years last past have been, engaged in the wholesale distribution and sale of imported merchandise, including necklaces and other jewelry products made from cultured pearls, in commerce among and between the various States of the United States and in the District of Columbia.

The respondents cause and have caused their said merchandise, when sold, to be shipped from their said place of business located in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

The said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise among and between the various States of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of their said business in connection with the sale and distribution of cultured pearls imported from Japan and other foreign countries, respondents receive said cultured pearls loosely strung, at which time they are graded, matched, restrung and used in pearl necklaces, earrings, brooches and rings, which are thereafter offered for sale and sold as aforesaid. Large quantities of said cultured pearls are imported by said respondents and are offered for sale and sold to members of the purchasing and consuming public in the manner aforesaid.

PAR. 4. At the time of the importation into the United States of the said cultured pearls and at the time the respondents receive said cultured pearls of foreign origin, such products have been and are all labeled or marked with the word "Japan" or the words "Made

in Japan," or marked with other word or words indicating the country of origin.

After said products are received in the United States, the respondents cause the words or marks indicating their foreign origin to be removed therefrom and thereafter sell and distribute the said products in commerce as above set forth without any words or marks thereon indicating their foreign origin, and cause the said products to be offered for sale and sold to members of the purchasing and consuming public in that condition without informing the purchasers thereof that the said products are of foreign origin.

PAR. 5. There is a well-established practice among merchandisers generally to mark or label products of foreign origin and their containers with the name of the country of their origin in legible English words in a conspicuous place. By reason thereof, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such labeling or marking and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin. When products composed in whole or in substantial part of imported materials are offered for sale and sold in the channels of trade in commerce in the various States of the United States and in the District of Columbia, they are purchased and accepted as and for and taken to be products wholly of domestic manufacture and origin unless the same are labeled, marked or imprinted in a manner which informs the purchaser that said products or substantial parts thereof are of foreign origin.

PAR. 6. There is now, and for several years last past has been, among members of the buying and consuming public, a substantial preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin or from products made in substantial part of materials or parts of foreign origin. During recent years and especially at the present time, there is a decided and overwhelming preference among American purchasers and consumers for products of American manufacture and origin as distinguished from products wholly or partly of Japanese manufacture and origin.

PAR. 7. The practice of respondents as aforesaid of offering for sale, selling, and distributing their cultured pearls of Japanese or other foreign origin, made into pearl necklaces, earrings, brooches, and rings, without any labeling or marking to indicate to purchasers the Japanese or other foreign origin of such products, has had, and now has, the capacity and tendency to, and has and does, mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that said cultured pearl necklaces, earrings, brooches, and rings and all the parts thereof, are wholly of domestic manufacture

and origin, and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondents' said practice places in the hands of uninformed retailers of respondents' cultured pearl necklaces, earrings, brooches, and rings, a means and instrumentality to mislead or deceive members of the buying and consuming public into the false and erroneous belief that said products and all the parts thereof are wholly of domestic origin and thus into the purchase thereof in reliance upon such erroneous belief.

PAR. 8. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Order dismissing amended complaint without prejudice, follows:

This proceeding regularly came on for final consideration by the Commission upon the amended complaint, respondents' answer thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, and recommended decision of the trial examiner, no briefs having been filed or oral argument requested.

The complaint herein charges respondents with the use of unfair and deceptive acts and practices in connection with the offering for sale, sale and distribution of cultured pearl necklaces and other articles of jewelry containing cultured pearls in commerce without disclosing the foreign origin of the cultured pearls. Upon consideration of the entire record herein, the Commission is of the opinion, for the reasons set forth in its opinion accompanying the findings as to the facts and order to cease and desist in the matter of *L. Heller & Son, Inc., et al.*,² Docket No. 5358, that under the circumstances it should not require that necklaces or other articles of jewelry composed of imported cultured pearls be labeled or marked so as to disclose the foreign origin of the cultured pearls.

The Commission having duly considered the matter and being now fully advised in the premises:

It is ordered, That the amended complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further or other action at any time in the future with respect to the subject matter of said complaint as may be warranted by the then existing circumstances.

Before *Mr. John W. Addison*, trial examiner.

Mr. B. G. Wilson and *Mr. Joseph Callaway* for the Commission.

Mr. Jay A. Gilman, of New York City, for respondents.

² 47 F. T. C. 34.

BEN FRIEDLANDER TRADING AS ADELPHI HOSIERY CO. AND LOUIS G. KAUDERER TRADING AS DOUBLE KNIT HOSIERY MILLS. Complaint, August 9, 1946. Order, July 13, 1951. (Docket 5457.)

CHARGE: Misbranding or mislabeling in violation of the Wool Products Labeling Act and the Federal Trade Commission Act; in connection with the offer and sale of men's socks, as set forth in the complaint thereof, as follows:

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Ben Friedlander, an individual trading as Adelphi Hosiery Co., and Louis G. Kauderer, an individual trading as Double Knit Hosiery Mills, hereinafter referred to as respondents, have violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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 Ben Friedlander is an individual trading and doing business as Adelphi Hosiery Company and has his principal office and place of business at 93 Worth Street, New York 13, N. Y. Said respondent is now and for more than 1 year last past has been engaged in the sale of hosiery.

Respondent Louis G. Kauderer is an individual trading and doing business as Double Knit Hosiery Mills and has his principal office and place of business at Riverside, N. J. Said respondent is now and for more than 1 year last past has been engaged in the manufacture of men's socks, some of which are sold and have been sold to the aforementioned respondent, Ben Friedlander, trading as Adelphi Hosiery Co.

PAR. 2. Respondent Louis G. Kauderer, trading as Double Knit Hosiery Mills, is engaged in the manufacture for introduction in commerce, and both of the respondents are engaged in the introduction into commerce and in the sale, transportation and distribution of wool products as such products are defined in the Wool Products Labeling Act of 1939, in commerce, as "commerce" is defined in said Act and in the Federal Trade Commission Act. Many of respondents' said wool products are composed in whole or in part of "wool," "reprocessed wool," or "reused wool," as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondent Louis G. Kauderer, trading as Double Knit Hosiery Mills, has violated the provisions of said act, and said rules and regulations, in the manufacture for intro-

duction into commerce, and both of said respondents have violated the provisions of said act and said rules and regulations in the introduction into commerce and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and the rules and regulations promulgated thereunder.

PAR. 3. Among the wool products manufactured for introduction into commerce by Louis G. Kauderer, trading as Double Knit Hosiery Mills and introduced into commerce, and sold, transported and distributed in said commerce by both the respondents, as aforesaid, were men's socks. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid wool products in violation of the provisions of said act and the said rules and regulations by failing to affix to said wool products a stamp, tag, label or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 percent of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 percent or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of any nonfibrous loading, filling or adulterating matter; (c) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product.

PAR. 4. The aforesaid acts, practices and methods of the respondents, as alleged herein, were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER dismissing complaint without prejudice follows:

This matter came on to be heard by the Commission upon the complaint, respondents' answers thereto, testimony and other evidence, including a stipulation between counsel which was read into the record, and initial decision of the trial examiner which the Commission ordered be considered, and which was considered, a recommended decision, to which no exceptions were filed (no briefs having been filed, and oral argument not having been requested).

The complaint charges the respondents with violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products by failing to affix to said wool products a stamp, tag, label, or other means of identification showing the fiber content thereof and other information required by the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

It appears from the record herein that the respondent L. G. Kauderer, an individual trading as Double Knit Hosiery Mills, at the instance of respondent Ben Friedlander, an individual trading as Adelphi Hosiery Co., shipped approximately 480 dozen pairs of men's socks to Black Manufacturing Co., Seattle, Wash., in July 1945. The socks, which were imperfect in construction and manufacture because they failed to conform to specifications of the United States Army and which were known in the trade as "Army rejects," were composed of 63 percent wool and 37 percent cotton. These socks did not bear a stamp, tag, label, or other means of identification showing the name or registered identification number of the manufacturer or of a seller, and at least 60 dozen pairs of these socks did not have printed thereon legible labels or transfers clearly showing the fiber content as required by the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

It further appears, however, that the aforesaid misbranding, which occurred during the abnormal and unsettled conditions resulting from the war, was inadvertent and partly due to carelessness on the part of an employee of respondent Kauderer; and that, upon having the improper labeling called to their attention, the respondents took immediate steps to fully comply with the requirements of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

The Commission being of the opinion that under the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding against the respondents or to take such further or other action in the future as may be warranted by the then existing circumstances.

Before *Mr. James A. Purcell*, trial examiner.

Mr. J. W. Brookfield, Jr., and *Mr. George M. Martin* for the Commission.

Mr. Herbert E. Kaufman, of New York City, for Ben Friedlander.
Powell & Parker, of Mount Holly, N. J., for Louis G. Kauderer.

SAMUEL LIPMAN, LOUIS B. LIPMAN, FLOYD LEIBOWITZ AND LOUIS WELSCHER DOING BUSINESS AS PETITE MISS CO. Complaint, June 28, 1945. Order, July 26, 1951. (Docket 5345.)

CHARGE: Misbranding or mislabeling in violation of the Wool Products Labeling Act and the Federal Trade Commission Act and using misleading product name or title as to composition of product in violation of last named act; in connection with the manufacture and sale of women's and children's coats and suits and other articles.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Samuel Lipman, Louis B. Lipman, Floyd Leibowitz and Louis Welscher, individually and as copartners, trading and doing business as Petite Miss Co., hereinafter referred to as respondents, have violated the provisions of said acts, and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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. The respondents, Samuel Lipman, Louis B. Lipman, Floyd Leibowitz and Louis Welscher, are copartners, trading and doing business as Petite Miss Co., and have their office and principal place of business at 500 Seventh Avenue, New York, N. Y. Respondents are now and for more than 1 year last past have been engaged in manufacturing and selling women's and children's coats and suits and other articles.

Respondents cause and for more than 1 year last past have caused said products, when sold by them, to be transported from their place of business in the State of New York to various purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business, and for the purpose of inducing the sale of certain of their aforesaid products, the respondents have used and are now using the expression "Ango-Llama" as a trade name for said products which trade name appears on labels attached to the products, and in various other ways.

PAR. 3. Through the use of the aforesaid trade name, in the manner aforesaid, the respondents have represented and are now representing that the said products are made wholly or in part of the hair or wool of the llama.

PAR. 4. The use by the respondents of the trade name, in the manner aforesaid, is false and misleading. In truth and in fact none of the hair or wool of the llama is used in the manufacture of said products or contained therein.

PAR. 5. There is a preference on the part of the substantial portion of the purchasing public for coats and other articles made of llama wool.

PAR. 6. The use by the respondents of the acts and practices hereinabove described has the capacity and tendency to and does mislead and deceive wholesalers and retailers who purchase their said products for resale as to the true fiber content of the products. By said acts and practices respondents also place in the hands of the aforesaid purchasers of their said products for resale a means and instrumentality whereby they may and do mislead and deceive the purchasing public as to the true fiber content of the products. As a result of this deception, substantial quantities of said products are purchased in the belief that they are made wholly or in part of the hair or wool of the llama.

PAR. 7. Since July 15, 1941, among the coats, suits, and other articles manufactured, offered for sale, sold and distributed in commerce, and the coats, suits, and other articles manufactured for introduction into commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, are many which are wool products within the intent and meaning of the Wool Products Labeling Act of 1939, in that such coats, suits and other articles are composed in whole or in part of wool, reprocessed wool or reused wool, as those terms are defined in said act and said rules and regulations.

