

Syllabus

IN THE MATTER OF

NAMSCO, INC. (FORMERLY NATIONAL WHEELS AND
PARTS MANUFACTURING CO., INC.)

COMPLAINT, DECISION, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECTION (a) OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5771. Complaint, May 1, 1950—Decision, Mar. 17, 1953

Automotive parts jobbers operate on a very small profit margin, and such a jobber's profit is made up of an accumulation of small margins of profit on many items, and where particular products, though slow moving, are essential items in every jobber's stock, the profit thereon contributes to the aggregate which determines whether a jobber grows, remains the same size, goes backward, or fails.

Price competition is but one form of competition, and additional service to customers, additional salesmen to call on them, carrying a larger and more varied stock, branch houses, and proximity to customers all aid such jobbers to stay in business and to prosper; and the institution or expansion of such competitive aids depends directly on operating profit margin, a major factor in which is cost of merchandise purchased.

To prove the existence of competition between two sellers reselling the same or substantially the same functional products, it is unnecessary that a distributor must testify he attempted to sell the product of one of the sellers to a given potential customer at the same specified time and place that another distributor was attempting to sell the same product bought from the same source.

A contention that since certain products are slow in turnover and constitute but a small part of the invested capital of distributor buyers, small differences in the cost of acquisition do not affect competition, is not valid, since, like a grocer, an automotive parts distributor must carry a large and varied stock, many items of which are slow in turnover, small in unit cost or profits, but necessary to stock; and it was the intention of Congress to protect a merchant from competitive injury attributable to discriminatory prices on any or all goods sold in interstate commerce, whether the particular goods constituted a major or minor portion of his stock. *Federal Trade Commission v. Morton Salt Company*, 334 U.S. 37.

A further contention that, in a price discrimination proceeding in which the alleged discriminating seller suggested certain resale prices for his distributor customers, no injury to competition or substantial lessening thereof was shown where the discriminatory discount was not used to reduce the resale price of the product and that no inference of such injury arises from obvious injury to profit or from a showing that one of two reselling competitors bought from respondent for less, is likewise not valid, since, where purchasers who buy and compete in the resale of the same merchandise are charged different prices therefor, the conclusion is inescapable that injury

to the competitive efforts of the unfavored purchaser is present, and the taking of testimony to show "actual financial losses" on account of the discriminatory prices is unnecessary. *Federal Trade Commission v. Morton Salt Company*, 334 U.S. 37.

Where a corporation engaged in the manufacture and interstate sale and distribution of wheel discs, hub caps, exhaust extensions, gas tank and radiator caps, and in the purchase and resale of wheel parts such as nuts, bolts, and studs; in selling its said automotive products to automotive jobbers, distributors, dealers, and warehousemen located through the United States, and including purchasers in Birmingham, Mobile, Los Angeles, New Orleans, Jackson (Miss.), Kansas City, Newark, Philadelphia, Memphis, and Dallas.

- (a) Discriminated in favor of eight "special accounts" during 1947-1949 in that it sold them hub caps in substantial quantities at prices which ranged from 10 percent to 17 percent below its "blue list," entitled "Distributors Net Prices" or "Jobbers Net Prices," on which were published prices at which it sold the great majority of the purchasers of its said products:
- (b) Discriminated in favor of five cooperative buying organizations during said period, in that it sold them all of its products at prices which were 5 percent, 7½ percent, and 10 percent lower than the prices on its said "blue list," by way of rebate in said amounts; and
- (c) Discriminated in favor of 104 purchasers through substantial sales to them of hub caps at its "white list" prices issued in 1949, listing prices which ranged up to 33½ percent below the "blue list;"

Effect of which discrimination in price between customers competing in the resale of its products was and might be to substantially lessen competition among its customers competitively engaged in the resale thereof, and to injure and prevent competition among them:

Held, That such acts and practices, under the circumstances set forth, violated the provisions of subsection (a) of section 2 of the Clayton Act as amended.

As respects respondent's contention that the evidence, consisting of testimony of purchasers from respondent in two of the areas involved, namely, Memphis and New Orleans, as to the competition concerned and affected, along with other evidence hereinbefore indicated, was insubstantial and insufficient to show the existence of competition between purchasers of respondent's products reselling the same in the same trading area: respondent offered no evidence, and there was nothing in the record, to indicate that the two areas were unique or different from other trading areas in which respondent sold its products to automotive parts jobbers at different prices, and it was therefore concluded that the competitive conditions shown to exist in the two areas with respect to the purchase and resale of said products were typical of the other areas in the United States herein concerned; that respondent's customers reselling its products in the same trading areas were in competition with each other in such reselling efforts; and that the challenged evidence was both substantial and sufficient.

With regard to respondent's further contention that there was no substantial or sufficient evidence to show that the effects of its different prices charged purchasers competitively engaged with each other in the resale of its products was "substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition:" testi-

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mony from customers in the aforesaid trading areas was unanimous that each purchaser took regular advantage, as a matter of necessity, of the cash discount for prompt payment extended uniformly to all by respondent; that failure to do so would seriously impair, if not wipe out, profit margin; and, in the absence of evidence to show that the areas in which testimony was taken were unique or different economically from the rest of the United States, and in the light of the other facts hereinbefore indicated, it was concluded that the effects found had been and were present throughout respondent's entire sales territory; and that respondent's said discrimination in price among its customers thus competitively engaged in the resale of its products had and might have the effect of substantially lessening competition among them, and of injuring and preventing such competition.

As respects the charge in the complaint, denied by respondent's answer, that its price discriminations had and might substantially lessen competition, tend to create a monopoly, and injure, destroy and prevent competition in respondent's line of commerce; the evidence in the record on the whole was sparse, lacking in detail, contradictory, and neither substantial nor sufficient evidence of the effect charged.

With regard to respondent's defense under section 2 of the Clayton Act, asserted in its answer, namely, that the challenged price variations were made to meet competition: no other evidence thereof was in the record and none was offered by it, and said defense was accordingly held not to be substantial.

As respects the fact that respondent in 1950 discontinued its price discriminations to group buying purchasers, and its request that no order be issued as to the discontinued practices: there was no evidence that it likewise discontinued its "white list" or its special discriminatory discounts to special accounts, discontinuance has been repeatedly held to be no defense, and discretion should not be favorably exercised in the matter, since respondent is engaged in a competitive business with highly fluid and constantly changing conditions, and the record is barren of anything to indicate that the partial discontinuance, which occurred about the time the complaint was issued, was permanent.

Before *Mr. Abner E. Lipscomb* and *Mr. Frank Hier*, hearing examiners.

Mr. Eldon P. Schrup and *Mr. Francis C. Mayer* for the Commission.

Mr. Frank A. Ramsey, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (a), section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent National Wheels and Parts Mfg. Company, Inc., is a corporation organized and doing business under and

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by virtue of the laws of the State of Illinois, with principal office and place of business located at 1810 South Michigan Avenue, Chicago, Illinois.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of the manufacture, sale and distribution of automotive products and supplies to different purchasers of the same located in the various States of the United States and in the District of Columbia. Said products and supplies are sold by the respondent for use, consumption or resale within the United States and the District of Columbia, and respondent causes said products and supplies so sold to be shipped and transported from the State or States of location of its places of business to the purchasers thereof located in States other than the State or States wherein said shipment or transportation originated. Respondent maintains, and at all times mentioned herein has maintained, a course of trade and commerce in said products and supplies among and between the States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid, is now, and since June 19, 1936, has been, engaged in active and substantial competition with other corporations, partnerships, firms, and individuals manufacturing, selling, and distributing comparable automotive products and supplies in commerce to purchasers of the same in manner and method and for purposes as aforestated. Many of said purchasers and many of the aforesaid purchasers from the respondent are competitively engaged each with the other.

PAR. 4. Respondent, in the course and conduct of its business as aforesaid, is now, and since June 19, 1936, has been, directly or indirectly discriminating in price between the aforesaid different purchasers of its said automotive products and supplies of like grade and quality sold and distributed in manner and method and for purposes as aforestated, by selling said products and supplies at higher and less favorable prices to numerous small businessmen purchasers than said products and supplies are sold to various larger purchasers, some of which are competitively engaged with some of said less favored purchasers and with some of said purchasers from respondent's competitors.

PAR. 5. The effect of respondent's aforesaid discriminations in price between the said different purchasers of its said automotive products and supplies of like grade and quality sold in manner and method and for purposes as aforestated, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and the aforesaid favored purchasers are engaged, or to injure, destroy or prevent competition with said respondent, said favored purchasers, or with customers of either of them.

PAR. 6. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (a) of section 2 of the Clayton Act (U. S. C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

DECISION OF THE COMMISSION

Pursuant to Decision and Order of the Commission dated March 17, 1953, the initial decision of hearing examiner Frank Hier became on that date the order of the Commission.¹

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Clayton Act as amended by the Robinson-Patman Act (15 U. S. C., Sec. 13), the Federal Trade Commission on May 1, 1950, issued and subsequently served its complaint in this proceeding upon National Wheels and Parts Manufacturing Company, Inc., a corporation, charging it with violation of subsection (a) of section 2 of said Act as amended. After the filing of answer to the complaint, hearings were held at which testimony and other evidence in support of the allegations of the 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. Respondent filed a motion to strike evidence from the record and a motion to dismiss the complaint, which motions were denied by the trial examiner. Respondent thereupon elected to offer no testimony or other evidence in opposition to the evidence received in support of the allegations of the complaint, and the record was thereupon closed. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, answer thereto, testimony and other evidence, proposed findings as to the facts, conclusions, and proposed order submitted by counsel and said trial examiner, having duly considered the record herein, makes the following findings as to the facts, conclusions drawn therefrom, and order :

¹ Said "Decision," etc., dated March 17, 1953, reads as follows, omitting the formal Order of Compliance, set forth infra at page 1172.

Service of the initial decision of the hearing examiner in this proceeding having been completed on the 10th day of September, 1951, and the Commission having, on the 10th day of October, 1951, extended until further order of the Commission the date on which the said initial decision would otherwise become the decision of the Commission; and

The Commission having duly considered the record herein and being of the opinion that said initial decision is adequate and appropriate to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner, a copy of which is attached, shall, on the 17th day of March, 1953, become the decision of the Commission.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent National Wheels and Parts Manufacturing Company, Inc., was a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its principal offices and place of business located at 1810 South Michigan Avenue, Chicago, Illinois. On January 12, 1951, respondent's corporate name was changed in accordance with the laws of the State of Illinois to Namsco, Inc., under which respondent has, since that date, operated. There was no change in the management and operation of respondent's business.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of the manufacture, sale and distribution of wheel discs, hub caps, exhaust extensions, gas tank and radiator caps and in the purchase and resale of wheel parts, such as nuts, bolts and studs, to different purchasers of the same located in the various States of the United States and in the District of Columbia. Said products and supplies are sold by the respondent for resale within the United States and the District of Columbia, and respondent causes said products and supplies, so sold, to be shipped and transported from Chicago, Illinois, to purchasers thereof located in States other than the State wherein said shipments or transportation originated. Respondent maintains, and at all times mentioned herein has maintained, a course of trade and commerce in said products and supplies among and between the States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid, is now, and since June 19, 1936, has been, engaged in active and substantial competition with other corporations, partnerships, firms and individuals manufacturing, selling, and distributing comparable automotive products and supplies in commerce to purchasers of the same.

PAR. 4. Respondent has sold and now sells its automotive products to the great majority of the purchasers thereof at prices published by respondent on its "blue list" which is entitled "Distributors Net Prices" or "Jobbers Net Prices." For a number of years and specifically during 1947, 1948 and 1949, it has sold its hub caps to eight "special accounts" in substantial quantities at prices ranging from 10 percent to 17 percent below its "blue list." Respondent has also during 1947, 1948 and 1949 sold all of its products to five cooperative buying organizations at prices 5 percent, 7½ percent and 10 percent lower than the prices on its "blue list," by way of rebate in those amounts. These discounts were withdrawn by respondent in 1950 and since then these five cooperative buying groups have paid "blue list" prices. In addition to these price-preferred customers, respondent in May 1949 issued

a so-called "white list" of prices on hub caps, listing prices ranging up to $33\frac{1}{3}$ percent below the "blue list," and substantial sales at these "white list" prices were made to 104 purchasers thereafter. Respondent has thus sold all or various of its products to 117 of its customers at prices substantially lower than the prices at which it sold the same products to the great majority of its customers.

PAR. 5. Automotive jobbers, distributors, dealers and warehousemen located throughout the United States purchase products from respondent. There is in the record in this proceeding, tabulations of sales to all customers of respondent for 1947, 1948 and 1949, located in Birmingham, Mobile, Los Angeles, New Orleans, Jackson (Mississippi), Kansas City, Newark (New Jersey), Philadelphia, Memphis and Dallas, in each of which areas was located one or more purchasers from respondent, purchasing at one of the preferential prices set out above in Paragraph Four, while all other purchasers located in the same city were purchasing at the "blue list" prices. Respondent makes no sales for original equipment, all purchases from it being for resale.

PAR. 6. Testimony was taken of purchasers from respondent in two of these areas, Memphis and New Orleans. In Memphis, respondent sold during 1947, 1948 or 1949 to eight purchasers, six at "blue list" prices, two at price preferences of 5 and 10 percent, and $7\frac{1}{2}$ percent. The president of one of the latter, a buying cooperative, testified his competition on products purchased from respondent, in Memphis and within an area of 50-200 miles thereof, is from all automotive parts wholesalers and car dealers and that there was no doubt that every automotive parts wholesaler in the Memphis area who bought from respondent was a competitor of his Memphis member. Two purchasers from respondent at "blue list" prices testified that they competed in the Memphis area on the resale of automotive parts, including respondent's, with everyone in that area who handled automotive parts.

PAR. 7. In the New Orleans area, respondent during 1947, 1948 or 1949 sold its products to eleven purchasers, two at "white list" prices, two at discounts of 5 and 10 percent, and seven at "blue list" prices. One of the latter and two of the former testified they had competition in the New Orleans area in the resale of automotive products, including respondent's, from car manufacturers, jobbers, oil and tire companies and others reselling automotive parts.

PAR. 8. The evidence set out supra in Paragraphs Five, Six and Seven is challenged by respondent as unsubstantial and insufficient to show the existence of competition between purchasers of respondent's products, reselling the same in the same trading area. From the record it is concluded to be both substantial and sufficient. Respondent offered no evidence, and there is nothing in the record to

indicate, that these two trading areas, Memphis and New Orleans, are unique or different from other trading areas where respondent sells its products to automotive parts jobbers at different prices. It is therefore further concluded that the competitive conditions shown to exist in these two areas with respect to the purchase and resale of respondent's products are typical and representative of the other areas in the United States set out in Paragraph Five above and that respondent's customers, reselling its products in the same trading area, are in competition with each other on such reselling efforts.