Among the said wool products offered for sale, sold and distributed by respondents in commerce, as aforesaid, and among the coats manufactured for introduction into said commerce, were certain articles which bore conflicting labels. Attached to some of said articles, particularly coats, were cardboard tags which bore the following information:

Fabric	Content
100% WOOL	
Exclusive of Ornamentation	

MFG. 885	

Manufactured for	

Style	Size

PETITE MISS CO.	

A cloth label sewed to the innerlining near the collar of said garments reads as follows:

The
CUDDLE COAT
ANGO-LLAMA
MOHAIR AND WOOL
100%

Lined with Skinner's Quality Rayon.

PAR. 8. The use on the same coat of the cardboard label which states that said coat is composed of "100% wool" and a cloth label which states that said coat is composed of "mohair and wool" is conflicting and has the capacity and tendency to confuse and mislead and does confuse and mislead the purchasing public as to the fiber content of said garments and is a violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

PAR. 9. In the course and conduct of their business as aforesaid, the respondents have used the statement "Mfg. 885" on the aforesaid cardboard tags.

By the use of said statement, in the manner aforesaid, the respondents represent that there has been assigned to them a manufacturer's number by the agency of the United States Government authorized to assign such numbers to manufacturers of woolen products. In truth and in fact a manufacturer's registered number has never been assigned to respondents by an agency of the United States Government authorized to assign such numbers to manufacturers of woolen products, and the respondents are not entitled to use such representation.

PAR. 10. The aforesaid acts, practices, and methods of respondents, as alleged in paragraph seven and nine herein, constitute misbranding and were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and all the acts, practices and methods of respondents, as alleged therein, are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, the attached initial decision of the trial examiner shall, on July 26, 1951, become the decision of the Commission.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Initial Decision by James A. Purcell, trial examiner: This proceeding came on to be considered by the above-named trial examiner theretofore duly designated by the Commission, upon the complaint of the Commission, the answer of respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint, no proposed findings and conclusions having been presented

by counsel and oral argument not having been requested; and further upon consideration of a motion to dismiss the complaint, without prejudice to the right of the Commission to reopen the matter should future conditions warrant, on the several grounds therein set forth, filed herein by memorandum to the Commission on January 20, 1950, by the attorney in support of the complaint, concurred in by the attorney representing the respondents. Said motion was, by order of the Commission dated November 6, 1950, referred to the trial examiner for his consideration.

The undersigned, being now fully advised in the premises, states as follows:

On June 28, 1945, complaint issued against the four-named respondents, former officers of Petite Miss, Inc. (such corporation not here a respondent), said individuals, as copartners having acquired the business and assets of the corporation, Petite Miss, Inc., and continuing said business under the firm name and style of Petite Miss Co. Respondents were charged with violation of the Federal Trade Commission Act through the deceptive use of the term "Ango-Llama" and also with violation of the Wool Products Labeling Act of 1939 and of the rules and regulations promulgated under the last-named act, the alleged violation consisting of the use of conflicting labels and the unauthorized use of a manufacturers' number in connection with the sale of their woolen products.

As to the use by respondents of the term "Ango-Llama" in connection with the sale of their products, a supplemental investigation of respondents' practices in October of 1947, developed that they no longer used the term "Ango-Llama," and in its place and stead had substituted a trade name or designation of its products which has not been challenged.

As to the charge of violation of the Wool Products Labeling Act: The specific violation charged respondents with the unlawful use of a "Manufacturer's Registered Identification Number," (885), which had been assigned for use on July 2, 1941, to the corporation, Petite Miss, Inc. Respondents, as copartners, after acquiring the assets and good will of Petite Miss, Inc., continued for a time the use of said manufacturer's number 885 under the misapprehension they were legally entitled so to do by reason of their successorship to the business of the corporation. In August of 1945, respondents were notified that the designation number theretofore assigned to Petite Miss, Inc., would have to be canceled, but due to the pendency of the complaint against the company such action was not in fact taken until April 14, 1948, whereupon respondents, copartners trading as Petite Miss Co., applied for assignment of a manufacturer's registered identification number as a result whereof the number 6838 was, on July 9,

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1948, duly assigned and such designation is now in force and effect.

An investigation of the methods of respondents in the conduct of their business in relation to the charges of the complaint, pursued at the instance of this Commission on October 3, 1947, failed to disclose that the respondents were, at that time, violating the provisions of the Wool Products Labeling Act of 1939.

By reason of the foregoing it is the opinion of the trial examiner that no substantial public interest presently exists in the issues raised in the present proceeding, wherefore:

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should further facts warrant.

Before *Mr. James A. Purcell*, trial examiner.

Mr. Russell T. Porter for the Commission.

Mr. Louis H. Solomon, of New York City, for respondents.

FOREST CITY PRODUCTS, INC., AND H. SCHINDLER & Co., INC. Complaint, August 11, 1945. Order, August 3, 1951. (Docket 5366.)

CHARGE: Misbranding or mislabeling as to composition of product; in connection with the sale of waxed thread designed for use in cleaning human teeth.

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 Forest City Products, Inc., a corporation, and H. Schindler & Co., Inc., a corporation, hereinafter 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 Forest City Products, Inc., is a corporation organized and existing under the laws of the State of Ohio with its office and principal place of business at 205 St. Clair Avenue NW., in the city of Cleveland, Ohio.

Said respondent is now, and has been for several years last past, engaged in the sale and distribution of waxed thread designed for use in cleaning human teeth, which said respondent designates and identifies generally by the trade name or brand "Sentinel," to dealers, purchasers, and users thereof located in the various States of the United States and in the District of Columbia.

Said respondent causes and has caused said waxed thread, when sold, to be transported from its principal place of business in Cleveland, Ohio, to the purchasers thereof located in the various States of the United States other than the State of Ohio, and in the District

of Columbia. Said respondent maintains, and at all times, mentioned herein has maintained, a course of trade and commerce in said waxed thread between and among the States of the United States.

PAR. 2. Respondent H. Schindler & Co., Inc., is a corporation organized and existing under the laws of the State of Massachusetts, with its office and principal place of business in the city of Canton, Mass.

PAR. 3. Respondent Forest City Products, Inc., has caused, and now causes, the containers and packages containing said waxed thread and the cards and other advertising material accompanying same, to be inscribed with the words "Dental Floss" and frequently with the additional words "Purified Wax Silk."

Through the use of the inscription "Dental Floss" and the inscription "Purified Wax Silk," respondent Forest City Products, Inc., represents and implies to purchasers and users of said product that it is made from silk fiber, the product of the cocoon of the silkworm. In truth and in fact, the waxed thread offered for sale and sold by said respondent marked, branded, and represented as aforesaid, was not and is not composed of silk fibers, the product of the cocoon of the silkworm, but was and is composed of a thread or fiber known as rayon, produced through a synthetic product, which was substituted for the silk fiber usually used in the manufacture of such thread.

PAR. 4. For many years waxed thread designed for use in cleaning human teeth has been composed of silk fibers, the product of the cocoon of the silkworm, and such thread has been designated, described and referred to in the trade and by the public as "Dental Floss." The term "Dental Floss" has so long been associated by the public with thread for the cleaning of teeth composed of silk fibers, the product of the cocoon of the silkworm, that when this term is used to designate, describe, or refer to thread used for cleaning teeth, such thread is accepted by the public as being composed of silk fibers.

The use of the term "Dental Floss" to designate, describe, or refer to waxed thread designed for use in cleaning human teeth which is composed in whole or in part of fibers other than silk, the product of the cocoon of the silkworm, without disclosing in immediate connection and conjunction therewith, in words of equal conspicuousness, the true name of the fibers contained in such thread, is misleading and deceptive to members of the public in that such thread is accepted as and for thread composed of silk.

PAR. 5. Respondent H. Schindler & Co., Inc., is now and has been for several years last past, engaged in the manufacture and packaging of waxed thread used for the cleaning of human teeth for the respondent Forest City Products, Inc., and respondent H. Schindler & Co., Inc., has placed, and now places, said waxed thread composed of rayon

in said containers or packages bearing the inscription "Dental Floss" and, in some instances, said additional inscription "Purified Wax Silk" thereby assisting and enabling respondent Forest City Products, Inc., to sell and dispose of said waxed thread composed of rayon as and for thread composed of silk, the product of the cocoon of the silkworm.

PAR. 6. The acts and practices of respondents, as herein described, have had and have the capacity and tendency to and do mislead and deceive purchasers and prospective purchasers of said waxed thread by creating the erroneous and mistaken belief that said waxed thread is made from silk fiber, the product of the cocoon of the silkworm, and to cause a substantial number of such purchasers and the general public, acting on such erroneous and mistaken belief, to buy said waxed thread composed of rayon from respondent Forest City Products, Inc.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

COMPLAINT DISMISSED without prejudice by the following order:

This matter came on to be heard by the Commission upon the complaint of the Commission and the respondents' answers thereto admitting all of the material allegations of the complaint and further stating additional facts in explanation of their acts and practices alleged in the said complaint to be in violation of the Federal Trade Commission Act.

The allegations of the complaint, all of which are admitted by respondents, state, among other things: (1) That respondent H. Schindler & Co., Inc., manufactured for respondent Forest City Products, Inc., waxed thread used for the cleaning of human teeth which, upon directions from respondent Forest City Products, Inc., it placed in containers which in all cases were labeled "Dental Floss" and in certain cases had the additional inscription "Purified Wax Silk," (2) that the wax thread in the containers so marked was composed of rayon, (3) that through the use of the inscription "Dental Floss" and the inscription "Purified Wax Silk" respondents have represented that the waxed thread in the containers so marked was composed of silk.

In addition to their admission of these allegations of the complaint, respondents state in their answers: (1) That their rayon product was packaged in containers inscribed "Purified Wax Silk" for a very limited period of time in 1941 while respondent H. Schindler & Co., Inc., used up containers so marked which it had on hand to complete an order for respondent Forest City Products, Inc., when the Office of Production Management unexpectedly froze its stock of raw silk

causing it to shift to rayon as the raw material used in completing the said order, and (2) that the term "Dental Floss" does not identify a product so marked as being made of silk. Also respondents' answers indicate that their acts and practices have greatly changed from their earlier practices as described in the complaint herein. For example, respondent Forest City Products, Inc., states that nylon has replaced rayon in their product and their containers now are labeled to show that their product is manufactured from nylon. Respondent Rain-Beau Products Co., the successor to H. Schindler & Co., Inc., states that it has long discontinued the practice of packaging wax thread for cleaning teeth and now supplies such material to others for packaging as they desire.

Therefore, the Commission being of the opinion that the record is not sufficient to support the allegations of the complaint relating to the unfair and deceptive nature of respondents' use of the term "Dental Floss" in referring to thread made of rayon, and that respondents' use of the term "Purified Wax Silk" in connection with rayon thread was abandoned many years ago and there is no reason to believe that the practice will be resumed; and the Commission being further of the opinion that in the circumstances the public interest would not be served by further proceedings in this matter at this time:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further or other action at any time in the future with respect to the subject matter of this complaint as may be warranted by the then existing circumstances.

Mr. John L. York for the Commission.

Barlow & Barlow, of Providence, R. I., for respondents.

EDWARD F. QUIRKE AND SARA QUIRKE, TRADING AS ELMIRA STEEL Co. Complaint, October 5, 1945. Order, August 16, 1951. (Docket 5387.)

CHARGE: Advertising falsely or misleadingly and misrepresenting directly or orally by self or representatives as to comparative merits of product, guarantee, patented product, tests, indorsements or approval and qualities, properties or results of product; claiming indorsements and testimonials falsely or misleadingly as to or from Department of Commerce; and offering unfair, improper, or deceptive inducements to purchase as to guarantee; in connection with the manufacture and sale of a powdered solvent preparation designed to improve or condition fuel oil and designated as Elmirite.