PAR. 9. Respondent likewise contends that there is no substantial or sufficient evidence to show that the effect of its different prices charged purchasers, competitively engaged with each other in the resale of its products was "substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition." The testimonial evidence on this point is that elicited from customers of respondent in Memphis and New Orleans. This testimony was unanimous that each purchaser from respondent took regular advantage as a matter of necessity of the cash discount for prompt payment extended uniformly to all by respondent, that failure to do so would seriously impair, if not wipe out, profit margin. It is apparent that automotive parts jobbers operate on a very small profit margin and most of them extend the same cash discount they receive to their purchasers; however, the latter is based on a mark-up of acquisition cost so that if the cash discount is 2 percent of invoice, upon resale that same discount may amount to nearly 3 percent of the cost of acquisition. One jobber, in business since 1916 in Northern Mississippi with six branches purchasing \$767,000 a year, testified that a 2 percent cash discount frequently amounted to 58 percent of his profit since his cost of doing business was 23.78 percent of sales and his gross margin was 27.52 percent of sales, leaving a net of 3.74 percent of sales. This witness' company was a member of a cooperative and received rebates of 5 percent and 10 percent from the "blue list" prices paid by others. He further testified that if he were to grant a 2 percent discount to his customers for prompt payment and fail to take advantage of a manufacturer's discount, which is usually 2 percent, his loss on that item would be 3.9 percent of sales and he would not be in business long. Respondent gives only a 1 percent cash discount to all purchasers. Another jobber doing \$400,000 yearly likewise testified that he had to take advantage of any cash discount, as it was an important item in his profit; another that it was extremely important to any jobber.

PAR. 10. The testimony is also to the effect that a jobber's profit is made up of an accumulation of small margins of profit on many items. Some of the witnesses handled 30-75 lines of products, consisting in

the aggregate of thousands of items. Respondent's products are slow-moving but essential items in every jobber's stock. Every jobber must stock them. Although the turn-over is slow, the profit thereon contributes to the aggregate which determines whether a jobber grows, remains the same size, goes backward or fails. With net margins of profit as narrow as they are among respondent's customers, where 2 percent of cost of acquisition may account for more than half of that margin, it follows inescapably that the price preferences found in Paragraph Four above, even though only one out of a number of lines handled, contribute directly and powerfully to that jobber's business health and his ability to compete. There is in the record also testimony from jobbers that a price difference of 21¢ on a \$1.05 hub cap would enable the favored buyer to get business which the unpreferred buyer could not get and that a price preference of 10¢ on an 85¢ hub cap would have "quite a bit" of commercial significance. The evidence is that respondent "suggests" resale prices which are generally followed by its customers, although without compulsion, hence it is concluded that none of the price preferences granted by respondent as found in Paragraph Four supra are used to obtain business by price-cutting.

PAR. 11. Price competition is but one form of competition. Additional service to customers, additional salesmen to call on them, carrying a larger and more varied stock, branch houses, proximity to customers—all aid respondent's customers to stay in business and to prosper. The institution or expansion of these competitive aids depends directly on operating profit margin, a major factor in which, on this record, is cost of merchandise purchased. From the above it is concluded, therefore, that respondent's discrimination in price between customers competing in the resale of its products has had and may have the effect of substantially lessening competition among its customers so competitively engaged and of injuring and preventing competition among them. Since respondent offered no evidence to show, and the record otherwise contains nothing to show, that the areas in which testimony was taken were unique or different economically from the rest of the United States, it is concluded that the effects herein found have been and are present throughout respondent's entire sales territory.

PAR. 12. The complaint in this proceeding charges and respondent's answer denies that respondent's price discriminations, as hereinabove found, have been and may be to substantially lessen competition, tend to create a monopoly and injure, destroy and prevent competition in respondent's line of commerce. Respondent's president testified that any price variations from its "blue list" were made solely to meet competition. This is corroborated by a few statements in letters

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from manufacturer's representatives soliciting orders for respondent's products in some instances, and contradicted by similar statements in the letters of others. The latter reveal the use of preferential discounts to obtain business from respondent's competitors but at most these merely show an intention or hope to do so. There is no substantial evidence of any such business obtained. On the whole, the evidence in the record is sparse, lacking in detail, contradictory and is neither substantial nor sufficient evidence of the effect charged. Although defense under section 2 (b) of the Clayton Act was asserted in respondent's answer, no other evidence in support of same is in the record, and none was offered by respondent. The defense is accordingly held not to be sustained.

CONCLUSIONS

1. To prove the existence of competition between two sellers reselling the same or substantially the same functional products, it is unnecessary, as respondent seems to contend in this proceeding, that a distributor must testify he attempted to sell respondent's product to a given potential customer at the same specified time and place that another distributor was attempting to sell the same product bought from the same source.

2. Respondent's contention that, since its products are slow in turnover and constitute but a small part of the invested capital of the distributor, small differences in the cost of acquisition do not affect competition, has been disposed of by the Supreme Court in *Federal Trade Commission vs. Morton Salt Company*, 334 U. S. 37. It was there held "There are many articles in a grocery store that, considered separately, are comparatively small parts of a merchant's stock. Congress intended to protect a merchant from competitive injury attributable to discriminatory prices on any or all goods sold in interstate commerce, whether the particular goods constituted a major or minor portion of his stock. Since a grocery store consists of many comparatively small articles, there is no possible way effectively to protect a grocer from discriminatory prices except by applying the prohibitions of the Act to each individual article in the store." Like a grocer, an automotive parts distributor must carry a large and varied stock, many items of which are slow in turnover, small in unit cost or profit but necessary to stock. As salt is to a grocer, so nuts and bolts and hub caps are to the jobbers in this proceeding.

3. Respondent's contention that no injury to competition or substantial lessening hereof has been shown in this proceeding because the discriminatory discount was not used to reduce the resale price of the product and that no inference of such injury arises from obvious

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injury to profit or from a showing that one of two reselling competitors bought from respondent for less, is the holding of the Seventh Circuit Court of Appeals in *Morton Salt Company vs. Federal Trade Commission*, 162 F. (2d) 949 at pages 956 and 957. This ruling however, was expressly reversed by the Supreme Court, 334 U. S. 37, holding that where purchasers, buying and competing in the resale of the same merchandise, are charged different prices therefor, the conclusion is inescapable that injury to the competitive efforts of the unfavored purchasers is present. That court held unnecessary the taking of testimony to show "actual financial losses on account of respondent's discriminatory prices" saying "It would greatly handicap effective enforcement of the Act to require testimony to show that which we believe to be self-evident, namely, that there is a 'reasonable possibility' that competition may be adversely affected by a practice under which manufacturers and producers sell their goods to some customers substantially cheaper than they sell like goods to the competitors of those customers. This showing in itself is sufficient to justify our conclusion that the Commission's findings of injury to competition were adequately supported by evidence." In the instant proceeding, the evidence more than meets this test.

4. Respondent in 1950 discontinued its price discriminations to group buying purchasers. There is no evidence that it likewise discontinued its "white list" prices or its special discriminatory discounts to special accounts. It asks that no order be issued as to the practices discontinued. Discontinuance has been repeatedly held to be no defense. *Corn Products Refining Company vs. Federal Trade Commission*, 144 F.(2d) 212; *Hershey Chocolate Company vs. Federal Trade Commission*, 121 F.(2d) 968; *Federal Trade Commission vs. Goodyear Tire & Rubber Co.*, 304 U. S. 257. Nor should discretion be so exercised. Respondent is engaged in a competitive business with highly fluid and constantly changing conditions. The record is barren of anything to indicate that the partial discontinuance, which occurred about the time the complaint issued, was permanent.

5. Respondent's acts and practices, as hereinabove found, violate the provisions of subsection (a) of section 2 of the Clayton Act as amended (U. S. C. Title 15, Sec. 13).

ORDER

It is ordered, That respondent Namsco, Inc., a corporation, formerly National Wheels and Parts Manufacturing Company, Inc., its officers, representatives, agents and employees, directly or through any corporate or other device, in the sale of wheels, discs, hub caps, exhaust extensions, gas tank caps, radiator caps and wheel parts, such

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as nuts, bolts and studs, or other automotive parts or supplies of like grade and quality in commerce, as "commerce" is defined in the aforesaid Clayton Act, to forthwith cease and desist, directly or indirectly, from discriminating in price between different purchasers of said products by selling such products of like grade and quality to any purchaser at prices lower than those granted other purchases who, in fact, compete, or whose customers compete, with the favored purchaser or purchasers in the resale and distribution of such products.

ORDER TO FILE REPORT OF COMPLIANCE

It is further 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 decision and order of March 17, 1953].

Syllabus

IN THE MATTER OF
DIRECTORY PUBLISHING CORPORATION ET AL.COMPLAINT, DECISION, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5920. Complaint, Sept. 6, 1951—Decision, Mar. 17, 1953*

Where a corporation and its two officers, engaged in the publication and in the interstate sale and distribution of their "Greater New York City Business Classified Directory", in competition with other publishers of directories selling advertisements and listings therein;

In soliciting business through clipping advertisements or listings from local telephone directories, trade journals, magazines, or business directories, and pasting such clippings, under appropriate business classifications, on their order forms—mailed to those solicited with a preaddressed reply envelope—upon which there were displayed, among other things, in 14-point extrabold letters the words "New York City Classified Business Directory", followed in capital letters, but in 10-point type, by "DIRECTORY PUBLISHING CORPORATION—PUBLISHERS", with the statement elsewhere in bold-faced, 10 point type "Listing Will Not Be Published Unless Payment Is Made" and in 8-point type the advice that they proposed to publish the "attached listing, taken from another publication" in "A New Annual Publication not connected with any other Directories, Redbooks or Telephone Company", and that a check would be "accepted and considered as approval"—

Falsely represented to a substantial segment of the public, through such use of clippings from other directories, that the advertisement or listing which was ordered would be placed in the directory from which the advertisement was clipped;

With effect of misleading many persons into the erroneous belief that they were buying and paying for advertising space in the publication from which said advertisements were clipped, and with tendency and capacity so to do; whereby trade was unfairly diverted to said corporation and individuals from their competitors, to the substantial injury of competition in commerce:

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

While the above proposal forms, if carefully read by the prospects, would preclude any misunderstanding on their part as to the identity of the publisher or publication actually involved, the practice concerned did actually deceive many into believing they were simply being asked to renew their advertisements in the original publications; the large type printing, the appropriated advertisement or listing, and the format so attracted the attention of the pros-

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pect that more than a cursory examination of the form appeared to him to be useless and time-wasting; some accepted respondent's proposal and mailed their checks in the preaddressed return envelopes without realizing until later that the advertisements or listings were not to appear in the publication from which the clippings were taken; and, in other instances, disregarding the envelope and the folder, mailed their checks for the amounts indicated to the company which had published the directory from which it had been taken; and respondent's practices, regardless of the cautions, disclosures and explanations printed on the folders and in the accompanying listings, were potentially deceptive.

As respects a Post Office proceeding, involving the corporate respondent: respondent's testimony indicated that under the terms of an affidavit of discontinuance submitted by respondent corporation to the Post Office Department they had not, since the date concerned, caused any advertisements to be clipped from classified telephone directories for use with proposals mailed by them.

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

Mr. Jesse D. Kash for the Commission.

Walsh & Levine, of New York City, 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 Directory Publishing Corporation, a corporation, Business Directory Corporation, a corporation, and Stanley Oleck and Harvey Oleck, individually and as officers of said corporations, 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, Director Publishing Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent, Business Directory Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania. Respondents, Stanley Oleck is President and Treasurer and Harvey Oleck is Vice-President and Secretary of said corporations, and as such officers formulate, direct, and control the policies and practices of said corporations. All these respondents have their office and principal place of business located at 303 Washington Street, Brooklyn, New York. Business Directory Corporation also has an office at 1001 Chestnut Street, Philadelphia, Pennsylvania.

PAR. 2. The aforesaid respondents are now and for more than one year last past have been engaged in publishing or having published

classified business directories for various cities in the United States. Some of said directories have been published under the names "Greater New York and Surrounding Territories Business Classified Directory," and "greater Philadelphia and Surrounding Territories Business Classified Directory." The publications contain classified lists of manufacturers, wholesalers, distributors, jobbers, and kindred services arranged in alphabetical order under their respective business or product headings. Respondents sell advertising space in said directories and the profitable conduct of their businesses is dependent on the sale of advertising in said directories.

Respondents cause their said publications to be transported through the United States mails and otherwise from the point of publication thereof, or from one or more of the above stated addresses and distributed among persons and firms that have purchased advertising space in said publication and also to other persons and firms at their respective points of location in various States of the United States, including States other than the States of New York, New Jersey, Pennsylvania and Illinois. Respondents maintain, and during all times mentioned herein have maintained, a course of trade in said publications in commerce between and among the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. Respondents' method of securing names, addresses and telephone numbers for use in soliciting prospective customers for advertising space in their publications and also the classified advertisements to be inserted therein, is to clip advertisements from various local telephone and other directories and to paste or otherwise attach said advertisements to their own contracts or order forms. Said forms are then mailed to the persons or firms whose advertisements are attached thereto with a request that such forms together with a check be returned to respondents in an enclosed addressed envelope to insure insertion of the advertisement in respondents' publications. The name and address of the advertiser and the cost of running the advertisement in respondents' publications, together with the business classification under which the proposed advertisement is to be run are inserted in the proposal form by respondents before the form is mailed to the advertiser. The cost of the advertisements in respondents' publications usually corresponds with the price the advertiser has been paying for the advertisement in the publication from which the advertisement was clipped. In many instances, advertising space is solicited in the above manner from, and sold to, persons and firms located in States other than the State in which respondents' offices are

located and from which said publication is shipped to the advertisers therein.

PAR. 4. As a rule, the advertisement attached to respondents' proposal form which is submitted to a prospect is clipped from the telephone or other directory of the locality in which the advertiser's business is located. Said form features in large print the word "directory" and the explanation as to what the document really is appears in much smaller and less conspicuous print, not in immediate conjunction or connection herewith, but on the contrary is substantially removed from the word "directory." Such advertiser recognizes the advertisement submitted to him as being one previously placed by him in the local telephone or other directory and without scrutinizing the proposal form closely and ascertaining that it is not a renewal of the advertisement in a local directory but is a proposal for an advertisement to be inserted in respondents' publication, signs respondents' form in the erroneous belief that he is merely renewing his advertisement in the directory from which the advertisement had been clipped.

PAR. 5. Respondents in the conduct of their businesses are in substantial competition in commerce with other firms and individuals also engaged in the publication of directories and in the sale of advertisements and listings therein.

PAR. 6. By and through the aforesaid acts and practices, the respondents represent and represented, directly and by implication, to business firms and individuals that they are soliciting advertising space from, and giving telephone listings to, such firms and individuals to be placed in the directory in which such persons and firms previously have been listed, when such is not the fact.

PAR. 7. The use by the respondents of the aforesaid acts and practices and the misleading representations employed by them in connection with such acts and practices has had and now has the tendency and capacity to mislead many persons, and has misled many persons, into the erroneous and mistaken belief that they are buying and paying for advertising space in the publications from which said advertisements were clipped. As a result, trade has been unfairly diverted to respondents from their competitors and substantial injury has been and is now being done to competition in commerce.

PAR. 8. The aforesaid acts, practices and methods of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors 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 AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 6, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with the use of unfair methods of competition in commerce 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 by respondents of answers thereto, 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. On April 2, 1952, the hearing examiner filed his initial decision.

Thereafter, within the time permitted by the Rules of Practice of the Commission, respondents appealed from the initial decision of the hearing examiner and this matter came on for final hearing upon the complaint, the answers, testimony and other evidence, briefs in support of and in opposition to such appeal, an oral argument; and the Commission, having duly considered the record herein and having ruled upon said appeal and being now fully advised in the premises, 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, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Directory Publishing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Stanley Oleck is president and treasurer and respondent Harvey Oleck is vice president and secretary of said corporate respondent and, as such officers, they formulate, direct and control the policies and practices of the said corporate respondent. The said corporate and individual respondents have their offices and principal place of business at 303 Washington Street, Brooklyn, New York.

Respondent Stanley Oleck is also owner of the Directory Publishing Co., of Chicago, Illinois, a company engaged in a business similar to that of the respondent Directory Publishing Corporation.

The respondent Business Directory Corporation was a corporation organized and formerly existing under and by virtue of the laws of

the State of Pennsylvania, but it ceased doing business in 1948 and has since been dissolved.

PAR. 2. Respondents Directory Publishing Corporation, Stanley Oleck and Harvey Oleck, are now and for more than one year last past have engaged in the publication of a classified business directory known as "Greater New York City Business Classified Directory," containing classified lists of manufacturers, wholesalers, distributors, jobbers and kindred services arranged in alphabetical order under their respective business or product headings. Respondents sell advertising in said directory primarily to advertisers interested in reaching businesses having plants or offices in the New York City Metropolitan Area, and the profitable conduct of their business is dependent on the sale of such advertising.

Said respondents have caused and are now causing their directories, when published, to be transported, through the United States mails and by other means, from the point of publication thereof to persons and firms that have purchased advertising space in said publication, and to other persons and firms, at their respective locations in various States of the United States, including States other than the State of New York. Respondents maintain, and during all times mentioned herein have maintained, a course of trade in said publication in commerce between and among the various States of the United States. Although the directories published and distributed by respondents contain the names of persons and firms primarily interested in the markets represented in the New York Metropolitan Area and the listings are predominantly from that area, the volume of respondents' trade in commerce has been and is substantial. At the time of the hearing two directories had been published by respondents and one was in process. These contained 2,650, 4,130 and 3,841 listings, respectively, of which 127, 130 and 183 were from States other than New York.

PAR. 3. Respondents' method of soliciting business has been and is to clip business advertisements or listings from local telephone directories, trade journals, magazines or from its own or other business directories and to paste such clippings on proposal or order forms under appropriate business classifications.

One of the proposal forms illustrative of those which have been used by respondents is approximately $3\frac{1}{2} \times 8\frac{1}{2}$ inches in size and is printed in three sizes of type, 8-point, 10-point and 14-point. Emphasis is added by printing certain portions in bold-faced, heavy capital letters and by the use of ruled boxes. For instance, in such a box in the upper left-hand corner of the proposal next to the blank space where the clipping is attached, there appear in 14-point, extra-

bold letters the words "New York City Business Classified Directory." Immediately under this box, also in capital letters but in 10-point type, appear the words "Directory Publishing Corporation—Publishers"; the address follows in 8-point type. In the lower right-hand corner in bold-faced 10-point type is the statement, "Listing Will Not Be Published Unless Payment Is Made," and immediately below this in 14-point extrabold, abbreviated or condensed type are the words "Cost Per Year." Following this last phrase respondents insert an amount indicating the price of publishing the clipped advertisement or listing. Near the top of the proposal is a statement in 8-point bold-faced capital letters, "Additional Information—See Descriptive Folder."

The body of the text of the proposal consists of four lines in 8-point type running lengthwise across the middle of the form. In this portion of such form, information is given that respondents propose to publish "the attached listing, taken from another publication" in "A New Annual Publication not connected with any other Directories, Red Books or Telephone Company," and that a "check will be accepted and considered as approval and a Complimentary Copy of the Directory will be sent to you when printed." The prospect's name and address corresponding to that in the clipping is then written in the lower left-hand corner.

These proposal forms so filled out are mailed to the persons or firms whose advertisements or listings have been clipped and attached thereto and whose business is solicited. Accompanying each form is a pre-addressed reply envelope and a four-page folder describing respondents' directory.

PAR. 4. The proposal forms, if carefully read by the prospects to whom they are sent, would preclude any misunderstanding on the part of such prospects as to the publisher by whom the proposals were sent or the publication in which the advertisements are to be printed. The record shows, however, that respondents' practice of attaching to the proposals advertisements or listings appropriated from local telephone or other directories or publications has actually deceived many of the prospects to whom such forms were sent into the mistaken belief that they were simply being asked to renew their advertisements in the publications from which the attached advertisements or listings were taken.

Respondents' practices are potentially deceptive regardless of the cautions, disclaimers and explanations printed on the proposals and in the accompanying circulars. The large type printing, the appropriated advertisement or listing, and the format so attract the attention of the prospect that more than a cursory examination of the form

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appears to him to be useless and time wasting. The statements, explanations and disclaimers on the forms have not been and are not effective to prevent deception or the likelihood of deception. The record shows that some advertisers accepted respondents' proposals and mailed checks to the respondents in the pre-addressed, return envelopes furnished by respondents and yet did not realize until later that their advertisements or listings were not appearing in the publication from which the clippings above referred to were taken. In still other instances, advertisers, disregarding the pre-addressed return envelope and the folder enclosed by the respondents, mailed their checks for the amounts indicated on the proposals to the company publishing the directory from which the clipped advertisement or listing had been taken.

PAR. 5. Under the terms of an affidavit of discontinuance submitted to the United States Post Office Department, corporate respondent, Directory Publishing Corporation, on August 17, 1951, H. E. Docket No. 1/48, agreed to delete from the proposal forms the words "not connected with any other directories, redbooks or Telephone Company," and since that date the proposal form has carried in place of those words the phrase "Established Annual Publication of proven merit." In the settlement with the Post Office Department, said corporate respondent also agreed not to clip or use on its proposal form "any advertisement cut or taken bodily from the classified telephone directories of the New York Telephone Company or any other telephone company." Respondents have presented testimony in this proceeding indicating that, since August 17, 1951, they have not, for use in connection with proposals mailed by them, caused any advertisements to be clipped from classified telephone directories.

PAR. 6. Said respondents in the conduct of their business are in substantial competition in commerce with other firms and individuals also engaged in the publication of directories and in the sale of advertisements and listings therein.

PAR. 7. The use by respondents in the circumstances here presented of listings and advertisements physically clipped and removed from other directories has constituted a representation to a substantial segment of the public that the advertisement or listing which is ordered by each of such persons or firms will be placed in the directory in which such person or firm has been previously listed and from which the advertisement or listing was clipped by the respondents, when such is not the fact.

PAR. 8. The use by said respondents of the aforesaid acts and practices and the misleading representations employed by them in connection with such acts and practices has had and now has the tendency

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and capacity to mislead many persons and has misled many persons into the erroneous and mistaken belief that they are buying and paying for advertising space in the publications from which said advertisements were clipped. As a result, trade has been unfairly diverted to respondents from their competitors and substantial injury has been and is now being done to competition in commerce.

CONCLUSION

The aforesaid acts, practices and methods of said respondents, as herein set forth, are all to the prejudice and injury of the public and of said respondents' competitors 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

It is ordered, That the respondent Directory Publishing Corporation, a corporation, and its officers, and respondents Stanley Oleck and Harvey Oleck, individually and as officers of said corporation, and said respondents' representatives, agents 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 advertising in industrial, commercial or other directories or registers, or any other publication, do forthwith cease and desist from using in the solicitation of such advertising by mail, advertisements which have been physically clipped or removed by or for the respondents from any publication issued by others than the respondents.

It is further ordered, That the charges of the complaint be, and the same hereby are, dismissed as they relate to the acts and practices of respondent Business Directory Corporation, and as they relate also to the acts and practices engaged in by respondents Stanley Oleck and Harvey Oleck, as officers of said corporation prior to its dissolution.

It is further ordered, That respondents, Directory Publishing Corporation, Stanley Oleck and Harvey Oleck, shall, within sixty (60) days after service of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Commissioner Mason dissenting from the order in this case for the reasons stated in his dissent of July 19, 1950, filed in the Matter of Independent Directory Corporation, Docket No. 5486.¹

¹ See 47 F. T. C. 13.

IN THE MATTER OF
SHELL OIL COMPANY

COMPLAINT, SETTLEMENT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 6051. Complaint, Oct. 16, 1952—Decision, Mar. 17, 1953

Where a corporation, which was engaged in the production and distribution of a complete line of petroleum products, made about 67% of its sales of kerosene and fuel oils in the "Eastern Midcontinent Territory", and sold in excess of 8% of the total sales for the industry in said territory, which comprised all States east of the Rocky Mountains; and which, prior to 1951, sold to independent dealers who resold its products and similar products of its competitors under their individual trade names, and to other independent dealers who handled its products exclusively and resold them under its own trade name—

- (a) Adopted, put into effect, and enforced a marketing plan whereby sales and contracts for the sale of its kerosene and fuel oils were made only on condition that the purchaser should not use, deal in, or resell such products of its competitors;
- (b) Effectuated said plan through sales contracts with independent dealers which required them, among other things, (1) to adopt and use its color scheme, trademark, and trade name on all delivery equipment; (2) to refrain from selling and delivering kerosene and fuel oils other than its own under its trade name; and (3) to purchase from it specified minimum quantities, based upon the dealer's total purchases of said products from all suppliers during the preceding year; and
- (c) Refused to sell its products to independent dealers who were unwilling or unable to enter into such sales contracts with it and thereby handle and deal in its kerosene and fuel oils exclusively;

Capacity, tendency and effect of which plan, sales contracts, and acts and practices in pursuance thereof might be to prevent its competitors from selling any such products to independent dealers who executed such contracts; to preclude such dealers from all benefits of competition between it and other sellers; and to cut off the source of supply for independent dealers who were unwilling or unable to handle its products exclusively; and

With the further result that its said marketing plan and sales contracts might substantially lessen competition in the lines of commerce in which it and its customers were engaged, and might tend to create a monopoly in it in the production, distribution, and sales in commerce of said products:

Held, That such acts and practices constituted a violation of Section 3 of the Clayton Act.

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Complaint

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

Mr. Fletcher G. Cohn and *Mr. Paul H. LaRue* for the Commission.

Mr. W. F. Kenney, *Mr. I. Slifkin* and *Mr. E. A. Hugill, Jr.*, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act, 15 U. S. C. Sec. 14, the Federal Trade Commission, having reason to believe that the Shell Oil Company, a corporation, hereinafter designated and referred to as respondent, has violated the provisions of section 3 of said Act, the Commission hereby issues its complaint stating its charges in such respects as follows:

PARAGRAPH 1. Respondent, Shell Oil Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 50 West 50th Street, New York 20, N. Y.

PAR. 2. Respondent is now, and for many years past has been engaged in the production, distribution and sale of a complete line of petroleum products, including kerosene and fuel oils which are used for industrial and domestic purposes.

PAR. 3. In the course and conduct of its business, respondent sells and distributes, and for many years last past has sold and distributed, kerosene and fuel oils to customers and purchasers thereof for use, consumption and resale within the United States and the District of Columbia. Until the year, 1951, or thereabout, respondent sold and distributed kerosene and fuel oils to independent dealers who resold said products and similar products of competitors of the respondent under said dealers' individual trade names. Respondent also sold and distributed kerosene and fuel oils for resale under its trade name to independent dealers who handled respondent's said products exclusively.

Approximately 95 percent of respondent's sales of kerosene and fuel oils are made in the territory designated as the "Eastern Midcontinent Territory," which comprises all of the States east of the Rocky Mountains and which is divided into eleven marketing divisions. Said marketing divisions, for the most part, extend over areas of several States and are further subdivided into districts.

During the years 1949 and 1950 respondent's sales of kerosene and fuel oils in said "Eastern Midcontinent Territory," were in excess of 8 percent of total sales for the industry.

PAR. 4. Respondent, in the course and conduct of its said business, sells and distributes kerosene and fuel oils from various plants and

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storage terminals to customers and purchasers thereof in the several States of the United States and in the District of Columbia, causing the said products when sold to be transported from the places of production and storage to customers and purchasers thereof located in States other than the State of origin of such shipments, and there is now, and has been for many years last past, a constant current of trade and commerce in said kerosene and fuel oils between and among the various States of the United States and in the District of Columbia.

PAR. 5. Except insofar as it is, has been, or may have been affected by the unlawful methods, acts and practices as hereinafter alleged, respondent is in substantial competition with various other persons, firms and corporations engaged in the production, sale and distribution of kerosene and fuel oils in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 6. Respondent, commencing sometime during the year 1951, or thereabout, adopted, put into effect and enforced a marketing plan whereby sales and contracts for the sale of its kerosene and fuel oils are made only on the conditions, understanding, and agreements that the purchasers thereof, shall not use, deal in, or resell the kerosene and fuel oils of a competitor or competitors of respondent. Said marketing plan is effectuated by means of sales contracts executed between respondent and independent dealers, the provisions of which require said dealers, among other things (1) to adopt and use the color scheme, trademark and trade name of respondent on all delivery equipment; (2) to refrain from selling and delivering kerosene and fuel oils other than respondent's under respondent's trade name; and (3) to purchase from respondent specified minimum quantities of kerosene and fuel oils. Said minimum quantities are based upon the independent dealer's total purchases of kerosene and fuel oils from all suppliers during the year preceding execution of the sales contract with respondent. Respondent has refused, and does now refuse, to sell kerosene and fuel oils to independent dealers who for various reasons are unwilling or unable to enter into said sales contracts with respondent and thereby handle and deal in respondent's kerosene and fuel oils exclusively.