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 Edward

F. Quirke and Sara Quirke, individually and trading as Elmira Steel Co., hereinafter 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. Respondents Edward F. Quirke and Sara Quirke are individuals trading under the name of Elmira Steel Co., with their principal place of business at 185 Montague Street, Brooklyn, N. Y.

PAR. 2. Respondents are now, and have been for more than 2 years last past, engaged in the manufacture and sale of a powdered solvent preparation designed to improve or condition fuel oil, and designated as Elmirite. Respondents cause and have caused said product, when sold by them, to be transported from their place of business in the State of New York to purchasers thereof located in various States of the United States other than the State of New York. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, in connection with the offering for sale, sale and distribution of their product in said commerce, respondents have made numerous false, deceptive, and misleading statements and representations to purchasers and prospective purchasers of their said product by means of circulars, letters, and pictures, all of general circulation, and also by means of sales manuals and oral representations employed by respondents' sales agents, all descriptive of their said powdered preparation. Among and typical of such representations so made, but not all-inclusive, are the following:

(Pictures of boilers, tanks and buildings wrecked by explosions.)

* * *

We have refrained from offering a "liquid solvent" for eliminating sludge from fuel oil storage tanks, sediment from the lines and carbon from pre-heaters. We can do it—but the customer would buy several hazards. * * * They are inflammable and explosive.

Only a powder such as Elmirite gives a guaranteed prescribed service to heating plants.

Elmirite is - - - - patented * * * tested and approved by Department of Commerce as per claims stated herein.

* * * * *

* * * will eliminate sludge and water from fuel oil tanks.

* * * * *

Reduces oil viscosity.

* * * * *

Changing to heavier from light oil * * * does not necessitate adjusting burners or changing equipment.

* * * * *

Savings up to 6% in oil consumption.

* * * * *

Furnaces will come up to heat in shorter time.

* * * * *

An absence of smoke.

* * * * *

Oil will be cleaner and fire hotter.

* * * * *

There will be no scale formation on alloy steels and particularly little or no scale on straight carbon steels.

* * * * *

Elmirite will remove carbon from burners * * * and will prevent carbon from forming on burners.

PAR. 4. Through the use of the foregoing statements and representations, and others similar thereto but not herein set out, all of which purport to be descriptive of the effectiveness of respondents' powdered preparation in use, respondents represent, directly and by implication, that Elmirite is not as hazardous as liquid solvents; that only a powdered solvent such as Elmirite is guaranteed to furnish prescribed service to heating plants; that Elmirite is patented; that Elmirite has been tested and approved by the Department of Commerce of the United States; that its use will eliminate sludge and water from fuel oil tanks; that Elmirite reduces oil viscosity; that in changing from light to heavier oils, there is no necessity for adjusting burners when Elmirite is used; that savings up to 6 percent in oil consumption result from the use of Elmirite; that furnaces will come up to a heating temperature in a shorter time when Elmirite is used; that Elmirite eliminates smoke and causes the fuel oil to be cleaner, causes the fire to be hotter, and leaves no scale on alloy steel and very little, if any, scale on carbon steel; that Elmirite will remove carbon from burners and will prevent carbon formation on burners.

PAR. 5. The foregoing statements and representations made by respondents are false, deceptive, and misleading in the following among other particulars:

In truth and in fact Elmirite is as hazardous as liquid solvents. Powdered solvents are not guaranteed to furnish prescribed services to heating plants. Elmirite is not a patented product. It has neither been tested nor approved by the Department of Commerce of the United States. Its use will not eliminate sludge and water from fuel oil tanks, nor reduce oil viscosity. Elmirite has no effect upon the adjusting of burners in changing from light to heavy oils. No saving in oil consumption results from the use of Elmirite in fuel. Furnaces will not come to a heating temperature any quicker when Elmirite is used. Elmirite does not eliminate smoke, and it does not cause fuel oil to be cleaner. Fires are no hotter when Elmirite

is added to the fuel oil. Elmirite has no effect on scale. Its use will not remove carbon from burners and will not prevent carbon from forming on burners.

PAR. 6. The use by respondents of the said false and misleading statement and representations in connection with the sale of their aforesaid product has a tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers of respondents' said product into the erroneous and mistaken belief that such statements and representations are true, and because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said product. By these means respondents have further placed in the hands of their dealers, agents, and distributors an instrument by means of which the latter mislead and deceive and have misled and deceived members of the consuming public.

PAR. 7. The aforesaid acts and practices of the respondents, as herein alleged, are all to the injury and prejudice of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's rules of practice, the attached initial decision of the trial examiner shall, on August 16, 1951, become the decision of the Commission.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Initial Decision by JOHN W. ADDISON, Trial Examiner: This proceeding came on to be considered by the above-named trial examiner theretofore duly designated by the Commission, upon the complaint of the Commission, the answer of respondents' testimony, and other evidence introduced in support of and in opposition to the allegations of the complaint and motion to dismiss the complaint without prejudice by counsel supporting the complaint as to which opposing counsel waived answer and agreed that the case be considered without intervening procedure which motion was tentatively denied by order of April 25, 1951 (proposed findings not having been presented and oral arguments not having been requested).

The complaint, issued in October 1945, charged a partnership in Brooklyn, N. Y., with the use of unfair and deceptive acts and practices, in violation of the Federal Trade Commission Act, to promote the sale in commerce of a powdered solvent preparation known as Elmirite designed to improve or condition fuel oil, by misrepresenting its effectiveness in the claims set forth in paragraph 3 of the complaint. When the complaint issued Edward F. Quirke, John S. Quirke, Sara

B. Quirke, Edith Quirke, and Virginia Quirke were partners trading as Elmira Steel Co. John S. and Sara B. died in September 1949 and Virginia retired and the partnership was dissolved, whereupon said Edward K. Quirke and Edith Quirke, trading as Elmira Steel Co., formed a new partnership that succeeded to the business of the dissolved Elmira Steel Co.

The use of many of the challenged claims had been abandoned before the complaint issued and the use of others was later given up. None of them has been used by the successor partnership except those shown in Commission Exhibit 12, which is not circulated among the general public. The only use of it for advertising purposes is in very rare instances where a customer or prospective customer asks for a copy. It has to do not with a stock product but with a coil-cleaning compound made up on order to meet requirements prescribed for troubles described by the customer concerned and is for use by engineers on ships and in plants daily consuming 30,000 to 80,000 gallons of Nos. 2-6 oils.

Respondent Edward F. Quirke says that the new partnership has no intention of resuming the use of any of the other advertisements in evidence.

The trial examiner concludes that the public interest does not require further corrective action by the Commission and that the motion to dismiss without prejudice should be granted. Accordingly,

It is ordered, That the complaint in this proceeding be, and it is, dismissed hereby without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

Before *Mr. John W. Addison*, trial examiner.

Mr. R. A. McOuat and *Mr. Jesse D. Kash* for the Commission.

Perkins, Daniels & Perkins, of New York City, for respondents.

H. WARSHOW & SONS, INC., JOSEPH WARSHOW, JACK J. FELDMAN AND LOUIS J. LAYTON. Complaint, November 2, 1950. Order, September 21, 1951. (Docket 5824.)

CHARGE: Advertising falsely or misleadingly, misbranding or mislabeling, misrepresenting directly or orally by self or representatives and using misleading product name or title as to manufacture or preparation, nature, qualities, properties, or results and quality of product; in connection with the manufacture and sale of elastic fabrics.

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 H. Warshow & Sons, Inc., a corporation and Joseph Warshow, Jack J. Feldman, and Louis J. Layton, as individuals and as officers of said corporation, hereinafter 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, H. Warshow & Sons, Inc., is a corporation organized and existing under the laws of the State of New York. Respondent Joseph Warshow is president and treasurer, Jack J. Feldman is vice president, and Louis J. Layton is secretary of corporate respondent. As such officers these individual respondents formulate, direct, and control the acts and practices of said corporation, including its advertising representations. The principal place of business of said respondents and their post-office address is 15 West Thirty-seventh Street, New York 18, N. Y.

PAR. 2. Respondents are now and for several years last past have been engaged in the manufacture, sale, and distribution, among other things, of elastic fabrics.

In the course and conduct of their said business, respondents cause their said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained a course of trade in said products, in commerce, among and between the various States of the United States.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the sale of their products in commerce, respondents have made statements and representations of general circulation classifying and describing their said elastic fabrics by means of advertisements in newspapers and trade journals, letters, oral statements, labels and invoices. Among and typical of the statements and representations made in the manner aforesaid are the following:

On printed labels attached to their elastic fabrics:

H. Warshow & Sons * * * Style 1140, price \$8.00, Width 60', Color Nude, Nylon Power Net;

POWER NET Woven with Du Pont Nylon;

In newspapers and trade journals:

Fabrics by Warshow. For flexible figure control. "npu" NYLON POWER NET;

In letters to customers:

We beg to advise you that our Quality 8318 is Nylon Power Net;

In statements by respondent Warshow to customers:

I told him it was power net and I approved his use of the power net label;
Feature it as Power Net.

PAR. 4. Through the use of the statements and representations above set forth and others similar thereto not specifically set out herein, respondents represent and have represented their elastic fabric to be a "power net" product, that is, having the quality, characteristics and method of construction of the genuine "power net" as that term is understood and used in the corset, girdle, foundation, and brassiere trade and industry, and as known to the purchasing public.

PAR. 5. In the year 1809 a machine was invented in Nottingham County, England, which was designed to make a simple hexagonal mesh or net having twisted threads that would not ravel. This machine was known as the "bobbinet" loom and it is manufactured at that one place and nowhere else, namely, Nottingham, England. From this machine comes the word "net" as comprised and used in the term "power net." The word "power" in combination with the word "net" was first used in the year 1931, in originating the term "power net." The process of the helical winding of two fibers upon a rubber thread to give an opposed double stretch was patented and the trademark "Lastex" was obtained for this elastic yarn. The idea of using this "Lastex" yarn on the "bobbinet" loom was conceived and tried out in 1932. The result of this experiment was a product with hexagonal mesh, or net design, with opposed diagonal threads which produced the "two-way stretch," a network which had a snap or powerful kick-back. It was strong enough to be used in making corsets, permitting the elimination of the use of whalebone, rattan, horn, turkey quill, laces, rustless steel, and celluloid strips in corset construction. It became a deluxe fabric for making expensive foundation garments. Because the fabric was "net" and made on the "bobbinet" loom, and because it was strong enough to become the "stretch" material of corsets and foundations, it was named in the industry as "power net." It became very popular and the demand exceeded the supply because only a few manufacturers had "bobbinet" machines, which were scarce because of the slow production of them in Nottingham County, England. The term "power net" is and has been extensively used not only by corset and girdle manufacturers in advertisements describing the "two-way stretch" fabric employed by them in making fine foundation garments, but it has also been widely publicized by department stores, and specialty shops selling "power net" articles of wear. "Power net" came to be known to the manufacturers, department stores, specialty shops and to members of the public as a high grade type of fabric made on the "bobbinet" loom with Lastex yarn. This meaning continued unchallenged from the year 1933 to 1948. Many members of the trade and of the purchasing public prefer corsets, girdles, and foundation garments made of the "power net" fabric produced on the bobbinet loom.