PAR. 7. The capacity, tendency and effect of the aforesaid plan, sales contracts entered into, and the methods, acts and practices in pursuance thereof may be (a) to prevent respondent's competitors from selling any kerosene and fuel oils to independent dealers who execute such sales contracts; (b) to preclude said dealers from all benefits of competition between respondent and others from whom they could purchase kerosene and fuel oils; and (c) to cut off a source

of supply for independent dealers who are unwilling or unable to handle respondent's products exclusively.

PAR. 8. Furthermore, the effect of respondent's marketing plan and sales contracts made in pursuance thereof containing the aforesaid conditions, agreements and understandings, may be to substantially lessen competition in the line of commerce in which the respondent is engaged and in the line of commerce in which the customers of respondent are engaged or tend to create a monopoly in respondent in the production, distribution and sale in commerce of kerosene and fuel oils.

PAR. 9. The aforesaid acts of respondent constitute a violation of the provisions of section 3 of the hereinabove-mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Clayton Act, the Federal Trade Commission on October 16, 1952, issued and subsequently served its complaint on the respondent in the caption hereof, charging it with violation of Section 3 of said Act.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

1. Admits all the jurisdictional allegations set forth in the complaint;
2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law;

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on March 17, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission has reason to believe are unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondent consents may be entered herein in final disposition of this proceeding, are as follows :

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Shell Oil Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 50 West 50th Street, New York 20, N. Y.

PAR. 2. Respondent is now, and for many years past has been, engaged in the production, distribution and sale of a complete line of petroleum products, including kerosene and fuel oils which are used for industrial and domestic purposes.

PAR. 3. In the course and conduct of its business, respondent sells and distributes, and for many years last past has sold and distributed, kerosene and fuel oils to customers and purchasers thereof for use, consumption and resale within the United States and the District of Columbia. Until the year 1951, or thereabout, respondent sold and distributed kerosene and fuel oils to independent dealers who resold said products and similar products of competitors of the respondent under said dealers' individual trade names. Respondent also sold and distributed kerosene and fuel oils for resale under its trade name to independent dealers who handled respondent's said products exclusively.

Approximately 67 percent of respondent's sales of kerosene and fuel oils are made in the territory designated as the "Eastern Midcontinent Territory," which comprises all of the States east of the Rocky Mountains and which is divided into eleven marketing divisions. Said marketing divisions, for the most part, extend over areas of several States and are further subdivided into districts.

During the years 1949 and 1950 respondent's sales of kerosene and fuel oils in said "Eastern Midcontinent Territory," were in excess of 8 per cent of total sales for the industry.

PAR. 4. Respondent, in the course and conduct of its said business, sells and distributes kerosene and fuel oils from various plants and storage terminals to customers and purchasers thereof in the several States of the United States and in the District of Columbia, causing the said products when sold to be transported from the places of pro-

duction and storage to customers and purchasers thereof located in States other than the State of origin of such shipments, and there is now, and has been for many years last past, a constant current of trade and commerce in said kerosene and fuel oils between and among the various States of the United States and in the District of Columbia.

PAR. 5. Except insofar as it is, has been, or may have been affected by the unlawful methods, acts and practices as hereinafter alleged, respondent is in substantial competition with various other persons, firms and corporations engaged in the production, sale and distribution of kerosene and fuel oils in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 6. Respondent, commencing sometime during the year 1951, or thereabout, adopted, put into effect and enforced a marketing plan whereby sales and contracts for the sale of its kerosene and fuel oils are made only on the conditions, understanding, and agreements that the purchasers thereof, shall not use, deal in, or resell the kerosene and fuel oils of a competitor or competitors of respondent. Said marketing plan is effectuated by sales contracts executed between respondent and independent dealers, and by other means, which require said dealers, among other things (1) to adopt and use the color scheme, trademark and trade name of respondent on all delivery equipment; (2) to refrain from selling and delivering kerosene and fuel oils other than respondent's under respondent's trade name; and (3) to purchase from respondent specified minimum quantities of kerosene and fuel oils. Said minimum quantities are based upon the independent dealer's total purchases of kerosene and fuel oils from all suppliers during the year preceding execution of the sales contract with respondent. Respondent has refused, and does now refuse, to sell kerosene and fuel oils to independent dealers who for various reasons are unwilling or unable to enter into said sales contracts with respondent and thereby handle and deal in respondent's kerosene and fuel oils exclusively.

PAR. 7. The capacity, tendency and effect of the aforesaid plan, sales contracts entered into, and the acts and practices in pursuance thereof may be (a) to prevent respondent's competitors from selling any kerosene and fuel oils to independent dealers who execute such sales contracts; (b) to preclude said dealers from all benefits of competition between respondent and others from whom they could purchase kerosene and fuel oils; and (c) to cut off a source of supply for independent dealers who are unwilling or unable to handle respondent's products exclusively.

PAR. 8. Furthermore, the effect of respondent's marketing plan and sales contracts made in pursuance thereof containing the afore-

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said conditions, agreements and understandings, may be to substantially lessen competition in the line of commerce in which the respondent is engaged and in the line of commerce in which the customers of respondent are engaged to tend to create a monopoly in respondent in the production, distribution and sale in commerce of kerosene and fuel oils.

CONCLUSION

The aforesaid acts of respondent constitute a violation of the provisions of Section 3 of the hereinabove-mentioned Act of Congress entitled an "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

ORDER

It is ordered, That the respondent, Shell Oil Company, a corporation, and all its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale or distribution of kerosene or fuel oils, for the purpose of resale, in commerce, as "commerce" is defined in the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act, do forthwith cease and desist from:

1. Selling or making any contact for the sale of said products upon the condition, agreement, or understanding, express or implied, that the purchaser thereof purchase any one or all of said products exclusively from respondent.
2. Selling or making any contract for the sale of said products upon any condition which, directly or indirectly, obligates the purchaser thereof to refrain from dealing in the goods, wares, or merchandise of a competitor or competitors of respondent.
3. Refusing to sell, or refraining from selling, any amount or quantity of said products unless the purchaser thereof agrees to purchase any one or all of said products exclusively from respondent.
4. Refusing to sell, or refraining from selling, any amount or quantity of said products because the purchaser has failed to paint or keep painted in any particular manner his equipment.
5. Entering into, enforcing or continuing in operation or effect any condition, agreement, arrangement or understanding in, or in connection with, any existing or future sales contracts, which condition, agreement, arrangement or understanding is to the effect that the purchaser of said products shall not use or deal in the goods, wares or merchandise of a competitor or competitors of the respondent.

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Order

It is accordingly ordered, That the respondent, Shell Oil Company, shall within sixty (60) days after service upon it of this notice and 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 contained in the consent settlement entered herein.

APPROVED:

	SHELL OIL COMPANY		SHELL OIL COMPANY
By [sgd]	W. F. KENNEY	By [sgd]	E. A. HUGILL, Jr.,
	<i>Vice President and General Counsel.</i>		<i>Attorney.</i>

DATED: FEBRUARY 27, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and order entered of record on this the 17th day of March, 1953.

IN THE MATTER OF
ASHEVILLE FABRICS, INC. ET AL.

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

Docket 6002. Complaint, June 17, 1952—Decisions, Mar. 24, 1953

Rayon and acetate are chemically manufactured fibers, and fabrics manufactured therefrom are capable of being finished so as to simulate wool and other natural fibers in texture and appearance, and garments manufactured from fabrics composed of rayon and acetate are likewise capable of having the appearance and feel of wool, and many members of the purchasing public are unable to distinguish between such garments and those made from wool.

The term "worsted" means primarily and popularly a yarn or fabric made wholly of wool, the product of the fleece of the lamb or sheep, and there is a preference on the part of a substantial portion of the purchasing public for wearing apparel made from fabrics composed of wool or worsted, over wearing apparel made from other and non-wool fabrics, particularly those made to simulate wool or worsted.

Where a corporation engaged in converting, selling and distributing rayon and acetate fabrics simulating wool fabrics in appearance, which it sold principally to manufacturers of women's apparel, such as suits and skirts—

- (a) Distributed among prospective purchasers sample swatches of the fabrics to which were attached cards bearing the legend "Crush Resistant Suitings With That Worsted Texture";
- (b) Supplied its customers with tags reading in part "An Asheville Fabric with that Worsted Texture", which could be, and were, attached to finished garments manufactured by such customers and sold to retail stores; and
- (c) Failed to reveal on said cards or tags that the fabrics were made of rayon or acetate and contained no wool whatsoever, notwithstanding use of the term "worsted";

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public as to the composition of said fabrics, and thereby into the purchase of substantial quantities of such garments; and with effect of placing in the hands of manufacturers and retailers a means to mislead and deceive said public:

Held, That such acts and practices, under the circumstances set forth, constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. William L. Pack*, hearing examiner.
Mr. George E. Steinmetz for the Commission.
Conrad & Smith, of New York City, for respondents.

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Complaint

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 Asheville Fabrics, Inc., a corporation, and Lawrence Herman, individually and as an officer 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, Asheville Fabrics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Lawrence Herman is president of said Asheville Fabrics, Inc., and formulates, controls and directs the policies and practices of said corporate respondent. All of said respondents maintain their offices and principal place of business at 1407 Broadway in the City of New York, State of New York.

PAR. 2. Respondents are now, and for some time last past have been engaged in the business known as converting and distributing rayon and acetate fabrics, which fabrics, when sold, are by said respondents shipped and transported from their place of business in the City of New York, New York, to purchasers thereof located in various other States of the United States. Said respondents also cause such fabrics to be transported from various mills manufacturing the same to the several places of business of their dyers and finishers located in the States of New York and New Jersey and thence to the respondent's place of business in the State of New York and also to customers located in various States of the United States other than the States of New York and New Jersey. There is now and has been, during all of the times mentioned herein, a course of trade in commerce by said respondents in said fabrics between and among the various States of the United States. The volume of such trade has been and is now substantial.

PAR. 3. Respondents, under the name of Asheville Fabrics, Inc., are now, and during all of the times mentioned herein have been, in substantial competition with other firms, persons, corporations and copartnerships engaged in converting and offering for sale and selling and distributing rayon and acetate and all rayon fabrics to manufacturers of garments and wearing apparel and others engaged in commerce between and among the various States of the United States.

PAR. 4. Rayon and acetate are each a chemically manufactured fiber, and fabrics manufactured therefrom are capable of being finished as

to simulate wool and worsted and other natural fibers in texture and appearance. Garments manufactured from such fabrics composed of rayon and acetate are capable of having the appearance and feel of worsted or wool, and many members of the purchasing public are unable to distinguish between such garments and garments manufactured from worsted or wool, the product of the fleece of the lamb or sheep. The rayon and acetate fabrics and all rayon fabrics sold and distributed by respondents simulate wool and worsted fabrics in texture and appearance. Consequently, garments made from such fabrics are accepted by many members of the purchasing public as wool products. Respondents do not disclose the true content of the fibers comprising their fabrics by labels or tags attached thereto or in any other manner. Such failure to identify the true fiber contents of such fabrics extends to the fabrics purchased by respondent corporation and moving from the dyers and finishers employed by said respondents to themselves in the City of New York, N. Y., and to the ultimate customers of said respondents, whether shipped by said dyers or by respondent corporation.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the purchase of said rayon and acetate fabrics by wholesalers and manufacturers of wearing apparel, respondents have advertised in trade papers of general circulation certain of its rayon and acetate or all rayon fabrics as "Rayon Gabardine"—"Starred for Its Worsted Texture" and furnish, and have furnished, separate hang tags to its customers for affixing to finished products made from such rayon and acetate, or all rayon fabrics, reading in part "An Asheville Fabric with that Worsted Texture" without setting forth true fiber contents thereof. Such labels or tags are furnished by respondents to purchasers in quantities sufficient to separately label or tag all such finished units so manufactured and thereafter sold in commerce by respondents' customers to the retail trade, and the practice is and has been for such customers to so label and tag as aforesaid.

PAR. 6. In the course of soliciting and inducing business by said respondents, sample sales swatches of said rayon and acetate fabrics have, by them, been, and now are, introduced in commerce, attached to which are cards bearing the legend "Crush Resistant Suitings With That Worsted Texture."

PAR. 7. The use by respondents and their agents, dyers and finishers, of the term "Worsted" in the several manners and methods herein set forth serves as a representation to purchasers, manufacturers, as well as members of the consumer public, that such fabrics or products made therefrom are composed in whole or in part of worsted or wool. Said representations are false and misleading in that said acetate and rayon

fabrics or the products made therefrom contain no worsted or wool whatever, although finished in such fashion as to resemble wool or worsted.

PAR. 8. The word "Worsted" means primarily and popularly a yarn or fabric made wholly of wool, being the wool of sheep, the longer and better fibers of which are spun and woven into cloth or fabric favorably known to the purchasing public as "worsted"; being a term synonymous with wool. A substantial portion of the purchasing public prefers to purchase wearing apparel composed of fabrics made of wool or worsted as distinguished from wearing apparel made from other and non-wool fabrics, especially those made to simulate or imitate wool or worsted.

PAR. 9. Through the use of the term "worsted" in combination with other words and phrases descriptive of respondent's products, as above set forth, both in the use of labels or tags so furnished to customers and in the use of advertising as aforesaid, and in failing to identify the fibers of which its fabrics are composed by means of labels, tags or any other appropriate means, respondents have placed, and are now placing, in the hands of such manufacturers and the retailers of such products a means and instrumentality by which such manufacturers and retailers may and do mislead and deceive the purchasing public by representing that such rayon and acetate and all rayon fabrics are in fact composed of worsted or wool.

PAR. 10. The use by the respondents of the acts and practices hereinabove described, including the failure to disclose the identity of the fibers of which their said fabrics are composed, have the capacity and tendency to mislead and deceive the purchasing public into the erroneous and mistaken belief that products made of such fabrics are wool products and into the purchase of substantial quantities of such products because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

PAR. 11. The aforesaid acts and practices of the respondents and each of them, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 17, 1952, issued and sub-

sequently served its complaint in this proceeding upon the respondents, Asheville Fabrics, Inc., a corporation, and Lawrence Herman, individually and as an officer of said corporation, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of respondents' answer, a hearing was held before a hearing examiner of the Commission theretofore duly designated by it, at which hearing there was incorporated into the record a stipulation as to the facts between counsel supporting the complaint and counsel for respondents, in lieu of all other evidence. On November 13, 1952, the hearing examiner filed his initial decision.

The Commission, having reason to believe that said initial decision did not constitute an adequate disposition of this matter, subsequently placed this case on its own docket for review, and on January 29, 1953, it issued, and thereafter served upon the parties, its order affording the respondents an opportunity to show cause why said initial decision should not be altered in the manner and to the extent shown in a tentative decision of the Commission attached to said order. Respondents having filed no objection in response to the leave to show cause, the proceeding regularly came on for final consideration by the Commission upon the record herein on review; 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, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Asheville Fabrics, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1407 Broadway, New York, New York. Lawrence Herman is named in the complaint as a respondent, individually and as an officer of respondent Asheville Fabrics, Inc. The record does not sustain the allegation as to respondent Lawrence Herman in his individual capacity, and therefore the complaint is being dismissed as to him in his individual capacity, but not in his capacity as an officer of respondent Asheville Fabrics, Inc. As used hereinafter, the term "respondent" does not include Lawrence Herman as an individual.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the business of converting and distributing rayon and acetate fabrics, the fabrics, when sold, being transported from respond-

ent's place of business in the State of New York to purchasers located in various other States of the United States. Respondent also causes such fabrics to be transported from various mills manufacturing them to the several places of business of respondent's dyers and finishers located in the States of New York and New Jersey, and thence to respondent's place of business in the State of New York and also to customers located in the various States of the United States other than the States of New York and New Jersey. There is now, and at all times mentioned herein has been, a course of trade by respondent in such fabrics in commerce between and among the various States of the United States, the volume of such trade being substantial.

PAR. 3. In the course and conduct of its business respondent is and has been in substantial competition with other corporations and with persons, firms, and copartnerships engaged in offering for sale and selling rayon and acetate and all-rayon fabrics in commerce between and among various States of the United States.

PAR. 4. Rayon and acetate are chemically manufactured fibers, and fabrics manufactured therefrom are capable of being finished so as to simulate wool and other natural fibers in texture and appearance. Garments manufactured from fabrics composed of rayon and acetate are likewise capable of having the appearance and feel of wool, and many members of the purchasing public are unable to distinguish between such garments and garments manufactured from wool. Respondent's fabrics simulate wool fabrics in texture and appearance, and in consequence garments made from such fabrics are accepted by many members of the purchasing public as wool products.

PAR. 5. The word "worsted" means primarily and popularly a yarn or fabric made wholly of wool, the product of the fleece of the lamb or sheep. There is a preference on the part of a substantial portion of the purchasing public for wearing apparel made from fabrics composed of wool or worsted, over wearing apparel made from other and non-wool fabrics, particularly those made to simulate wool or worsted.

PAR. 6. Respondent sells its fabrics principally to manufacturers of women's wearing apparel, such as suits and skirts. In promoting the sale of the fabrics, respondent has distributed among prospective purchasers sample swatches of the fabrics to which were attached cards bearing the legend "Crush Resistant Suitings With That Worsted Texture." Respondent has also supplied to its customers tags to be attached to finished garments manufactured by such customers and sold to retail stores. These tags read in part "An Asheville Fabric with that Worsted Texture." Respondent's customers have followed the practice of attaching these tags to the garments and the tags have thus found their way into the hands of retail stores and

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finally to the purchasing public. At no place on either these cards or tags or on any other tags or labels was there any disclosure by respondent of the materials of which the fabrics were made, rayon or acetate. The fabrics contained no wool whatever.

PAR. 7. The use by respondent of the word "worsted" as set forth above, the supplying by respondent to its customers of the tags in question, and the failure of respondent to disclose the fabric content of its fabrics had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's fabrics and the garments made therefrom, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such garments as a result of the erroneous and mistaken belief so engendered. Respondent's acts and practices served also to place in the hands of manufacturers and retailers of garments made from such fabrics a means and instrumentality whereby such manufacturers and retailers might be enabled to mislead and deceive the purchasing public. In consequence, substantial trade has been diverted unfairly to respondent from its competitors.

PAR. 8. The acts and practices in question have already been discontinued by respondent.

CONCLUSION

The acts and practices of respondent as hereinabove set out are all to the prejudice of the public and of respondent's competitors, 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

It is ordered, That respondent Asheville Fabrics, Inc., a corporation, its officers, and respondent Lawrence Herman as an officer of said corporation and their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "worsted" or any other word of similar import, either alone or in conjunction with other words, to designate or describe any product which is not composed entirely of worsted or wool; provided, however, that in the case of a product composed in part of worsted or wool and in part of other fibers, such word may be used as descriptive of the worsted or wool content if there are used in im-

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mediate conjunction therewith, in letters of at least equal size and conspicuousness, other words truthfully describing such other constituent fibers.

2. Offering for sale or selling products composed in whole or in part of rayon or of acetate, without clearly disclosing thereon or on tabs or labels attached thereto, such rayon or acetate content.

3. Supplying to or placing in the hands of others, for use in designating fiber content of respondent's fabrics or of garments made therefrom, tags, labels, or advertising material which misrepresent the fiber content of such fabrics or garments, or which fail to disclose any rayon or acetate content therein.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Lawrence Herman in his individual capacity.

It is further ordered, That respondent Asheville Fabrics, Inc., a corporation, and respondent Lawrence Herman as an officer of said corporation shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
TUNGSTEN CONTACT MANUFACTURING COMPANY
ET AL.

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

Docket 5835. Complaint, Dec. 26, 1950—Decision, Mar. 26, 1953

Where a firm engaged in buying, manufacturing and selling ignition parts for automobiles and, as thus engaged in the purchase in bulk of ignition points which bore no stamp, label or trade-mark and none of which were purchased from General Motors Corporation, The Electric Auto-Lite Company, or the Ford Motor Company or their authorized dealers—

- (a) Sold such ignition contact points, purchased untrademarked, but upon which, at the time of sale there appeared the trade marks of said manufacturers, as and for genuine Delco-Remy, Auto-Lite, and Ford points; and
- (b) Sold as and for genuine Auto-Lite and Delco-Remy parts such ignition points which were not in fact made by or for The Electric Auto-Lite Co. or the General Motors Corp.; and

Where a certain corporation and its controlling officer, engaged in the purchase of genuine Delco-Remy contact points, and in the purchase also from the aforesaid firm of such products which were not so represented—

- (c) Sold a quantity of said last-named points as and for genuine Delco-Remy, Auto-Lite, and Ford ignition points; admitting, extra judicially, to a New York police officer that he had been knowingly selling counterfeit points; and

Where an individual who dealt at wholesale in automotive parts, and purchased from aforesaid corporation ignition parts designated as Delco-Remy—

- (d) Sold and repurchased from the aforesaid corporation such points, after being informed of their counterfeit nature, and, following an interview with an attorney-investigator of the Commission and the storage by said individual for a few months, following his admitted persuasion of the counterfeit nature of said products, resumed and continued the sale thereof until his supply was exhausted; and

Where the aforesaid firm, corporation, and individuals, engaged as aforesaid in the interstate sale and distribution of said counterfeit ignition points in competition with others engaged in the sale and distribution of genuine and original automotive ignition points and replacement parts not falsely represented as such—

- (e) Placed thereby in the hands of dealers a means and instrumentality of deception regarding the source or origin of their said products;
- With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that the ignition points and parts sold by them were made by or for the General Motors Corp., The Electric Auto-Lite

Co., or the Ford Motor Co., and thereby induce its purchase of substantial quantities thereof; and with the result that substantial trade in commerce was diverted to said respondents from their competitors, to the injury of competition in commerce:

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

In the aforesaid proceeding, in which numerous respondents joined in the complaint had theretofore had the proceeding dismissed as to said respondents, the proceeding was also dismissed as to several remaining respondents not included in the foregoing cease and desist order.

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

Mr. Edward F. Downs for the Commission.

Vanderbach & Vanderbach, of Guttenberg, N. J., for Tungsten Contact Manufacturing Co., Union Electrical Parts Co., Inc., Orville C. Hollopeter, Jenny V. Hayes and Saul H. Lippman.

Mr. Murry Bower, of New York City, for Harry Augen, Lillian Augen, Irwin Schneeberger, Bell Auto Supply Co. and Tom Brown.

Greenwald, Kovner & Goldsmith, of New York City, for Herman D. Stein and Myna S. Stein.

Mr. Charles Rose, of Brooklyn, N. Y., for Jack Weiss.

Brass & Brass, of Newark, N. J., for Charles DePerty.

Lochtan & Wolfe, of Chicago, Ill., for Bernard Hirsch and Lester Hirsch.

Mr. Seymour Gair, of Chicago, Ill., for Gair & Co.

Mr. Robert J. Weiss, of Chicago, Ill., for Scott Adams Co., Alvin Sampson, Mandel Rubin and Walter Jeschke.

Prince & Schoenberg, of Chicago, Ill., for Louis Feldman and Perry Feldman.

Snyder, Balmer & Kershner, of Reading, Pa., for Harry A. Spatz and Berk's Auto Ignition Co.

Mr. Jay L. Oldham, of Kansas City, Mo., for Raymond Miller.

Terte, Levi, Rosenwald, Wasserstrom & Levitt, of Kansas City, Mo., for Israel A. Kosovitz.

Mr. Harold Kaminsky, of St. Louis, Mo., for General Accessories & Supply Co., Ben Recht and Henry Lacks.

Behrendt, Shockley & Searing, of Kansas City, Mo., for *Matt Millard*.

Kaufman & Stemmler, of St. Louis, Mo., for Mendenhall Motors.

Mr. J. Dudley Inman, of Louisville, Ky., for Maurice R. McGinnity and H. J. Spath.

Mr. Martin R. Freedman, of Philadelphia, Pa., for Harry Friedman.

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Mr. Edmund E. De Paul and *Mr. Herman Toll*, of Philadelphia, Pa., for *Martin O. Krupnick*.

Marcus & Schenkman, of New York City, for *Alfred Gliksman, Inc., Alfred Gliksman and Otilia Gliksman*.

Smith & Rafsky, of New York City, for *Irving Gilbert*.

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 Tungsten Contact Manufacturing Company, a corporation, and Union Electrical Parts Company, Inc., a corporation, and Orville C. Hollopeter, Jenny V. Hayes and Saul H. Lippman, individually and as officers of said corporations; Harry Augen, Lillian Augen and Irwin Schneeberger, individuals doing business as Graphited Lubricants Company; Livingston Automotive Supply Company, Inc., a corporation, and Charles E. Kerpen and Sylvia Kerpen, individually and as officers of said corporation; Herman D. Stein and Myna S. Stein, individuals doing business as Crown Automotive Manufacturing Company; Jack Weiss, an individual doing business as Bergen Auto Supply Company; Charles DePerty, an individual doing business as DePerty's Ford Parts; Alexander Levenson, an individual; Bernard Hirsch and Lester Hirsch, co-partners doing business as General Wholesale Auto Supply; Seymour Gair, an individual doing business as Gair & Company; Scott Adams Company, a corporation, and Alvin Sampson, Mandel Rubin and Walter Jeschke, individually and as officers of said corporation; Louis Feldman and Perry Feldman, co-partners doing business as L. Feldman and Company; Bell Auto Supply Company, a corporation, and Tom Brown, individually and as an officer of said corporation; Harry A. Spatz, an individual; Berk's Auto Ignition Company, a corporation; Raymond Miller, an individual doing business as Missouri Manufacturers Sales Company; Israel A. Kosovitz, an individual; General Accessories & Supply Company, a corporation, and Ben Recht and Henry Lacks, individually and as officers of said corporation; Matt Millard, an individual doing business as Millard Supply Company; Mendenhall Motors, a corporation; Maurice R. McGinnity and H. J. Spath, co-partners doing business as Auto Electric Service Company; Harry Friedman, an individual doing business as Penn Autoware Sales; *Martin O. Krupnick*, an individual; *Alfred Gliksman, Inc.*, a corporation, and *Alfred Gliksman and Otilia Gliksman*, individually and as officers of said corporation; and *Irving Gilbert*, an individual doing business as Acme Products Com-

pany, 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 therein its charges as follows:

PARAGRAPH 1. Tungsten Contact Manufacturing Company and Union Electrical Parts Company, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Their office and principal place of business is located at 7311 Cottage Avenue, North Bergen, New Jersey. These corporations will hereinafter be referred to as Tungsten and Union.

Respondents Orville C. Hollopeter, Jenny V. Hayes, and Saul H. Lippman are officers of said corporate respondents and as such formulate and execute the policies and practices of said corporations.

Said corporate respondents are engaged in manufacturing and selling, among other things, points and parts for use in the ignition systems of automotive motors hereinafter collectively referred to as ignition parts. The ignition parts which they manufacture are copies of original and genuine parts of the various automobile manufacturers. Original and genuine ignition parts are normally stamped and packaged and bear the manufacturer's trade name and numerals. Some automobile manufacturers do not, themselves, manufacture the ignition parts, but have them manufactured for them by others. These original and genuine ignition parts are branded and packaged with the trade names and numerals such as "Auto-Lite," IGP 3028 E. S., manufactured by Auto Electric Light Company of Toledo, Ohio, "Delco-Remy," 1871870, and "Delco-Remy," 1855720, made for or by the General Motors Corporation, and "Ford," 7RA12171, made for or by the Ford Motor Company. The ignition parts produced by or for Auto-Lite, Delco-Remy and Ford are universally known as genuine and original and are restrictively distributed. All others are commonly referred to as replacements. Ignition parts are sold to repair shops who, in turn, use them to replace worn parts when necessary in the repair of automobile ignition systems. Ignition parts are subjected to constant use in the operation of an automobile so that replacements must of necessity be made more or less frequently.

Tungsten and Union manufacture and supply the trade with replacement ignition parts branded Union or UE and Tungsten. These ignition parts so branded are sold as replacements in competition with original and genuine ignition parts such as Auto-Lite, Delco-Remy and Ford.

These respondents also manufacture, sell and ship to some other of the respondents mentioned herein, ignition parts in bulk, unstamped and bearing no identification marks. These parts closely resemble

the original and genuine parts and may be readily mistaken for original and genuine parts. Some of the other respondents assemble such parts and place counterfeit marks thereon and package such ignition parts as original and genuine Auto-Lite, Delco-Remy and Ford parts. Such ignition parts are packaged in envelopes and cartons on which are printed the identical words and figures used on said original packages to simulate the packages used by Auto-Lite, General Motors and Ford. The completed containers of said ignition parts are finished and printed and simulated and appear to be identical with the original and genuine containers.