PAR. 6. During the year 1948 respondents began using Lastex yarn on knitting machines known as Kayloom, Kidde, Raschel, and Reiner to make elastic fabric, and to advertise and represent such elastic fabric as "power net" as alleged in paragraph 3 of this complaint. The said elastic fabric, advertised and sold by respondents, as aforesaid, is of entirely different construction from power net, being knitted with loops and not woven of intersecting yarns. Respondents' said fabric is an imitation of bobbinet power net. It is not a "net" product, and it does not have the hexagonal mesh of the genuine "power net" product made on the bobbinet machine. It does not have the "double stretch" or "two-way" stretch of power net but stretches more one way than another, and does not have the same appearance on both sides as is true of the power net product. Respondents' product is a knitted fabric which is merely looped while the bobbinet machine produces a product which is genuinely net with an even, powerful two-way stretch.

PAR. 7. The representations of respondents as hereinbefore set forth in describing, designating and advertising its product as "power net" are false and misleading and have the capacity and tendency to deceive manufacturers, department stores, specialty shops, and members of the public alike into the erroneous and mistaken belief that such representations are true, and as a result of such belief, so induced, cause and have caused a substantial portion of the purchasing public to purchase substantial quantities of respondents' said product.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, the attached initial decision of the trial examiner shall, on September 21, 1951, become the decision of the Commission.

ORDER DISMISSING COMPLAINT

Initial decision by Clyde M. Hadley, trial examiner: This proceeding is before the trial examiner for final consideration upon the complaint of the Commission, the answer of respondents, testimony and other evidence introduced in support of and in opposition to the complaint, proposed findings and conclusions submitted by counsel, and oral argument of counsel.

Respondents H. Warshow & Sons, Inc., a New York corporation, and its officers, Joseph Warshow, Jack J. Feldman, and Louis J. Layton, all located at 15 West Thirty-seventh Street, New York 18, N. Y.,

are engaged in the manufacture, sale, and distribution of elastic fabrics, in which they maintain a course of trade in commerce among various States of the United States. The complaint herein charges respondents with unfair and deceptive acts and practices in commerce by falsely and misleadingly representing in their advertising that their elastic fabric is a power net product, with the characteristics of genuine "power net" as understood in the corset, girdle, foundation, and brassiere trade and industry, and known to the purchasing public.

There is only one issue herein: Whether the term "power net" as applied to two-way stretch meshed fabrics has acquired a secondary meaning, with the trade and consuming public, that any such fabric is made only on a bobbinet machine; or whether such term "power net" is and always has been known in the trade and to purchasers generally as descriptive of a fabric having certain characteristics, rather than as indicative of the type of machine upon which it was made.

As shown by the record, the great majority of fabrics advertised today as "power net" are made on machines other than bobbinet, by a knitting process, whereas the bobbinet fabric is woven on a loom. The characteristics distinguishing "power net," as generally understood by the trade and the public, are a hexagonal mesh, and a two-way stretch imparted to the fabric by means of a component of elastic yarn.

While some testimony appears in the record that a product made on respondents' knitting machines might ravel or slip, whereas the bobbinet weave, due to its knotted construction, would not, this feature was not mentioned in advertising, nor stressed by witnesses sufficiently to indicate substantial public concern or even knowledge thereof, in connection with power net; thus it would not be a determining factor in specifying "power net."

Since the record shows that all elastic fabrics designated "power net" possess, and have possessed, the two essential characteristics—hexagonal mesh, with two-way stretch achieved by the constituent of elastic yarn—and evidence is lacking that either the trade or the public is concerned as to whether such power net be knitted or woven, the question resolves itself into whether, in the public interest, the Federal Trade Commission should restrict use of the term "power net" to woven fabrics made only on bobbinet machines, on the ground that said term has acquired a secondary meaning to this effect among the trade and the purchasing public.

The term "secondary meaning" has been judicially defined as a word or phrase which might "have been used so long and so extensively by one producer with reference to his article that, in that trade and to that branch of the purchasing public, the word or phrase had come to mean that the article was his product; in other words, had

come to be, to them, his trademark." In arriving at this definition, the courts have considered how the particular term or name may or might have become established in the mind of the public, including the length of time the term was used, the advertising involved, and public acceptance of the meaning of the term. No time-limit has been set for the emergence of a secondary meaning; this varies with the circumstances of the case. The identity of the manufacturer does not appear essential so long as the term connotes to the trade and the public only one machine or process as the source of the designated article.

According to the evidence, the fact that when power net was first made, the bobbinet machine was the only machine extant capable of making net, appears never to have been a factor in determining the recognized meaning of "power net." "Net" is included therein in its pristine significance as a generic term denoting a meshed fabric. The word "power" as used therein was intended and promoted by the United States Rubber Co., the originator in 1935 of Lastex "power yarn," to describe all fabrics "both knitted and woven" containing that yarn, without giving any fabricator exclusive right to such use of the word "power." In fact, free use of the word "power" in connection with any fabric so constructed, as in "power satin," "power leno," etc., was encouraged and fostered.

The fortuitous circumstance that for a time "power net" was made only on bobbinet machines—because they were then the only ones available—was nullified and became of no consequence immediately upon the advent of other machines suitable for this purpose. The term "power net" has never been applied to a fabric not possessing the component of power yarn, nor has it ever been linked in any manner with any particular machine. This fact has been tacitly recognized by the first manufacturer to produce power net on a bobbinet machine, who initially designated its product "Elastonet," later "power net," and finally adopted therefor, in 1951, the legend "Power Nets Made on Bobbinet Machines," to indicate the mechanical source of its particular product.

Other advertisers used designations such as "Power Net Elastic" (1935), "Power Net Lastex" (1939), and "Power Net Fabric . . . Knit or Woven of 'Lastex' Yarn" (1939). Eventually one manufacturer, in 1950, adopted the term "power bobbinet net." In all the "power net" advertising contained in the record (covering the span from 1935 to date) the word "bobbinet" does not once appear until 1950. Hence, it becomes apparent that no association of the term "power net" with the bobbinet machine ever existed in the mind of the purchasing public to develop a secondary meaning.

In the light of such judicial understanding of "secondary meaning," and as shown by the record herein, the term "power net," as com-

monly used by the trade and the general public, refers, not to a fabric made on a certain machine or by a certain manufacturer, but to a fabric possessing certain characteristics: specifically, hexagonal mesh and two-way stretch imparted thereto by a component of elastic yarn. These characteristics are possessed in common by the meshed fabric with two-way stretch, known to the trade as "power net," produced on both bobbinet machines and machines other than bobbinet. It follows, therefore, that no secondary meaning connoting bobbinet fabrication inheres in the term "power net."

Inasmuch as the greater weight of reliable, probative, and substantial evidence establishes the truth of respondents' representations, it is found that the charge of unfair and deceptive acts and practices in commerce is unproven; therefore

It is ordered, That the complaint be, and it hereby is, dismissed.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. R. L. Banks, *Mr. Morton Nesmith*, and *Mr. J. M. Doukas* for the Commission.

Mr. Herman Mendes, of New York City, for respondents.

GARY JUNIOR CO., INC., OSCAR ZINN AND IRVING WILENSKY.
Complaint, March 26, 1951. Order, October 23, 1951. (Docket 5863.)

CHARGE: Misbranding or mislabeling and neglecting, unfairly, or deceptively, to make material disclosure as to composition of product, in violation of the Wool Products Labeling Act of 1939, and the Federal Trade Commission Act; in connection with the introduction and manufacture for introduction and sale of wool products which include ladies' dresses and other articles of ladies' apparel which were made by respondents from a fabric designated as "Parker-Wilder Range 1121."

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Gary Junior Co., Inc., a corporation, Oscar Zinn and Irving Wilensky, individually, and as officers of said corporation have violated the provisions of said acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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. Gary Junior Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 237 West Thirty-fifth Street, New York, N. Y.

Respondents Oscar Zinn and Irving Wilensky are president and secretary-treasurer, respectively, of corporate respondent, and in such capacity they formulate and execute its policies and practices. Their business address is the same as that of corporate respondent.

PAR. 2. Subsequent to January 1, 1950, respondents have introduced into commerce, manufactured for introduction into commerce, and offered for sale, sold, and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein. The said wool products include ladies' dresses and other articles of ladies' apparel which were made by respondents from a fabric designated as "Parker-Wilder Range 1121," purchased from Strand Woolen Co., Inc.

PAR. 3. Upon the labels affixed by respondents to the said articles appeared the following:

55% wool
45% rayon

PAR. 4. The said products were misbranded within the intent and meaning of the said act and the rules and regulations promulgated thereunder, in that they were falsely and deceptively labeled with respect to the character and the amount of their constituent fibers. In truth and in fact, the said products were not 55 percent wool, as "wool" is defined in the said act; the aggregate of the woolen fibers therein constituted less than 55 percent of the said products and they contained more than 45 percent of rayon. The said articles were further misbranded in that the labels affixed thereto did not show the aggregate of all other fibers, each of which constituted less than 5 per centum of the total fiber weight.

PAR. 5. The person by whom the piece goods, from which said products were made by respondents, were manufactured for introduction into commerce affixed thereto labels and tags as required by said act containing information with respect to its fiber content as follows:

20% wool
30% reprocessed wool
50% rayon

Respondents have further violated the provisions of the Wool Products Labeling Act of 1939 by substituting for said tags and affixing to the said products tags and labels containing information set forth in paragraph three herein with respect to the content thereof which was not identical with the information with respect to such content upon the tags and labels as affixed to the wool product from which said products were made by the person by whom it was manufactured for introduction into commerce.

PAR. 6. The aforesaid acts and practices of respondents as herein alleged were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and consti-

tuted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner shall, on October 23, 1951, become the decision of the Commission.

ORDER DISMISSING COMPLAINT

Initial Decision by Frank Hier, trial examiner.

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission on March 26, 1951, issued and subsequently served its complaint in this proceeding upon the respondents Gary Junior Co., Inc., a corporation, and Oscar Zinn and Irving Wilensky, individually, and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. After the issuance and service of said complaint and the filing of respondents' joint answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. The taking of testimony was closed after all counsel rested, and thereafter counsel on both sides submitted proposed findings and conclusion for the consideration of the trial examiner. Thereafter counsel in support of the allegations of the complaint moved to set aside the closing order and to reopen the proceeding in order to offer additional evidence, which motion was denied by the trial examiner. Thereafter the proceeding regularly came on for final consideration by said trial examiner on the complaint, the answer thereto, testimony, and other evidence, proposed findings as to the facts and conclusions presented by counsel, and said trial examiner, having duly considered the record herein, finds that this proceeding was brought in the interest of the public, and that there is insufficient reliable, definite, and substantial evidence to sustain the allegations and charges of the complaint.

The complaint charges misbranding as to the fiber content of respondents' dresses. The correct fiber content of a fabric known as Parker-Wilder Range 1121 Gordon Mills was proved as 20 percent wool, 30 percent reprocessed wool and 50 percent rayon, and it was

further established that respondents purchased some 8,700 yards thereof correctly labeled as to content, from which they manufactured some 4,000 dresses, all of which were sold, a substantial portion at least being sold in interstate commerce. A dress manufactured by respondents, and purportedly sold by them to Jay's of Washington, D. C., was introduced in evidence. There was no definite evidence, however, that this dress was made from the fabric in question. The Federal Trade Commission investigator testified it looked like one (Tr. 56, 58), the respondents were uncertain at first but later identified it from the style number as being made from another fabric containing 55 percent wool, 45 percent rayon (Tr. 85). Since the tag, which was purportedly on the dress at the time of purchase, although never proved to be affixed thereto, bore this content as a legend, the connection between tag and dress became immaterial. The dress was never exhibited to the fabric seller for identification and connection with the fabric sold.