Respondents, Tungsten and Union are affiliated with other respondents mentioned herein, as is afterwards set out, and have full knowledge that these purchasers of their bulk ignition parts, stamp, label, package and sell such parts as original Auto-Lite, Delco-Remy and Ford parts. The practice of Tungsten and Union of supplying such counterfeit and unbranded parts to other respondents, enable such other respondents and their purchasers to pass off such parts to the public as genuine Auto-Lite, Delco-Remy and Ford parts.

PAR. 2. Respondents Harry Augen, Lillian Augen, and Irwin Schneeberger are individuals doing business as Graphited Lubricants Company, with their office and principal place of business at 423 Broadway, Brooklyn, New York. These respondents are hereinafter designated as Graphited. For the past several years they have been associated with the officers of respondent companies Tungsten and Union. Graphited and officers of Tungsten and Union operated a corporation under the name of Lily-Ann Toy Corp. A close business relationship existed between officials of Tungsten, Union and Graphited.

Tungsten and Union sold large quantities of individual ignition parts to respondent Graphited in bulk. These parts were not branded with the Tungsten or Union symbol or marks. These ignition parts were assembled, branded, packaged and resold by respondent Graphited as original Auto-Lite, Delco-Remy and Ford ignition parts to purchasers, among which were some of the respondents mentioned herein, with the knowledge on the part of respondent Graphited and its customers that said parts were counterfeits of original Auto-Lite, Delco-Remy and Ford ignition parts. Graphited invoiced said counterfeits by reference to AL for Auto-Lite, DR for Delco-Remy and FO for Ford, affixing thereto the numerals such as 1855720, 1882391, 1871870 and "Ford 1949 7RA12171," "Ford 4ps. 6812162," duplicating the different numbers and letters used by the makers of genuine and original parts. Respondent Graphited stamped counterfeit markings on the metal of such ignition points sold by them and

for a certain charge placed such counterfeit markings and symbols on ignition parts for other respondents.

Graphited also printed packages and envelopes with figures and written words indicating said ignition parts to be genuine Auto-Lite, Delco-Remy and Ford parts. These were then sold to customers among which were other respondents herein who used the same in packaging counterfeit parts for resale.

PAR. 3. Respondent Livingston Automotive Supply Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 236 Livingston Street, Brooklyn, New York.

Respondents Charles E. Kerpen and Sylvia Kerpen are officers of said corporation, and as such formulate and execute the policies and practices of said corporation. The address of said officers is the same as that of said corporation.

For the past several years said corporate respondent has bought ignition parts from Graphited which were purchased from Tungsten and Union. These ignition parts had been stamped with counterfeit markings by Graphited and packaged in envelopes and containers bearing markings, words and symbols indicating that such ignition parts were the products of Auto-Lite, Delco-Remy and Ford. The officers of respondent Livingston Auto Supply Company and the individuals operating as Graphited are business associates and friends of many years standing. Respondent Livingston Auto Supply Company, Inc. had full knowledge of the counterfeiting and misbranding operations of respondent Graphited and the connection of the persons operating as Graphited with respondents Tungsten and Union. Respondent Livingston Auto Supply Company, Inc. has for many years past sold and delivered hundreds of thousands of these counterfeit ignition parts all over the United States to many of the respondents mentioned herein.

PAR. 4. Respondents Herman D. Stein and Myna S. Stein, are individuals doing business as the Crown Automotive Manufacturing Company, with their office and principal place of business at 32-52 58th Street, Woodside, Long Island, New York. For several years past they have engaged in buying and selling, among other things, automobile ignition points and parts.

Said respondents bought counterfeit ignition parts stamped "Ford" from Graphited and sold said parts to others, well knowing such parts were not genuine Ford ignition parts but were counterfeits stamped with the word "Ford."

PAR. 5. Respondent Jack Weiss is an individual doing business as Bergen Auto Supply Company, with his office and principal place of

business at 1206 Bedford Avenue, Brooklyn, New York. He is a wholesaler, buying and selling automobile parts including ignition parts. During the past several years, this respondent purchased large quantities of counterfeit ignition parts from respondent, Graphited. Said ignition parts were invoiced to said respondent as AL, FO and DR points, but respondent well knew that said replacement parts were not original parts, but were counterfeit parts. Respondent sold counterfeit ignition parts to numerous dealers over the United States as original Ford, Auto-Lite and Delco-Remy ignition parts, well knowing that he was selling counterfeit parts.

PAR. 6. Respondent Charles DePerty is an individual doing business as DePerty's Ford Parts, with his office and principal place of business at 145 Glenwood Avenue, East Orange, New Jersey. For the past several years he has been engaged in selling automobile motor parts, including ignition parts.

This respondent bought ignition parts from respondents Tungsten and Union in bulk, unstamped. He caused such points and parts to be stamped and marked as original and genuine Auto-Lite, Delco-Remy and Ford ignition parts and sold them as original and genuine parts well knowing that the parts he bought from Tungsten and Union and others were not genuine Auto-Lite, Delco-Remy or Ford parts.

PAR. 7. Respondent Alexander Levenson is an individual doing business under his own name at 6722 South Clyde Avenue, Chicago, Illinois. He is a wholesaler, dealing in automotive parts, including ignition parts. For several years last past he bought ignition parts from respondent Livingston Automotive Supply Company, Inc., designated as Delco-Remy, well knowing that such ignition parts were counterfeits and were not produced by the General Motors Company or for the General Motors Company. These parts were resold by Levenson as genuine and original Delco-Remy ignition parts.

PAR. 8. Respondents Bernard Hirsch and Lester Hirsch are co-partners doing business as General Wholesale Auto Supply, with their office and principal place of business at 1528-1530 North Pulaski Road, Chicago, Illinois. For the past several years they have been engaged in wholesaling automotive replacement parts, among which are ignition parts. They purchased counterfeit ignition parts from respondent Livingston Automotive Supply Company, Inc., which parts were invoiced, branded, labeled and packaged as "Delco-Remy." Respondents well knew that the ignition parts which they purchased from respondent Livingston Automotive Supply Company, Inc. were not genuine Delco-Remy ignition parts. Respondents resold such counterfeit Delco-Remy ignition parts in packages simulating original and genuine packages and branded and labeled as Delco-Remy.

PAR. 9. Respondent Seymour Gair is an individual doing business as Gair & Company, with his office and principal place of business at 1430 West 18th Street, Chicago, Illinois. For the past several years he has been engaged in wholesaling automotive parts, including ignition parts. He acted as a sales representative for Alexander Levenson in the sale and distribution of counterfeit Delco-Remy ignition parts and resold said counterfeit parts as genuine, well knowing that such ignition parts were, in fact, counterfeits.

PAR. 10. Respondent Scott Adams Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 1806 Michigan Avenue, Chicago, Illinois.

Respondents Alvin Sampson, Mandel Rubin and Walter Jeschke are officers of said corporation and as such formulate and execute the policies and practices of said corporation. The addresses of said officers is the same as that of the corporation.

Respondent Scott Adams Company has for several years last past dealt with respondent Alexander Levenson. Respondent purchased counterfeit Delco-Remy ignition parts from said Alexander Levenson, well knowing that such ignition parts were, in fact, counterfeits.

Respondents cooperated with the said Alexander Levenson and aided and abetted in the transportation and sale of said counterfeits to dealers and represented such Delco-Remy counterfeits to be original and genuine Delco-Remy ignition parts.

PAR. 11. Respondents Louis Feldman and Perry Feldman are co-partners doing business as L. Feldman and Company with their office and principal place of business at 2330 South Michigan Avenue, Chicago, Illinois. Said respondents sold ignition parts and cooperated with Alexander Levenson and other respondents in the sale and transportation of counterfeit Delco-Remy ignition parts, well knowing that such parts were not genuine Delco-Remy parts.

PAR. 12. Respondent Bell Auto Supply Company is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business at 1177 Tremont Street, Boston, Massachusetts.

Respondent Tom Brown is an officer of said corporation and as such participated in the formulation and execution of the policies and practices of said corporation. His address is the same as that of the corporation.

For several years last past corporate respondent Bell Auto Supply Company has been engaged in buying and selling automobile parts, among which are ignition parts. During the past several years said respondent has purchased ignition parts from respondent Graphited.

The said ignition parts were invoiced to this respondent as AL-18, DR-18, DR-28, FO-12, 13-R and 13-L. Said respondent well knew that the replacement parts purchased from said respondent Graphited were not original Auto-Lite, Delco-Remy or Ford ignition parts, and were, in fact, counterfeits, but sold said counterfeits as originals.

PAR. 13. Respondent Harry A. Spatz is an individual doing business under his own name, with his office and principal place of business at 40-42 South 9th Street, Reading, Pennsylvania.

For several years last past he has operated as a wholesale and retail dealer of automobile parts, including ignition parts. During the past several years he has purchased large quantities of counterfeit ignition parts from respondent Martin O. Krupnick and others. These counterfeits were purchased both in bulk and in packages. The bulk counterfeit ignition parts were stamped genuine Delco-Remy. The counterfeit Auto-Lite ignition parts were stamped and packaged as genuine and original Auto-Lite parts. Respondent resold said parts to purchasers as original Auto-Lite and Delco-Remy ignition parts, well knowing that such parts so sold by him were, in fact, counterfeits and not original and genuine parts. The said respondent has aided and abetted other respondents in the transportation, sale and distribution of said counterfeit ignition parts.

PAR. 14. Respondent Berk's Auto Ignition Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business at 315 North 4th Street, Reading, Pennsylvania. It is engaged in the wholesale distribution of automobile accessories and supplies including ignition parts and points. It is an authorized direct dealer of original and genuine Auto-Lite and Delco-Remy ignition parts. Supplies of genuine and original Auto-Lite and Delco-Remy ignition parts were available to it from direct sources. However, the said respondent purchased and sold counterfeit Auto-Lite ignition parts, well knowing them to be counterfeit and not original parts. Respondent aided and abetted other respondents in the transportation, sale and distribution of counterfeit Auto-Lite ignition parts as genuine and original.

PAR. 15. Respondent Raymond Miller is an individual doing business as Missouri Manufacturers Sales Company, with his office and principal place of business at 2207 Myer Boulevard, Kansas City, Missouri. He is an itinerant dealer in automobile parts, including ignition parts. For several years last past said respondent has purchased large quantities of counterfeit ignition parts from respondent Charles DePerty, which counterfeits were packaged and branded as genuine Auto-Lite, Delco-Remy and Ford. This respondent sold

large quantities of such counterfeit ignition parts to dealers in different parts of the United States, well knowing that said ignition parts were counterfeits. Respondent has aided and abetted respondent Charles DePerty and other respondents in the transportation, sale and distribution of counterfeit ignition parts branded as genuine Auto-Lite, Delco-Remy and Ford ignition parts.

PAR. 16. Respondent Israel A. Kosovitz is an individual residing at 6637 Brookside Boulevard, Kansas City, Missouri. Respondent has engaged in the sale and distribution of automobile parts including ignition parts. This respondent has, for several years last past, bought large quantities of counterfeit ignition parts from respondent Charles DePerty and respondent Raymond Miller, which ignition parts were counterfeits stamped and branded as genuine Auto-Lite, Delco-Remy and Ford ignition parts. Said respondent afterwards sold said parts as genuine Auto-Lite, Delco-Remy and Ford parts, well knowing them to be counterfeit and not original parts. Said respondent aided and abetted respondents Charles DePerty, Raymond Miller and other respondents in the transportation, sale and distribution of counterfeit ignition parts branded as genuine and original parts.

PAR. 17. Respondent General Accessories & Supply Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 1936 Franklin Street, St. Louis, Missouri.

Respondents Ben Recht and Henry Lacks are officers of said corporation and as such officers they formulate and execute the policies and practices of said corporation.

Respondent General Accessories & Supply Company is a wholesale dealer in automobile accessories and supplies, including ignition parts. During the last several years said corporate respondent has purchased counterfeit Auto-Lite, Ford, and Delco-Remy ignition parts from respondent General Wholesale Auto Supply and afterwards resold said counterfeit ignition parts in various parts of the United States as original parts, well knowing them to be counterfeit and not original parts. Respondent aided and abetted other respondents in the sale and distribution of counterfeit ignition parts branded as genuine parts.

PAR. 18. Respondent Matt Millard is an individual doing business as Millard Supply Company, with his office and principal place of business located at 939-41 Minnesota Avenue, Kansas City, Kansas. He is now and for several years last past has been a dealer in automobile accessories and supplies, including ignition parts. This respondent has purchased large quantities of counterfeit ignition parts

from respondent Israel A. Kosovitz and respondent Raymond Miller and others. The said counterfeits were designated on invoices as Ford and Chevrolet ignition parts, and were packaged and marked to indicate that the said ignition parts were genuine and original Ford and Delco-Remy ignition parts. Said respondent resold said counterfeit ignition parts in various parts of the United States in packages and containers marked as genuine and original parts. Said respondent knew that the said parts were, in fact, not genuine and original parts. Respondent has aided and abetted respondents Israel A. Kosovitz and Raymond Miller in the transportation, sale and distribution of counterfeit ignition parts branded as genuine and original parts.

PAR. 19. Respondent Mendenhall Motors is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business at 23rd and Washington Avenue, St. Louis, Missouri. Said respondent operates a Ford agency and has an exclusive franchise for the rebuilding of Ford motors.

Respondent purchased counterfeit Ford ignition parts from respondent Raymond Miller, well knowing that such parts were not original and genuine Ford parts but were, in fact, counterfeits. It has aided and abetted the said respondent Raymond Miller in the transportation, sale and distribution of counterfeit Ford ignition parts.

PAR. 20. Respondents Maurice R. McGinnity and H. J. Spath are co-partners doing business as Auto Electric Service Company, with their office and principal place of business at 102 East Jacobs Street, Louisville, Kentucky. For the past several years they have been wholesale dealers in automobile parts and replacements, including ignition parts.

Said respondents have purchased large quantities of counterfeit ignition parts from respondents Livingston Auto Supply Company, Inc., and Harry Friedman, which counterfeits were branded and packaged as genuine Auto-Lite, Delco-Remy and Ford ignition parts. Said respondents resold said counterfeits to purchasers located in various parts of the United States, knowing that they were counterfeit but representing them to be original and genuine Auto-Lite, Delco-Remy and Ford ignition parts. Respondents have aided and abetted other respondents in the transportation, sale and distribution of counterfeit ignition parts.