There was also testimony by an investigator that he had found 300 dresses hanging on racks in respondents' warehouse, of the same style, of which 150 were tagged as containing 20 percent wool, 30 percent reprocessed wool and 50 percent rayon, the remaining 150 being tagged as containing 55 percent wool, 45 percent rayon. Since he believed all the dresses to be made from the same fabric, Parker-Wilder Range 1121, he called respondents' attention to this and they, accepting without further examination his statement, changed the tags on the last batch to read 20 percent wool, 30 percent reprocessed wool and 50 percent rayon. None of these dresses had been sold at the time.

This proof, resting only, as it does, on the investigator's belief based on his prior examination of the fabric (Tr. 57-59), that these 150 dresses were made from Parker-Wilder Range 1121, the fiber content of which was known, coupled with respondent Wilensky's statement in one place in the transcript that he did not know he had Range 1121 (Tr. 33), and in another that the 150 dresses could have been made from that fabric but he did not know, and the further fact that all of respondent Wilensky's knowledge came from the investigator, which he accepted without inquiry or examination (Tr. 7, 26, 27, 32; Cx. 3, 48, 54, 55, 61), is too unsubstantial and indefinite on which to make a positive finding. The trial examiner is of the opinion, on the whole record, that the evidence of misbranding fails on vital points from haziness, uncertainty and contradiction.

It is accordingly ordered that the complaint herein be, and the same hereby is, dismissed as to all respondents.

Before *Mr. Frank Hier*, trial examiner.

Mr. Jesse D. Kash and *Mr. C. J. Aimone* for the Commission.

Curran & Stim, of New York City, for respondents.

AMERICAN PHARMACEUTICAL Co. Complaint, April 18, 1950. Order, October 30, 1951. (Docket 5765.)

CHARGE: Advertising falsely or misleadingly as to history, qualities, properties or results and safety of product and furnishing means and instrumentalities of misrepresentation and deception through supplying false and misleading advertising mats and display cards; in connection with the manufacture and sale of a preparation containing drugs and designated "C. S. A. Tablets."

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 American Pharmaceutical Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, American Pharmaceutical Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey with its principal office and place of business at 525 West Forty-third Street, New York, N. Y.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the business of manufacturing, offering for sale, selling and distributing a preparation containing drugs as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for its said preparation and the formula and directions for use are as follows:

Designation: C. S. A. Tablets

Formula: Each tablet contains:

Calcium Succinate 2.8 grs.

Aspirin 3.7 grs. plus excipients

Directions for use:

The directions for use appearing on the label are as follows:

When indicated, start treatment with a dose of 3 tablets 4 times daily taken preferably at meal times and before retiring. After relief from acute pain has been achieved, reduce dose to 2 tablets 4 times daily and continue for 4 to 6 weeks. Then 1 tablet 4 times daily should be taken for a period of several months to prevent recurrence of pain.

If fever or other untoward symptoms occur, the physician should be consulted.

Children under 14 years of age should receive treatment only upon medical advice.

Tablets should be swallowed whole with a generous amount of water.

PAR. 3. Respondent causes said preparation, when sold, to be transported from its aforesaid place of business in the State of New York to purchasers thereof located in various States of the United States, other than the State of New York, and in the District of Columbia.

Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said preparation in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of its said business respondent, subsequent to March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning said preparation by means of the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to booklets entitled "C. S. A. Therapy," "A. P. C. Products Catalog," and advertising mats and display cards furnished to dealers; and respondent has disseminated and has caused the dissemination of advertisements concerning said preparation, including but not limited to the advertisements referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Through the use of the said advertisements respondent has made, directly and by implication, the representations shown in the following subparagraphs, identified as (a) to (f) inclusive. The said advertisements, by reason of the said representations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act by reason of the true facts which are set forth in subparagraphs (1) to (7) inclusive.

(a) That C. S. A. Tablets, taken as directed, are adequate, effective and reliable treatment for all kinds of arthritis and rheumatism.

(1) C. S. A. Tablets, however taken, are not an adequate, effective and reliable treatment for any kind of arthritis or rheumatism.

(b) That C. S. A. Tablets, taken as directed, will arrest the progress of, will correct the underlying causes of, and will cure arthritis and rheumatism and prevent their recurrence.

(2) C. S. A. Tablets, however taken, will not arrest the progress of, will not correct the underlying causes of and will not cure arthritis or rheumatism, nor prevent their recurrence.

(c) That C. S. A. Tablets, taken as directed, are an adequate, effective and reliable treatment for the symptoms of arthritis and rheumatism and will afford complete and immediate relief from the aches, pains and discomforts thereof.

(3) C. S. A. Tablets are not an adequate, effective or reliable treatment for the symptoms of arthritis or rheumatism; the aches, pains and discomforts incident to those ailments may be of such nature that they will be in no way alleviated by the use of C. S. A. Tablets, however taken, and in other cases the relief afforded will be limited to such degree of temporary and partial analgesic and antipyretic effects as their aspirin content may afford in the individual case.

(4) The effect of C. S. A. Tablets when used in arthritis and rheumatism is limited to temporary and partial relief of minor aches and pains and fever.

(d) That C. S. A. Tablets can be used over a prolonged period of time without harmful effects on the body.

(5) The prolonged administration of C. S. A. Tablets may produce harmful effects on the body.

(e) That C. S. A. Tablets will not cause gastric distress.

(6) C. S. A. Tablets may cause gastric distress.

(f) That C. S. A. Tablets are a new discovery of medical science for relief of arthritis and rheumatism.

(7) C. S. A. Tablets are not a new discovery of medical science for relief of arthritis and rheumatism.

PAR. 6. Respondent's practice of placing, in the hands of its dealers, advertising mats and display cards containing some or all of the representations charged herein as being false and misleading, furnishes such dealers a means and instrumentality designed to enable and capable of enabling said dealers to mislead and deceive the purchasing public as to the therapeutic value of respondent's product.

PAR. 7. The aforesaid acts and practices of respondent have had the capacity and tendency to mislead and deceive, and have misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations and statements contained therein were true and into the purchase of substantial quantities of C. S. A. Tablets by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Service of the initial decision of the trial examiner in this proceeding having been completed on the 30th day of January 1951, and no notice of intention to appeal having been filed; and

The Commission having, on the 28th day of February 1951, extended until further order of the Commission the date on which said initial decision of the trial examiner would otherwise become the decision of the Commission; and

The Commission having duly considered said initial decision of the trial examiner and the record herein, and it appearing that the respondent tendered a stipulation and agreement which the trial examiner accepted, subject, however, to the Commission's approval and acceptance thereof, and that the trial examiner, in accordance with the provisions of said stipulation and agreement, ordered that

DISMISSALS—AMERICAN PHARMACEUTICAL CO.—ORDER 1535

this proceeding be closed without prejudice to the right of the Commission to reopen the same and resume trial thereof in accordance with its regular procedure should the facts warrant such action; and

The Commission being of the opinion that said stipulation and agreement constitutes an adequate disposition of this proceeding and that the public interest does not require further corrective action at this time:

It is ordered, That said stipulation and agreement be, and the same hereby is, approved and accepted.

It is further ordered, That the attached initial decision of the trial examiner shall, on the 30th day of October 1951, become the decision of the Commission.

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

Commissioner Ayres dissenting.

ORDER CLOSING CASE WITHOUT PREJUDICE

Initial Decision by Frank Hier, trial examiner.

Counsel supporting the allegations of the complaint, joined by counsel for respondent, moves to close this proceeding without prejudice to reopening the same, should the facts warrant. This motion is based on an affidavit of respondent's president stating that upon issuance of the complaint, respondent immediately stopped the advertising and representations complained of, and upon an agreement executed by the president of respondent, but as yet unaccepted and unexecuted by the Commission, that respondent will not in the future resume the representations attacked in the complaint. Counsel in support of the complaint accepts the facts in the affidavit as true and the agreement not to resume as made in good faith, and urges that the public interest will be best served by granting the motion. Nothing to the contrary appearing, the trial examiner accepts the stipulation for and on behalf of the Commission, subject however to the Commission's subsequent approval and acceptance thereof in the public interest, and therefore grants the motion. Accordingly,

It is ordered, That this proceeding be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same and resume trial thereof in accordance with its regular procedure should the facts in its judgment warrant such action.

Before *Mr. Abner E. Lipscomb*, trial examiner.

Mr. Edward F. Downs for the Commission.

Mr. Albert T. Scharps, of New York City, for respondent.

J. KAY DAVIDSON, JR., NORTON A. DAVIDSON, ETC., TRADING AS STONE MOUNTAIN GRIT CO. Complaint, March 1, 1949. Order, November 26, 1951. (Docket 5642.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product; in connection with the sale of a poultry grit designated Stonemo Granite Grit.

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 J. Kay Davidson, Jr., Norton A. Davidson, Charles L. Davidson, Elizabeth L. Davidson, Florre Jo E. Davidson, and Mamie St. J. Davidson, individually and as copartners, trading and doing business as Stone Mountain Grit Company, hereinafter 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. Respondents J. Kay Davidson, Jr., Norton A. Davidson, Charles L. Davidson, Elizabeth L. Davidson, Florre Jo E. Davidson, and Mamie St. J. Davidson are individuals and copartners trading under the name Stone Mountain Grit Company with their principal office and place of business located in Lithonia, Georgia.

PAR. 2. These respondents are now and have been for more than one year last past engaged in offering for sale, selling and distributing a poultry grit designated Stonemo Granite Grit.

In the course and conduct of their said business, the respondents cause and have caused said poultry grit, when sold, to be transported from their aforesaid place of business in the State of Georgia to the purchasers thereof located in the various States of the United States other than the State of Georgia and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said poultry grit in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said poultry grit in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondents have made certain statements and representations concerning their said poultry grit, said statements and representations appearing in newspapers, trade journals, folders, circular letters and other advertising media. Among and typical of such statements and representations, but not all inclusive, are the following:

* * * it keeps * * * birds in better health, free from crop bound and digestive troubles and effects a definite saving in feed consumed—up to 20%.
* * * STONEMO * * * keeps digestive systems healthy!

It assures better use of available feed and improved flock health.

* * * for each 1¢ spent for STONEMO a saving of 5¢ in feed costs is very certain to occur. More important than the saving in feed costs is the benefits your birds secure through the improved digestion. They grow and thrive better—are naturally healthier—produce better and live longer. We know that the foregoing is absolutely true * * *

A hen will eat only 3 to 5¢ worth of STONEMO Granite Grit in one year but—Oh, Brother! What that low cost means to the poultryman in better health for his hens, lower mortality, better use of feed and a definite feed saving!

* * * —helps to build big lusty pullets that are disease resistant * * *

* * * STONEMO * * * It makes feed go 20% further.

* * * You can feed the fifth hen free.

20% better digestibility means 20% saving in feed costs.

STONEMO saves up to 20% on feed.

There is a definite saving in feed costs when you feed STONEMO Granite Grit.

PAR. 4. By and through the use of the statements and representations set out in Paragraph Three above, and others of similar import, but not specifically set out herein, the respondents represent and have represented directly and by implication that their poultry grit, Stone-mo Granite Grit, when used with poultry ration will keep poultry free of digestive or crop-bound troubles; will keep digestive systems healthy; will improve flock health; will increase egg production; will reduce mortality; will assure disease-resistant and long-lived birds; will make feed go substantially further thereby effecting a substantial saving in feed consumed.

PAR. 5. The foregoing statements and representations are false, deceptive and misleading. In truth and in fact, respondents' said poultry grit will not, when used with poultry ration, keep poultry free of digestive or crop-bound troubles; nor will it keep digestive systems healthy. It will not under all conditions improve flock-health or increase egg production. It will not generally reduce mortality, nor will it assure disease-resistant or long-lived birds. It will not effect any substantial saving in feed consumed.

PAR. 6. The use of respondents of the false, deceptive and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true, and into the purchase of respondents' said product as a result of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This matter came on to be heard by the Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence taken before a trial examiner of the Commission

theretofore duly designated by it, the trial examiner's recommended decision and exceptions thereto by counsel for respondents, and briefs and oral argument of counsel.

The complaint alleges that the respondents, copartners trading as the Stone Mountain Grit Company, falsely represented that their poultry grit when used with poultry ration:

1. Will effect a substantial saving in feed consumed, and will increase egg production; and
2. Will keep poultry free from digestive or crop-bound troubles, keep digestive systems healthy, improve flock health, reduce mortality and assure disease-resistant and long-lived birds.

The record shows that respondents discontinued the complained of representations approximately one year prior to the issuance of the complaint herein.

Respondents' grit consists of small, uniformly graded pieces of crushed granite rock. This grit when consumed by poultry lodges in the gizzard. The gizzard is a muscular organ which uses such grit to crush and grind food eaten by the poultry and thus performs an important function in aid of the digestive process. Without any hard objects in the gizzard, poultry are unable to adequately digest a diet consisting of anything of a fibrous nature or anything coarser than finely ground grain mash.

Some raisers confine their poultry to restricted areas and feed them finely ground grain mashes only. Others confine their poultry but feed them a diet of mashes and whole or coarsely ground grain. Still others do not confine their flocks, which, therefore, in addition to being supplied with a diet consisting of mashes and whole or coarsely ground grain in varying degrees, are free to pick up grass, seeds and various other coarse and fibrous foods. The record shows that if grit is furnished to confined poultry fed a diet containing no coarse or fibrous material requiring grinding, no appreciable saving in feed results. However, furnishing a grit to confined poultry fed a coarser diet results in a better utilization of such diet and therefore a substantial saving in feed. Where poultry are not confined but are permitted to range, they require some kind of grit to properly utilize the coarse and fibrous food thus made available to them. The amount of savings in feed which results from supplying such flocks with commercial grit depends upon the amount of suitable sized gravel present in the area to which the poultry have access. There are certain large areas of the country in which there is not a sufficient amount of gravel naturally available in the pastures to supply the needs of poultry. In such areas the supplying of grit results in great savings in feed. The greater weight of the evidence shows that even in those areas where there is available an ample supply of suitable gravel, furnishing a commercial grit may result in a substantial saving in feed costs.

Where poultry are restricted to a diet not requiring any grinding in the digestive process, no saving in feed will result from supplying them with a grit. But the Commission is of the opinion the knowledge that the principal purpose of grit in a poultry diet is as a grinding agent is so common to poultry raisers that respondents' representations do not have the tendency or capacity to mislead poultry raisers into believing that they would effect a substantial saving in feed by adding respondents' grit to a poultry diet which contains nothing requiring grinding. The Commission is therefore of the further opinion that the greater weight of the evidence of record does not support the allegations of the complaint relating to respondents' representations that the use of their product will effect a substantial saving in feed consumed.

The Commission has not considered herein the question of whether or not respondents' representations that the use of their grit will result in a 20 percent saving in feed are unfair and deceptive in that 20 percent is greater than the actual saving. The complaint does not raise this question, being limited on this point to the allegation that respondents falsely represented that the use of their grit will effect a substantial saving in feed consumed.

The record further shows that better utilization by poultry of their feed results in better egg production. Therefore, for the same reasons as stated above in connection with respondents' representations relating to savings in feed consumed, the Commission is of the opinion that the greater weight of the evidence of record does not support the allegations of the complaint relating to respondents' representations that the use of their grit will increase egg production.

The record also shows that the presence of grit in their diet is a factor tending to improve the health of poultry. Its grinding action tends to assure proper utilization of their feed, thus adding to their general health. Its grinding action also prevents impaction in the digestive tract of grass and other feeds containing a large amount of fiber. Also, the presence of grit toughens the lining of the gizzard, preventing erosion which frequently occurs in poultry having no grit or gravel available. However, the use of respondents' grit does not cause poultry to be immune to disease or to all digestive trouble and will not always improve flock health, reduce mortality or assure disease-resistant and long-lived birds. However, as above set out, the use of their grit will in many cases and to some extent accomplish the results which respondents' complained of representations claimed would be accomplished in all cases and to an absolute extent. Also, the record shows that respondents discontinued all of these unfair and deceptive representations approximately one year before the issuance of the complaint herein. They have employed a new agency to handle

their future advertising, and they assure the Commission that these representations will not be repeated.

The Commission having no reason to believe that respondents will resume these discontinued representations, and upon all of the above circumstances being of the opinion that the public interest does not require further corrective action in this proceeding at this time:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further or other action at any time in the future with respect to the subject matter of this complaint as may be warranted by the then existing circumstances.

Before *Mr. Henry P. Alden*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Robert P. McLarty, of Atlanta, Ga., for respondents.

NATIONAL RETAIL FURNITURE ASSOCIATION, ET. AL. Complaint, September 11, 1946.¹ Order, December 7, 1951. (Docket 5324.)

CHARGE: Combining or conspiring to restrain and monopolize trade through so-called "uniform standards of fair commercial practices", involving the controlling of distributive channels through boycotts, blacklists, and the cutting off of supplies of others; and the putting into effect of a "Trade Relations Movement", concerned with prohibiting direct employer-employee selling in large organizations; in connection with the offer and sale of furniture and associated products or articles.

AMENDED COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named specifically and by reference in the caption hereof have violated the provisions of section 5 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent National Retail Furniture Association, sometimes hereinafter referred to as respondent National Association, is a nonprofit membership corporation organized and existing under the laws of the State of Illinois, with its principal office at 666 Lake Shore Drive, Chicago, Ill., composed of various trade associations, such as are referred to in the above caption, whose members are, in part at least, engaged in the manufacture of, or dealing in, furniture and associated products or articles, and of corporations, partnerships and individuals so engaged.

The following named individuals are or have been during the time

¹ Amended.

hereinafter mentioned officers of said respondent National Association, and as such, and individually, are designated as respondents herein:

Lorenzo Richards, President.

Jurgen Petersen, Treasurer.

W. J. Cheyney, Vice president.

Roscoe R. Rau, Executive vice president and secretary.

The following named individuals are or have been during the time hereinafter mentioned members of the Board of Directors of respondent National Association, and as such, and individually, are named as respondents herein:

J. H. Huffard

Edward Adaskin

C. Ludwig Baumann

Louis Cohen,

Julius Goodman

Clarence Haverty

Howard B. Josselyn

Kalter Kleeman

Homer Ladd

Leo Lehman

R. H. Levenson

Richard Link

H. A. Moran

W. W. Morrison

Neil Petree

Maxwell S. Porter

Harold M. Ruben

Frank L. Sedgwick

R. F. Shawan

William L. Shearer, III

E. N. Short

E. B. Spangenthal

Harry Stern

Loren Troost

John Van Den Berg.

and the above-named officers.

The membership of respondent National Association changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and directors hereinabove named as respondents, as such officers and board members, are also made respondents as representatives of all the members of said association, including those members not herein specifically named.

PAR. 2. Respondents American Retail Federation, sometimes hereinafter referred to as respondent American Federation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office at 1627 K Street NW., Washington, D. C., composed of trade associations, corporations, partnerships, and individuals.

The following named individuals are or have been during the time hereinafter mentioned officers of said American Federation, and as

such, and individually, are named as respondents herein:
Delos Walker, Chairman of the board.

Bruce MacLeish	} Vice Chairmen
B. Earl Puckett	
Clarence Haverty	

Walter Morrow, President.
William Schear, Treasurer.
W. F. Wade, Jr., Secretary.

The following named individuals are or have been during the time hereinafter mentioned members of the executive committee and trustees of said American Federation, and as such, and individually, are named as respondents herein:

Edward N. Allen	Clarence Haverty
Ralph F. Burkard	A. W. Hughes
T. V. Houser	Harold M. Lane
Nathan S. Sachs	Bruce MacLeish
Thomas S. Smith	E. C. Mauchly
R. Don Herod	Morton J. May
Fred Lazarus	B. Earl Puckett, and
Malcolm McNaughten	Delos Walker
Barent S. Vrooman	

The membership of respondent American Federation changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers, members of the executive committee, and trustees hereinabove named as respondents, as such officers, members of the executive committee, and trustees, are also made respondents as being representatives of all the members of said respondent American Federation, including those members not herein specifically named.

PAR. 3. Respondent Illinois Federation of Retail Associations, sometimes hereinafter referred to as respondent Illinois Federation, is a nonprofit corporation organized and existing under the laws of the State of Illinois, with its principal office at 140 South Dearborn Street (suite 737), city of Chicago, State of Illinois.

The following named individuals are or have been during the time hereinafter mentioned officers of said Illinois Federation, and as such, and individually, are named as respondents herein:

Joseph C. Spiess, President.
M. C. Penticoff, Vice president.

Earl Kribben, Treasurer.

Joseph T. Meek, Executive secretary.

The following named individuals are or have been during the time hereinafter mentioned members of the Board of Directors of said respondent Illinois Federation, and as such, and individually, are named as respondents herein:

Al Baskin	Elmer F. Wieboldt
R. M. Black	George Madigan
C. M. Broughton	Leon Mandell
Guy Deetz	J. C. Amis
Herbert Giessing	C. G. Gilbert
Robert Halbach	D. F. Kiesau
Harold Lund	J. D. McCarthy
Charles Osheroff	A. S. Bauer
O. L. Parr	J. C. Brennan
J. A. Long	D. D. Richards, and
Earl Swingle	A. L. Starshak
S. P. Carson	

and the above-named officers.

The membership of respondent Illinois Federation changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and directors hereinabove named as respondents, as such officers and board members, are also made respondents as being representatives of all the members of respondent Illinois Federation, including those members not herein specifically named.

PAR. 4. Respondent Cleveland Retail Furniture Association sometimes hereinafter referred to as respondent Cleveland Association is a voluntary nonprofit association, with its principal office at 5432 Broadway, Cleveland, Ohio.

The following named individuals are or have been during the time hereinafter mentioned officers of said Cleveland Association, and as such, and individually, are named as respondents herein:

R. W. Young, President.
 B. W. Amster, Vice president.
 A. L. Federman, Treasurer.

The following named individuals are or have been during the time hereinafter mentioned members of the executive committee of re-

spondent Cleveland Association, and as such, and individually, are named as respondents herein :

B. W. Amster	H. E. Marder
E. W. Brown, Jr.	B. W. Marks
F. L. Grdina	L. C. Reidy, and
A. L. Kaufmann	R. W. Young
W. H. Leopold	

and the above-named officers of respondent Association.

The following are members of the respondent Association :

(1) Respondent Fish Furniture Shop, Inc., a corporation, organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business at 1829-31 Euclid Avenue, Cleveland, Ohio.

(2) Respondent A. Grdina and Sons, a corporation, organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business at 6019 St. Clair Street, Cleveland, Ohio.

(3) Respondent Altman Furniture Co., a corporation, organized, existing and doing business under the laws of the State of Ohio, with its principal place of business at 15012 St. Clair Street, Cleveland, Ohio.

(4) Respondent Colonial Furniture Co., a corporation, organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business at 739 Prospect Avenue, Cleveland, Ohio.