PAR. 21. Respondent Harry Friedman is an individual doing business as Penn Autoware Sales, with his office and principal place of business at 2427 80th Avenue, Philadelphia, Pennsylvania.

Said respondent bought ignition parts from Tungsten and Union and sold such parts as genuine Auto-Lite, Delco-Remy, and Ford parts, well knowing them to be counterfeit and not original and genuine parts.

Respondent has aided and abetted other respondents in the transportation, sale and distribution of said counterfeit Delco-Remy, Auto-Lite and Ford ignition parts.

PAR. 22. Respondent Martin O. Krupnick is an individual residing at 5657 Melvern Avenue, Philadelphia, Pennsylvania. He is an itinerant dealer in automobile parts. For the past several years he has been engaged in buying and selling automotive supplies, including ignition parts. He bought counterfeit ignition parts stamped as Auto-Lite, Delco-Remy and Ford, well knowing that such ignition parts so purchased were counterfeits. He sold them to purchasers as original and genuine Auto-Lite, Delco-Remy and Ford parts, with the knowledge that such parts were, in fact, counterfeits. Said respondent has aided and abetted other respondents in the transportation, sale and distribution of counterfeit ignition parts.

PAR. 23. Respondent Alfred Gliksman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 53 West 72nd Street, New York, New York.

Respondents Alfred Gliksman and Otilia Gliksman are officers of said corporation and, as such, formulate and execute the policies and practices of said corporation. Their address is the same as that of the corporation.

For the past several years corporate respondent Alfred Gliksman, Inc., has been engaged in the business of buying and selling automobile replacement parts, including ignition parts.

One of its sources of supply of ignition parts was respondent Graphited. It purchased from said respondent counterfeit ignition parts, branded, packaged and marked as genuine Auto-Lite, Delco-Remy and Ford ignition parts, well knowing that same were counterfeits and sold said parts to purchasers located in various parts of the United States and in Havana, Cuba, representing same to be genuine original replacement parts of Auto-Lite, Delco-Remy and Ford. Respondent aided and abetted other respondents in the transportation, sale and distribution of counterfeit ignition parts.

PAR. 24. Respondent Irving Gilbert is an individual doing business as Acme Products Company, with his office and principal place of business at 357 West 53rd Street, New York, New York. He is now and for the past several years has been engaged in the business of whole-

selling automobile replacement parts, including ignition points and parts.

Respondent bought ignition parts from respondent Graphited which parts were invoiced to him as Auto-Lite, Delco-Remy and Ford parts but which respondent knew were counterfeit parts. Respondent sold said parts as original and genuine Auto-Lite, Delco-Remy and Ford parts. Respondent aided and abetted other respondents in the transportation, sale and distribution of counterfeit ignition parts.

PAR. 25. None of the respondents herein with the exception of Berk's Auto Ignition Company and Mendenhall Motors were at the time of the transactions herein referred to authorized dealers in genuine Auto-Lite, Delco-Remy or Ford ignition points and parts; and all of the respondents herein were well aware of this fact.

PAR. 26. In the course and conduct of their businesses, respondents caused their said products, when sold, to be transported in commerce from their places of business located in various States as set forth hereinabove, to the purchasers thereof located in various other States and jurisdictions and at all times mentioned herein maintained a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business of each respondent in said commerce is and has been substantial.

PAR. 27. In the course and conduct of their businesses, respondents have been at all times mentioned herein, in substantial competition with other corporations, individuals and firms engaged in the business of selling and distributing genuine and original automotive ignition parts and replacement parts which were not falsely represented as being genuine and original parts, in commerce among and between the various States of the United States.

PAR. 28. In their course of dealing in commerce in automotive ignition parts, respondents, as aforesaid, have placed in the hands of unscrupulous dealers the means or instrumentalities whereby the latter were enabled to employ deception regarding the source of origin of said products.

PAR. 29. The use by the respondents of the false representations and practices hereinabove set forth in connection with the conduct of their businesses, as aforesaid, had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the ignition points and parts sold by them were original and genuine parts and to induce a substantial portion of the purchasing public to purchase substantial quantities of respondents' counterfeit products in the mistaken belief that they were genuine and original ignition parts. As a direct result of the practices of respondents, as aforesaid, substantial trade in

commerce has been diverted to respondents from their said competitors and injury has been done to competition in commerce between and among the various States of the United States.

PAR. 30. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of the competitors of respondents, 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.

ORDERS AND DECISION OF THE COMMISSION

Order denying appeals from initial decision of hearing examiner and decision of the Commission and order to file report of compliance, Docket 5835, March 26, 1953, follows:

This matter came on to be heard by the Commission upon the appeal of respondent Harry Augen, an individual doing business as Graphited Lubricants Company, and the appeal of respondents Livingston Automotive Supply Company, Inc., a corporation, and Charles E. Kerpen, individually and as an officer of said corporation, from the initial decision of the hearing examiner herein, and upon briefs and oral argument of counsel in support of and in opposition to said appeals.

The complaint herein charges a number of respondents with unfair methods of competition and unfair and deceptive acts and practices in connection with the sale and distribution of ignition parts for automobiles. The hearing examiner in his initial decision found that the allegations of the complaint are sustained only as to the respondents who have appealed as aforesaid and one other respondent, who did not appeal from said decision.

Respondent Harry Augen in his appeal and respondents Livingston Automotive Supply Company, Inc., and Charles E. Kerpen in their appeal contend that the hearing examiner's findings as to their acts and practices in connection with the sale and distribution of ignition contact points are not sustained by the evidence in the record. The Commission rejects these contentions. With respect to Harry Augen, there is testimony that he purchased ignition contact points which bore no trade-mark. He sold ignition contact points which were stamped with the trade-marks of well-known manufacturers, and represented that such points were manufactured by or for such well-known manufacturers. The points so stamped and so represented were not manufactured by or for such well-known manufacturers. With respect to respondents Livingston Automotive Supply Company, Inc., and Charles E. Kerpen, there is testimony that Kerpen as controlling officer of the corporate respondent sold a quan-

tity of ignition contact points which the purchasers said were represented as being points manufactured by or for well-known manufacturers, but which were in fact counterfeit. There is also evidence that respondent Kerpen knew that such points were counterfeit. The Commission is of the opinion that the hearing examiner's findings and conclusion as to these respondents are fully supported by and in accordance with the greater weight of the evidence in the record.

The Commission having duly considered the said appeals, the briefs and oral argument of counsel, and the record herein, and being of the opinion that the appeals are without merit and that the hearing examiner's initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the said appeals from the hearing examiner's initial decision be, and they hereby are, denied.

It is further ordered, That the initial decision of the hearing examiner, a copy of which is attached hereto, shall, on the 26th day of March, 1953, become the decision of the Commission.

It is further ordered, That the respondents Harry Augen, Livingston Automotive Supply Company, Inc., Charles E. Kerpen, and Alexander Levenson 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.

Commissioner MASON not participating.

INITIAL DECISION BY ABNER E. LIPSCOMB, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 26, 1950, issued and subsequently served its complaint in the above-entitled proceeding upon each and every respondent named in the caption hereof, charging them with the use of unfair or deceptive acts or practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answers thereto, hearings were held, at which testimony and other evidence in support of the allegations of the complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission. Thereupon counsel supporting the complaint rested his case, and motions to dismiss the proceeding as to them were presented by the respondents hereinafter named, and others.

The hearing examiner thereafter, on September 27, 1951, filed an initial decision dismissing the complaint herein, without prejudice, as to respondents Tungsten Contact Manufacturing Company and

Union Electrical Parts Company, Inc., corporations, and Orville C. Hollopeter, Jenny V. Hayes, and Saul H. Lippman, individually, and as officers of said corporations; Herman D. Stein and Myna S. Stein, individuals, doing business as Crown Automotive Manufacturing Company; Jack Weiss, an individual doing business as Bergen Auto Supply Company; Seymour Gair, an individual doing business as Gair & Company; Scott Adams Company, a corporation, and Alvin Sampson, Mandel Rubin, and Walter Jeschke, individually and as officers of said corporation; Louis Feldman and Perry Feldman, co-partners doing business as L. Feldman and Company; Bell Auto Supply Company, a corporation, and Tom Brown, individually and as an officer of said corporation; Israel A. Kosovitz, an individual; General Accessories & Supply Company, a corporation, and Ben Recht and Henry Lacks, individually and as officers of said corporation; Mendenhall Motors, a corporation; Maurice R. McGinnity and H. J. Spath, co-partners doing business as Auto Electric Service Company; Alfred Gliksman, Inc., a corporation, and Alfred Gliksman and Otilia Gliksman, individually and as officers of said corporation.

On October 22, 1951, counsel supporting the complaint appealed to the Commission from such initial decision, and on February 14, 1952, the Commission issued its order denying the appeal of counsel supporting the complaint and confirming the hearing examiner's initial decision of September 27, 1951.

At the request of certain respondents, further hearings were held, and testimony and other evidence was presented in opposition to the allegations of the complaint and motions to dismiss were presented on behalf of certain respondents. On July 16, 1952, the last of the respondents to present testimony rested its case.

Thereafter the proceeding regularly came on for final consideration by said hearing examiner on the complaint, answers thereto, testimony and other evidence, motions to dismiss and proposed findings as to the facts and conclusions presented by counsel, oral argument thereon not having been requested. The 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, conclusions drawn therefrom, and order :

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondents Harry Augen and Lillian Augen are individuals doing business as Graphited Lubricants Company, with their office and principal place of business at 423 Broadway, Brooklyn, New York. Said business has been conducted by respondent

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Harry Augen, who has directed and controlled the policies, acts and practices of the partnership known as Graphited Lubricants Company. He has been engaged in the business of buying, manufacturing and selling ignition parts for automobiles.

(b) Respondent Lillian Augen, although owning an interest in the above-named partnership, has been engaged in the occupation of housewife, and has taken no part in the acts or practices of such partnership, nor in the control nor direction thereof.

(c) Respondent Irwin Schneeberger is an individual who has been employed in a subordinate capacity by respondent Harry Augen, and has taken no part in controlling or directing the acts, practices or policy of the partnership known as Graphited Lubricants Company.

(d) All the contact ignition points purchased by Graphited Lubricants Company were purchased in bulk, and bore no stamp, label or trademark. Said respondent purchased such points from Tungsten Contact Manufacturing Company and from American Motor Products, and made a few purchases of war surplus contact ignition points from one Sam Harris, most of which were sold to one customer, Alfred Gliksman, Inc. No purchases were made by Graphited Lubricants Company from the General Motors Corporation, The Electric Auto-Lite Company, the Ford Motor Company, or their authorized dealers.

(e) Although Graphited Lubricants Company purchased no contact ignition points bearing the genuine trademarks of General Motors Corporation (Delco-Remy), The Electric Auto-Lite Company (A-L) or the Ford Motor Company (Ford), said respondent, during the years of 1949 and 1950, sold automotive ignition contact points to one Harry Friedman, Philadelphia, Pennsylvania, as genuine Delco-Remy, Auto-Lite and Ford points, with those trademarks appearing thereon. Furthermore, respondent Graphited Lubricants Company sold to one George Luxner, as genuine Auto-Lite and Delco-Remy parts, ignition contact points which were not, in fact, manufactured by or for The Electric Auto-Lite Company or the General Motors Corporation.

(f) An unknown number of ignition contact points sold by respondent Harry Augen, controlling officer of respondent Graphited Lubricants Company, as genuine Delco-Remy, Auto-Lite and Ford points, and trademarked as such, were known to him to be counterfeit, in that he had purchased them un-trademarked from suppliers other than General Motors Corporation, The Electric Auto-Lite Company, the Ford Motor Company, or their authorized dealers, and, when selling such points, had represented them to be genuine Delco-Remy, Auto-Lite or Ford points.

PAR. 2 (a) Respondent Livingston Automotive Supply Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 236 Livingston Street, Brooklyn, New York. Respondent Charles E. Kerpen, an individual, is the controlling officer of said corporate respondent, and has formulated, directed and executed the policies, acts and practices thereof. His address is the same as that of the respondent corporation.

(b) The record contains no evidence that respondent Sylvia Kerpen, an individual, functioned as an officer of respondent Livingston Automotive Supply Company, Inc., or engaged in any of the acts or practices alleged in the complaint.

(c) Respondent Charles E. Kerpen, as controlling officer of corporate respondent Livingston Automotive Supply Company, Inc., purchased automotive contact ignition points from Berger Auto Supply Company in 1949; from respondent Graphited Lubricants Company in 1946-1949; and from W. W. Comins in 1950. The ignition points purchased from Berger Auto Supply Company and from W. W. Comins were purchased as genuine Delco-Remy contact points, whereas the points purchased from respondent Graphited Lubricants Company were not represented to respondent Charles E. Kerpen as genuine Delco-Remy points. Respondent Kerpen, however, sold a quantity of the points which he had purchased from respondent Graphited Lubricants Company to the Auto Electric Service Company of Louisville, Kentucky, as genuine Delco-Remy, Auto-Lite and Ford ignition points.

(d) Respondent Charles E. Kerpen admitted, in an extra-judicial statement made to a police officer of the State of New York, that he had been knowingly selling counterfeit contact ignition points.

PAR. 3. Respondent Charles DePerty, an individual, had been, prior to the issuance of the complaint herein, engaged in business under the name "DePerty's Ford Parts," with his office and principal place of business at 145 Glenwood Avenue, East Orange, New Jersey. He sold contact ignition points to a number of the respondents in this proceeding with the representation that they were genuine Ford contact ignition points. Although he bought some parts from Tungsten Contact Manufacturing Company, the sources of his entire supply of such points are not shown in the record. There is no reliable, probative and substantial evidence in the record to support the allegations of the complaint that respondent Charles DePerty caused such points to be stamped and marked as original Auto-Lite, Delco-Remy and Ford ignition parts, or that he sold them as genuine, knowing that they were not genuine Auto-Lite, Delco-Remy and Ford parts.

PAR. 4. (a) Respondent Alexander Levenson is an individual who, prior to the issuance of the complaint herein, did business under his own name as a wholesaler dealing in automotive parts, including ignition parts, with his principal office and place of business at 6722 South Clyde Avenue, Chicago, Illinois. He purchased ignition parts designated as "Delco-Remy" from respondent Livingston Auto Supply Company, Inc., of New York.

(b) In 1950 respondent Levenson was visited by two men who informed him that some of the ignition points in his possession were counterfeit. Subsequently he made further purchases of ignition points from respondent Livingston Auto Supply Company, Inc., the same source from which he had purchased the counterfeit points.