(5) Respondent Mayer-Marks Co., a corporation, organized, existing and doing business under the laws of the State of Ohio, with its office and principal place of business at 414 Prospect Avenue, Cleveland, Ohio.

(6) Respondent S. Kohn and Sons Co., a corporation, organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business at St. Clair Avenue and East 105th Street, Cleveland, Ohio.

(7) Respondent King Furniture Co., a corporation, organized and existing under the laws of the State of Ohio, with its principal office and place of business at 908-10 East 105th Street, Cleveland, Ohio.

(8) Respondent Stern Furniture Co., a corporation, organized and doing business under the laws of the State of Ohio, with its principal office and place of business at 7734-42 Broadway Avenue, Cleveland, Ohio.

(9) Respondent Ohio Furniture and Music Co., a corporation, organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business at 6321-23 St. Clair Street, Cleveland, Ohio.

The membership of respondent Cleveland Association changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and executive committee hereinabove named as respondents, as such officers and members of the executive committee, and the above named corporate respondent members are also made respondents as being representatives of all the members of said respondent Cleveland Association, including those members not herein specifically named.

PAR. 5. Respondent Trade Relations Council of Western Pennsylvania sometimes hereinafter referred to as respondent Western Pennsylvania Council is a nonprofit corporation, organized and existing under the laws of the State of Pennsylvania, with its office at 425 Park Building, Pittsburgh, Pa. The following named individuals are or have been during the time hereinafter mentioned officers of respondent Western Pennsylvania Council, and as such, and individually, are designated as respondents herein:

W. H. Burchfield, president.
 Frank A. Hegner, 1st vice president.
 Wilmer M. Jacoby, 2d vice president.
 Joseph Gilbert, secretary-treasurer.
 L. J. McAllister, managing director.

The following named individuals are or have been during the time hereinafter mentioned members of the Board of Directors of respondent Western Pennsylvania Council, and as such, and individually, are named as respondents herein:

W. H. Burchfield	Otto A. Kossler
H. M. Epstine	Martin Kramer
C. A. Faller	Joseph Mandel
Joseph Gilbert	William E. Morgan
Frank A. Hegner	S. F. Pollock
W. M. Jacoby	J. D. Poske, and
Lynford A. Keating	Irwin D. Wolf
L. S. Kelso	

The membership of the respondent Western Pennsylvania Council changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respond-

ents herein; therefore the members of the Board of Directors of respondent Western Pennsylvania Council hereinabove named as respondents, as such members of the Board of Directors, are also made respondents as being representatives of all members of respondent Western Pennsylvania Council including those members not herein specifically named.

PAR. 6. Respondent Retail Furniture Association of Baltimore, Inc., sometimes hereinafter referred to as respondent Baltimore Association, is a corporation organized and existing under the laws of the State of Maryland, with its principal office at 12 West Madison Street, Baltimore, Md.

The following named individuals are or have been during the time hereinafter mentioned officers of said respondent Baltimore Association, and as such, and individually, are designated as respondents herein:

Raymond Schapiro, President.
Isaac Potts, Vice president.
Charles Feldman, Vice president.
Millard Littlepage, Vice president.
R. E. Hegel, Secretary.
Norman Labovitz, Treasurer.

The following-named individuals are or have been during the time hereafter mentioned members of the Board or Directors of respondent Baltimore Association, and as such, and individually, are named as respondents herein:

Charles Besche	Milford Nathan
Herman Fish	Solomon Shaivitz
Harry Goldberg	Theodore Siehler
Samuel Bugatch	Oliver B. J. Krastell
Morris Fradkin	David B. Sonneborn
Stewart Hecht	R. H. Levenson, and Jesse
Theodore Elfont	Benesch
Gerard Gassinger	

The membership of respondent, Baltimore Association, changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also respondent's members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and directors hereinabove named as respondents, as such officers and board members, and also made respondents as being representatives of all members of said respondent Baltimore Association, including those not herein specifically named.

PAR. 7. Respondent, the Retail Trade Board of the Boston Chamber of Commerce, sometimes hereinafter referred to as respondent Boston Board, is an unincorporated association with its office at 80 Federal Street, Boston, Mass.

The following named individuals are or have been during the time hereinafter mentioned officers of respondent Boston Board, and as such, and individually, are designated as respondents herein:

Edward L. Hubbard, President.	
H. D. Hodgkinson	} Vice presidents.
Edward H. Presbrey	
E. D. Warner	
Robert A. Johnston, Secretary.	
Miller Laufman, Treasurer.	
Daniel Bloomfield, Manager.	

The following named individuals are or have been during the time hereinafter mentioned members of the "Governing Council" of respondent Boston Board, and as such, and individually, are named as respondents herein:

Abraham Asher	J. Henry Smith
Ralph U. Brett	Leon Strauss
H. J. Clapp	F. Frank Vorenberg
Richard F. Fuller	A. M. Horne
George Hansen	Edward L. Hubbard
Hazen Jones	L. B. Hunter
Edwin M. Kingsley	A. J. Jardine
H. D. Hodgkinson	David E. Moeser
R. W. Maynard	P. A. O'Connell
J. G. McNeil	Edward H. Presbrey
E. R. Mitton	Walworth Pierce
Paul Schaye	E. D. Warner, and
Frank Schmandt	Joseph Wiggin
A. P. Schier	

The following are, or have been during the time hereinafter mentioned, members of said respondent Boston Board.

(1) Respondent Jordan Marsh Co., a corporation organized, existing and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 450 Washington Street, Boston, Mass.

(2) Respondent Wm. Filene's Sons Co., a corporation organized, existing and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 426 Washington Street, Boston, Mass.

(3) Respondent R. H. White Corp., a corporation organized, existing and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 518 Washington Street, Boston, Mass.

(4) Respondent C. F. Hovey Co., a corporation organized, existing and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 33 Summer Street, Boston, Mass.

(5) Respondent Leopold Morse Company, a corporation organized, existing and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 135 Washington Street, Boston, Mass.

(6) Respondent T. D. Whitney Co., a corporation organized, existing and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 39 Temple Place, Boston, Mass.

(7) Respondent R. H. Stearns Co., a corporation organized, existing and doing business under the laws of the State of Massachusetts, with its principal office and place of business at 140 Tremont Street, Boston, Mass.

The membership of respondent Boston Board changes from time to time by the addition and withdrawal of members, so that all the members of respondent Boston Board at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent's members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and members of the "Governing Council" hereinabove named respondents as such officers, and members, are also made respondents as being representatives of all the members of said respondent Boston Board including its members not herein specifically named.

PAR. 8. Respondent New York Council on Retail Trade Diversion, Inc., sometimes hereinafter referred to as respondent New York Council, is a corporation organized and existing under the laws of the State of New York, with its principal office located at 60 East 42d Street (Room 4402), New York, N. Y.

The following named individuals are or have been during the time hereinafter mentioned officers of said respondent New York Council, and as such, and individually, are designated as respondents herein:

Arthur L. Garniss, Executive vice president.

Nathan Sachs, Vice president.

David Freudental, Treasurer.

The following-named individuals are or have been during the time hereinafter mentioned members of the Executive Committee of re-

spondent New York Council, and as such, and individually, are named as respondents herein :

Louis Broido	Delos Walker
J. E. Davidson	John Wood
Sidney Solomon	

The membership of respondent New York Council changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent's members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and members of the Executive Committee hereinabove named respondents, as such officers and members of the Executive Committee, are also made respondents as being representatives of all the members of said respondent New York Council, including its members not herein specifically named.

PAR. 9. Respondent Associated Furniture Dealers of New York, Inc., sometimes hereinafter referred to as respondent New York Association, a corporation organized and existing under the laws of the State of New York, with its principal office at 45 East 17th Street, New York, N. Y.

The following-named individuals are or have been during the time hereinafter mentioned officers of said respondent, and as such, and individually, are designated as respondents herein :

Harry Michaels, President.
 Nathan S. Sachs, Vice president.
 I. Finkenberg, Chairman of the board.
 James N. Spear, Treasurer.
 Eugene H. Sickel, Secretary.
 James B. McMahan, Jr., Executive vice president.

The following-named individuals are or have been during the time hereinafter mentioned members of the Board of Governors of the said respondent New York Association and as such, and individually, are named as respondents herein :

Milton S. Ballenberg	George Hammel
C. Ludwig Baumann	John A. Schwarz
S. L. Froelich	J. Selig

and the above-named officers, with the exception of respondent James B. McMahan, Jr.

The membership of respondent New York Association changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named

as respondents herein without inconvenience and delay, and also said respondent's members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and members of the Board of Governors hereinabove named respondents, as such officers and members of the Board of Governors, are also made respondents as being representatives of all the members of respondent New York Association, including its members not herein specifically named.

PAR. 10. Respondent Philadelphia Trade Relations Council sometimes hereinafter referred to as respondent Philadelphia Council, is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office at 12 South 12th Street (room 1532), Philadelphia, Pa.

The following-named individuals are or have been during the time hereinafter mentioned officers of said respondent Philadelphia Council and as such, and individually, are designated as respondents herein:

Arthur Bloch, Vice president.

Thomas Quigley, Secretary-treasurer.

The following named individuals are or have been during the time hereinafter mentioned members of the Board of Directors of respondent Philadelphia Council and as such, and individually, are named as respondents herein:

Fred Bandler

Myer B. Barr

B. Leo Doyle

Carl Fissell

Walter T. Grosscup

Arthur C. Kaufmann

Philip Kind

Walter Murta

Raymond Rosen

J. Richard Shryock

Myer Simon

Donald M. Smith

Maurice Spector

Harry I. Stern

Herbert J. Tily

George E. Whitwell

Alexander Wilf, and

Julius N. Zeckhauser

and the above named officers.

The membership of respondent Philadelphia Council changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also respondent's members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and directors hereinabove named as respondents, as such officers and board members, are also made respondents, as being representatives of all the members of said respondent Philadelphia Council, including its members not herein specifically named.

PAR. 11. Respondent Retail Merchants Association of Pittsburgh

sometimes hereinafter referred to as respondent Pittsburgh Association is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office at 1916 Oliver Building, Pittsburgh, Pa.

The following named individuals are or have been during the time hereinafter mentioned officers of said respondent Pittsburgh Association and as such, and individually, are named as respondents herein:

Edgar J. Kaufmann, President.
 Karl J. Kaufmann, Vice president.
 William H. Burchfield, Treasurer.
 Edward B. Livingston, Acting secretary.

The following named corporations compose the membership of respondent, Pittsburgh Association, and as such, and individually, are named as respondents herein:

(1) Kaufmann's Department Stores, Inc., organized, existing and doing business under the laws of the State of New York, with its principal office and place of business at 5th Avenue and Smithfield St., Pittsburgh 19, Pa.

(2) Joseph Horne Co., organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business at Penn Avenue and Stanwix Street, Pittsburgh 22, Pa.

(3) Gimbel Bros., organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business at 339 Sixth Avenue, Pittsburgh 22, Pa.

(4) The Rosenbaum Co., of Pittsburgh, organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business at Sixth Street and Liberty Avenue, Pittsburgh 22, Pa.

(5) Frank and Seder of Pittsburgh, Inc., organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business at Fifth Avenue and Smithfield Street, Pittsburgh 22, Pa.

The membership of said respondent Pittsburgh Association changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent's members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and Board of Directors, hereinabove, named as respondents as such officers and members of the Board of Directors, and the above-named corporate respondent members, are

also made respondents, as being representatives of all the members of said respondent Pittsburgh Association, including those members not herein specifically named.

PAR. 12. Respondent, Retail Merchants Association of Detroit, is an unincorporated association, with its principal office at 320 West Lafayette Avenue, Detroit, Mich.

The following-named individuals are or have been during the time hereinafter mentioned officers of said respondent Detroit Association, and as such, and individually, are named as respondents herein :

Ralph E. Murphy, President.
 Steven J. Jay, First vice president.
 Maurice A. Enggass, Second vice president.
 I. Himelhoch, Treasurer.
 Charles E. Boyd, Secretary.

The following-named individuals are or have been during the time hereinafter mentioned members of the Board of Directors of respondent Detroit Association, and as such, and individually, are named as respondents herein.

L. C. BeGole	J. F. Moore
Harry Breitmeyer	James H. Neubauer
Dudley Campbell	Stuart J. Rackham
William Demery	W. W. Rogers
S. F. Dole	Jay D. Runkle
Adolph M. Goetz	Nate S. Shapero
Joseph L. Hickey	Leo Siegel
R. Hunsinger	Victor W. Sincere
Charles Kern	Harry Suffrin
Ernest C. Kern	Ray J. Sullivan
Ralph B. King	Oscar Webber
A. E. Loyal	Eugene C. White
E. R. McDuff	Frank P. Williams
John Miller	Edward F. Wright

and the above-named officers.

The following corporations are, or have been during the time hereinafter mentioned members of said respondent Detroit Association and as such are named respondents herein :

- (1) Demery and Co., organized, existing and doing business under the laws of the State of Michigan, with its principal office and place of business at 6433 Woodward Avenue, Detroit, Mich.
- (2) Saks Fifth Avenue, organized, existing and doing business under the laws of the State of New York, with its principal office and place of business at 100 New Center Building, Detroit, Mich.
- (3) Ernest Kern Co., organized, existing and doing business under

the laws of the State of Michigan, with its principal office and place of business at 1030 Woodward Avenue, Detroit, Mich.

(4) Peoples Outfitting Co., organized, existing, and doing business under the laws of the State of Michigan, with its principal office and place of business at 150 Michigan Avenue, Detroit, Mich.

(5) Himelhock Brothers & Co., organized, existing and doing business under the laws of the State of Michigan, with its principal office and place of business at 1545 Woodward Avenue, Detroit, Mich.

(6) Frank & Seder of Detroit, Inc., organized, existing and doing business under the laws of the State of Michigan, with its principal office and place of business at 1437 Woodward Avenue, Detroit, Mich.

(7) The J. L. Hudson Co., organized, existing and doing business under the laws of the State of Michigan, with its principal office and place of business at 1206 Woodward Avenue, Detroit, Mich.

(8) Montgomery Ward & Co., Incorporated, organized, existing and doing business under the laws of the State of Illinois, with its principal office and place of business at 619 W. Chicago Avenue, Chicago, Ill.

(9) Sears, Roebuck & Co., organized, existing and doing business under the laws of the State of New York, with its principal office and place of business at 925 S. Homan Avenue, Chicago, Ill.

The membership of said respondent Detroit Association changes from time to time by the addition and withdrawal of members, so that all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and said respondent's members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and Board of Directors, hereinabove named as respondents as such officers and members of the Board of Directors, and the above-named corporate respondent members, are also made respondents, as being representatives of all the members of said respondent Detroit Association, including those members not herein specifically named.

PAR. 13. Respondent Retail Trade Board of Providence Chamber of Commerce is an unincorporated trade association, with its principal office at Westminster St., Providence, R. I., sometimes hereinafter referred to as respondent Providence Trade Board.

The following-named individuals are or have been during the time hereinafter mentioned officers of said respondent, and as such, and individually, are named as respondents herein:

- Charles A. Blake, Chairman.
- Frank A. W. Pelley, Vice chairman.
- Frank J. Ryan, Treasurer.
- Paul R. Ladd, Manager.

The following-named individuals are or have been during the time hereinafter mentioned members of the Board of Directors of respondent Providence Trade Board, and as such, and individually, are named as respondents herein :

Frederick W. Aldred	H. Albert Walker
Frank E. Ballou	A. P. Avery
Woodworth Bradley	A. Wilson Barstow
William S. Cherry, Jr.	Mortimer L. Burbank
George L. Crooker	Bernard L. Cleary
Irving Goldberg	Kenneth E. Griffin
Jesse L. Johnson	Robert M. Parker
Stanley B. Mason	Ernest T. Scattergood
Harry Pinkerson	Max Siegal
Robert F. Shepard	Frederick B. Thurber and
A. Howard Swanson	Albert H. Daly

and the above-named officers.

The following corporations are or have been during the time hereinafter mentioned members of said respondent Providence Trade Board and as such are named respondents herein :

(1) The Outlet Co., organized, existing, and doing business under the laws of the State of Rhode Island, with its principal office and place of business at 176 Weybosset St., Providence, R. I.

(2) A. T. Scattergood Co., organized, existing and doing business under the laws of the State of Rhode Island, with its principal office and place of business at 210 Weybosset St., Providence, R. I.

(3) Rhode Island Supply Company, Incorporated, organized, existing and doing business under the laws of the State of Rhode Island, with its principal office and place of business at 877 Westminster St., Providence, R. I.

(4) Crooker Company, organized, existing and doing business under the laws of the State of Rhode Island, with its principal office and place of business at 100 Empire St., Providence, R. I.

(5) Gladding's Inc., organized, existing and doing business under the laws of the State of Rhode Island, with its principal office and place of business at 291 Westminster St., Providence, R. I.

(6) Callender, McAuslan & Troup Co., organized, existing and doing business under the laws of the State of Rhode Island, with its principal office and place of business at 239 Westminster St., Providence, R. I.

(7) The Shepard Co., organized and existing, and doing business under the laws of the State of Rhode Island, with its principal office and place of business at 259 Westminster St., Providence, R. I.

The membership of respondent Providence Trade Board changes from time to time by addition and withdrawal of members, so that

all of the members thereof at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers hereinabove named as respondents as such officers, directors and the above-named respondent members are also made respondents as being representatives of all the members of said respondent Providence Trade Board including those members not herein specifically named.

PAR. 14. The membership of said respondent, National Retail Furniture Association and the American Retail Federation is composed of trade associations in various States of the United States, whose respective members, are engaged in business in the various States of the United States, as well as corporate, partnership and individual members of the industry, representing approximately 80 percent of the total output of the furniture industry and associated products or articles, of the United States, the same being organized for the purpose of promoting the interests of and to secure friendly relations and cooperation between the various retail furniture dealers and dealers in associated products or articles in their respective areas and in the United States and with the other members of the furniture industry. Many of them, in the regular course and conduct of their business, purchase furniture and said kindred articles from concerns located in States other than the States in which they are, respectively located, and many of them, in the regular course and conduct of their business, sell and deliver such articles to purchasers in States other than the States in which they, respectively, are located, and in the District of Columbia, and are variously engaged in interstate commerce.

PAR. 15. Since the organization of respondent National Retail Furniture Association and during the past 10 years, the respondents hereinabove named and described or referred to and each of them, have under varying circumstances and degrees of cooperation, and for varying differing periods of time entered into, acquiesced in, maintained, carried out or observed and have joined in or participated in various planned or agreed common courses of action and agreements, understandings, combinations and conspiracies to hinder and suppress competition and to restrain such trade and to promote a monopoly therein among themselves, in the interstate sale and distribution of the merchandise hereinabove referred to, in the United States and in the District of Columbia. Pursuant to and in order to effectuate and carry out said purposes, common courses of action, agreements, understandings, combinations and conspiracies, respondents have imposed or attempted to impose upon all members of said industry, including one another and including independent manufacturers,

jobbers and wholesalers, selling agents and others, certain practices, rules, regulations, and requirements more particularly described as follows:

Respondent National Retail Furniture Association, and the other respondents, have adopted, promoted, effected and enforced, for approximately eleven years last past, said uniform standards of so-called fair commercial practices to be observed by the members of the industry, including manufacturers, wholesalers, jobbers and other vendors, among which practices are the following:

1. No sales will be made directly to ultimate consumers with the exception of sales to city, county, State, and Federal governments or other public bodies, and authorities connected therewith, railroads and other common carriers; provided, however, that sales to any such consumers as are above expected shall be for their own use and not for any other consumer. This applies regardless of whether such ultimate consumer is a friend of any member of the firm, or a friend or relative of an employee of the firm or of any other concern.

2. No person will be admitted to showrooms or quoted prices except an authorized dealer or his regularly employed agent.

3. No person or firm will be recognized as an authorized dealer unless such person or firm, actually carries a stock of new furniture and is listed as a recognized retailer of furniture. Such stock of new furniture must be representative of a full line and in sufficient quantity to clearly establish that it is used for retail selling purposes and not as a subterfuge to gain recognition as an authorized dealer.

4. Use of effective methods and means to enforce said practices, rules, regulations and requests above set forth in this paragraph 15, including use of boycotts and blacklists against members and others who fail or refuse to abide by and carry into effect said practices, rules, regulations and requests.

PAR. 16. Respondents have also collectively and cooperatively formulated, adopted and put into operation a "Trade Relations Movement," one of the purposes and objectives of which was to deprive employees of large industrial and commercial organizations of the opportunity of buying furniture and associated products and articles from their respective employers. The said Trade Relations Movement was formulated, adopted and put into operation beginning in 1938, but the respondent American Retail Federation did not become affiliated with it until 1940. Respondents' purposes and objectives have been accomplished through respondents' collective persuasion directed at said large industrial and commercial organizations, some of which were thereby led into acceptance and agreement with respondents' purposes and objectives, resulting in a substantial number of the said employees and other buyers of furniture and associated

products or articles being deprived of opportunities of buying through the facilities of said large industrial and commercial organizations, and, correlatively, the vendors of said products or articles being deprived of that outlet and method of selling and marketing their said products or articles. Various other means were also collectively and cooperatively used by respondents in said movement to stop consumer trade from being diverted from respondent retail furniture merchants.

PAR. 17. Said planned and agreed courses of action, understandings, agreements, combinations and conspiracies and the things done thereunder, and pursuant thereto, as hereinabove alleged, have had, and have the direct or indirect effect of unduly and unlawfully restricting and restraining trade in commerce in said products between and among the several States of the United States and in the District of Columbia; of substantially enhancing prices to the consuming public and otherwise depriving the public of the benefits that would flow from normal competition among and between said respondents, except respondent National Retail Furniture Association, the American Retail Federation and the other trade association respondents, and with others not respondents herein; of tending to eliminate and eliminating, competition, and of tending to create a monopoly in the sale of said products in commerce.

PAR. 18. The acts, practices and methods of the respondents, as herein alleged, are all to the prejudice of the public; having a dangerous tendency to, and have actually hindered competition between and among respondents in the sale of said products in commerce within the intent and meaning of the Federal Trade Commission Act; have tended to create in respondents a monopoly in the sale of said products in interstate commerce; have unreasonably restrained interstate commerce in said products; and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER GRANTING RESPONDENT'S APPEAL FROM RULING OF HEARING EXAMINER AND DISMISSING COMPLAINT WITHOUT PREJUDICE

This matter coming on to be heard by the Commission upon the respondents' appeal from a ruling of the hearing examiner denying the respondents' motion for dismissal of the amended complaint herein, and the answer to such appeal filed by counsel in support of the complaint; and

It appearing to the Commission that the specific acts and practices described in the amended complaint and alleged to have been engaged in pursuant to the planned common courses of action, agreements,