(c) Thereafter, on March 4, 1950, respondent Levenson was interviewed by Attorney Investigator Warner of the Federal Trade Commission's staff, who, respondent Levenson admitted, convinced him that the points in his possession were counterfeit. Respondent Levenson kept these points in storage for three or four months, and then continued to sell them until he disposed of all that he had.

PAR. 5. Respondents Bernard Hirsch and Lester Hirsch are individuals and co-partners doing business as General Wholesale Auto Supply, with their office and principal place of business at 1528-1530 North Pulaski Road, Chicago, Illinois. Prior to the issuance of the complaint herein they were engaged in the business of buying and selling at wholesale automotive replacement parts, including ignition parts. They purchased ignition parts from respondent Livingston Automotive Supply Company, Inc., which parts were invoiced and branded as Delco-Remy; and resold such parts to various purchasers. Although respondents Hirsch purchased ignition points from respondent Livingston Automotive Supply Company, Inc., who did engage in the sale of counterfeit parts, there is no substantial, reliable and probative evidence in the record to show that the particular ignition points sold to respondents Hirsch were in fact genuine or counterfeit, or, if they were counterfeit, that respondents Hirsch had knowledge thereof.

PAR. 6. Respondent Harry A. Spatz is an individual doing business under his own name, with his office and principal place of business at 40-42 South 9th Street, Reading, Pennsylvania. For several years prior to the issuance of the complaint herein he has operated a wholesale and retail business in the buying and selling of automotive parts, including ignition parts. He purchased contact ignition points from respondent Martin O. Krupnick and others, including authorized Delco-Remy dealers. There is no substantial, reliable and probative evidence in the record to show that this respondent did

other than buy contact ignition points as genuine Delco-Remy points, and resell them as such.

PAR. 7. Respondent Berks' Auto Ignition Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business at 315 North 4th Street, Reading, Pennsylvania. This respondent is engaged in the wholesale distribution of automotive accessories and supplies, including ignition parts and points, and is an authorized direct dealer of original and genuine Auto-Lite and Delco-Remy ignition parts. Prior to the issuance of the complaint herein, respondent Berk's Auto Ignition Company purchased certain ignition parts as war surplus from a source other than its usual source of supply. Thereafter it was informed that such parts were not genuine. Respondent Berk's Auto Ignition Company thereafter made no further purchases of such parts. There is no substantial, reliable and probative evidence in the record to show that respondent Berk's Auto Ignition Company knowingly bought or sold counterfeit parts.

PAR. 8. Respondent Raymond Miller is an individual who, prior to the issuance of the complaint herein, was engaged in the business of buying and selling automotive parts, including ignition parts, with his office and principal place of business at 2207 Myer Boulevard, Kansas City, Missouri. From approximately 1945 to 1949, respondent Raymond Miller repeatedly purchased contact ignition parts from respondent Charles DePerty, which parts were branded as genuine Auto-Lite, Delco-Remy and Ford parts. Respondent Miller resold such parts as genuine parts until he was informed, by a representative of the General Motors Corporation, that they were not genuine, but were in fact counterfeit. Thereupon he discontinued selling them and threw the remainder of his stock of such parts into the Missouri River. There is no substantial, reliable and probative evidence in the record to support the allegation of the complaint that respondent Raymond Miller knowingly purchased, or that he knowingly sold, counterfeit parts.

PAR. 9. Respondent Matt Millard is an individual doing business as a partner in the firm of Millard Supply Company, with his office and principal place of business at 939 Minnesota Avenue, Kansas City, Kansas. Prior to the issuance of the complaint herein he was engaged in the wholesale distribution of automotive parts, including ignition contact points. In the course of such business respondent Matt Millard, on behalf of Millard Supply Company, purchased small quantities of ignition contact parts from respondents Israel A. Kosovitz and Raymond Miller, who represented to him, at the time of such

purchase, that such parts were genuine, and he resold them as such. There is no substantial, reliable and probative evidence in the record to support the allegation of the complaint that respondent Matt Millard bought or sold contact ignition parts with the knowledge that they were counterfeit.

PAR. 10. Respondent Harry Friedman is an individual doing business as Penn Autoware Sales, with his office and principal place of business at 2427 80th Avenue, Philadelphia, Pennsylvania. In 1949 and 1950 he purchased contact ignition points from respondent Graphited Lubricants Company, which were stamped as genuine Delco-Remy points, and which respondent Harry Friedman resold to respondent Martin Krupnick as genuine Delco-Remy points. There is no substantial, reliable and probative evidence in the record to support the allegation of the complaint that respondent Harry Friedman bought or sold counterfeit ignition parts, knowing them to be counterfeit.

PAR. 11. Respondent Martin O. Krupnick is an individual residing at 5657 Melvern Avenue, Philadelphia, Pennsylvania. Prior to the issuance of the complaint herein, respondent Krupnick was engaged in the business of buying and selling automotive supplies, including ignition parts. He purchased ignition parts from respondent Harry Friedman, which parts were marked as genuine Delco-Remy, and represented to him as such at the time of purchase. Thereafter respondent Krupnick resold such ignition parts, as genuine Delco-Remy parts, to respondent Harry Spatz and others. There is no substantial, reliable and probative evidence in the record to support the allegation of the complaint that respondent Krupnick bought or sold counterfeit ignition parts, knowing them to be counterfeit.

PAR. 12. There is no evidence in the record to sustain the allegations of the complaint with respect to respondent Irving Gilbert.

PAR. 13. In the course and conduct of their businesses, respondents caused their said products, when sold, to be transported in commerce from their places of business located in various states, as hereinabove found, to the purchasers thereof located in various other states, and at all times mentioned herein maintained a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 14. In the course and conduct of their businesses, respondents have been, at all times mentioned herein, in substantial competition with other corporations, individuals and firms engaged in the business of selling and distributing genuine and original automotive ignition parts and replacement parts which were not falsely repre-

sented as being genuine and original parts, in commerce among and between the various states of the United States.

PAR. 15. In their course of dealing in commerce in automotive ignition parts, respondents Harry Augen, an individual doing business as Graphited Lubricants Company; Livingston Automotive Supply Company, Inc., a corporation; Charles E. Kerpen, an individual and the controlling officer of Livingston Automotive Supply Company, Inc.; and Alexander Levenson, an individual, as herein found, have placed in the hands of dealers means and instrumentalities of deception regarding the source of origin of said products.

PAR. 16. The use by the respondents Harry Augen, Livingston Automotive Supply Company, Inc., Charles E. Kerpen and Alexander Levenson of the false representations and practices hereinabove found in connection with the conduct of their businesses has had the tendency and capacity to mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that the ignition points and parts sold by such respondents were manufactured by or for the General Motors Corporation, The Electric Auto-Lite Company or the Ford Motor Company, and to induce a substantial number of the purchasing public to purchase substantial quantities of such products in the mistaken belief that they were the genuine product of one of the said manufacturers of ignition parts. As a direct result of such practices, as herein found, substantial trade in commerce has been diverted to the four above-named respondents from their competitors, and injury has been done to competition in commerce between and among the various states of the United States.

CONCLUSIONS

The aforesaid acts and practices of respondents Harry Augen, Livingston Automotive Supply Company, Inc., Charles E. Kerpen and Alexander Levenson are all to the prejudice and injury of the public and of respondents' competitors, 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.

Since the record herein has been found to contain no substantial, reliable and probative evidence to sustain the allegations of the complaint with respect to respondents Lillian Augen, Irwin Schneeberger, Sylvia Kerpen, Charles DePerty, Bernard Hirsch, Lester Hirsch, Harry A. Spatz, Berk's Auto Ignition Company, Raymond Miller, Matt Millard, Harry Friedman, Martin O. Krupnick and Irving Gilbert, the complaint as to them should be dismissed.

Order

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It is ordered, That respondents Harry Augen, an individual doing business as Graphited Lubricants Company; Livingston Automotive Supply Company, Inc., a corporation, and Charles E. Kerpen, individually and as an officer of said corporation; Alexander Levenson, an individual; and their officers, representatives, agents and employees, directly or through any corporate or other device in connection with the sale and distribution of automotive ignition parts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or delivering to others for sale to the public any automotive ignition contact points or parts thereof which are marked with the trademark of or packaged in containers simulating those used by the General Motors Corporation, The Electric Auto-Lite Company, or the Ford Motor Company, when such ignition contact points or parts thereof have not been made by or for the said General Motors Corporation, The Electric Auto-Lite Company, or Ford Motor Company;

2. Representing, directly or by implication, that automotive ignition contact points or parts thereof, not made by or for the General Motors Corporation, The Electric Auto-Lite Company, or the Ford Motor Company, were made by or for such manufacturers;

3. Aiding and abetting any corporation, individual, or firm in the transportation, sale and distribution of counterfeit automotive ignition contact points or parts thereof.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed with respect to respondents Lillian Augen, Irwin Schneeberger, Sylvia Kerpen, and Charles DePerty, individuals; Bernard Hirsch and Lester Hirsch, individuals and co-partners doing business as General Wholesale Auto Supply; Harry A. Spatz, an individual; Berk's Auto Ignition Company, a corporation; Raymond Miller, an individual; Matt Millard, an individual doing business as a partner in the firm of Millard Supply Company; Harry Friedman, an individual doing business as Penn Autoware Sales; and Martin O. Krupnick and Irving Gilbert, individuals.

Syllabus

IN THE MATTER OF

JULES LIVINGSTON TRADING AS MARYLAND DISTRIBUTORS AND MARYLAND DISTRIBUTING COMPANY

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

Docket 6065. Complaint, Nov. 25, 1952—Decision, Mar. 26, 1953

Where an individual engaged in conducting a mail-order business in watches, in competition with others engaged in the interstate sale of such products who truthfully described and advertised the same; in advertising his said watches in various periodicals—

(a) Represented through such statements as "Practically wholesale—Direct to user", " x x x Factory Surplus, Originally \$71.95 while stock lasts now only \$24.95 x x x", and other similar statements including words "Factory Surplus Sacrifice", that said watches had been purchased by him from factory surplus stocks and were offered at prices lower than those at which such watches were ordinarily sold; and that \$71.95, \$59.00, and \$71.50 were the customary retail prices, respectively, for the watches concerned;

The facts being he did not purchase said watches from factory surplus stocks; the prices at which they were offered for sale were greatly in excess of wholesale prices; the figures mentioned above as customary retail prices were greatly in excess of retail prices; and no saving resulted for the purchaser who bought his watches;

(b) Falsely represented through his said advertisement that the watch designated as "17 Jewel Chronograph" contained a movement of the finest quality; that the "17 Jewel Self-Winding" watch was waterproof and nonmagnetic; and that the "17 Jewel Chronograph" watch contained the Incablock Shock Resistant Feature and was shock resistant;

(c) Represented through the use of such statements in his periodical advertising as "Free. Handsome Expansion Band Included with your order." that an expansion wrist band was given without cost, free, or as an unconditional gift to purchasers of a wrist watch; when in fact it was only furnished in connection with the purchase of a wrist-watch from him, and the price was included in that of the watch; and

(d) Represented that said watches were guaranteed, through deceptive and misleading use of the statement "Lifetime Written Guarantee", without setting forth the terms and conditions of said guarantee;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations were true, and thereby into the purchase of substantial quantities of said watches:

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.

Complaint

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Before *Mr. James A. Purcell*, hearing examiner.
Mr. Frederick McManus 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 Jules Livingston, an individual trading as Maryland Distributors and as Maryland Distributing Company, 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 its charges in that respect as follows:

PARAGRAPH 1. Respondent Jules Livingston is an individual trading as Maryland Distributors and as Maryland Distributing Company, by which names the said individual is known and under which his business is conducted at his principal place of business located at 501 East Baltimore Street, Baltimore, Maryland. Respondent is now, and has been for more than three years last past, engaged in the sale and distribution of watches.

PAR. 2. In the course and conduct of his aforesaid business, respondent now causes, and for more than three years last past has caused, said watches, when sold by him to be transported from his place of business located in the State of Maryland to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in commerce in said watches between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, at all times mentioned herein, has been in substantial competition in commerce with corporations and with other persons, firms and partnerships engaged in the sale of watches.

PAR. 4. In the course and conduct of his aforesaid business, and for the purpose of inducing the sale of his said watches in commerce, respondent has made numerous statements and representations with respect to said watches in advertisements inserted in various magazines and periodicals. Among and typical, but not all inclusive, of said statements and representations are the following:

Practically wholesale—Direct to user
17 Jewel Self Winding
Factory Surplus
Originally \$71.95 while stock lasts
now only \$24.95
* * *

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Waterproof * * Nonmagnetic

* * *

17 Jewel Shock Protected—Water Resist

Factory Surplus Sacrifice

Originally \$59.00

Our Price Now Only \$16.95

Nonmagnetic * *

17 Jewel Chronograph

Factory Surplus

Originally \$71.50

Our Price \$21.95 plus \$2.20 tax

Precision 4 in 1 time piece

Incablock shock resistant feature * *

This is one of the finest 17 jewel
movements in the World

PAR. 5. Through the use of the statements appearing in the aforesaid advertisements and others similar thereto, but not specifically set out herein, respondent represented, directly or by implication, that said watches had been purchased by him from factory surplus stocks and were offered for sale at prices lower than those at which such watches were sold in the ordinary and usual course of business; that \$71.95, \$59.00 and \$71.50 were the customary and usual retail prices, respectively, for said watches; that all of said watches were 17 jewel watches with the jewels located in accordance with established horological practice for 17 jewel watches; that the watch designated as "17 Jewel Chronograph" contained a movement of the finest quality; that the "17 Jewel Self-Winding" watch was waterproof and nonmagnetic; that the "17 Jewel Chronograph" watch contained the Incablock Shock Resistant Feature and was shock resistant.

PAR. 6. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, respondent did not purchase said watches from factory surplus stocks and the prices at which they were offered for sale were greatly in excess of wholesale prices. The prices \$71.95, \$59.00 and \$71.50 were not the customary or usual retail prices for said watches at the time they were offered for sale by respondent but were greatly in excess of such prices and were not less than the usual retail prices for said watches. No savings resulted to a purchaser buying these watches. While said watches contained 17 jewels, the jewels were not located in accordance with established horological practice for 17 jewel watches. The movement in the "17 Jewel Chronograph" was not of the finest quality. The 17 "Jewel Self-Winding" watch was not waterproof or nonmagnetic. The "17 Jewel Shock Protected" watch was not nonmagnetic or water resistant. The "17 Jewel Chronograph" watch did not contain the "Incablock Shock Resistant Feature" and was not shock resistant.

PAR. 7. Respondent also, for the purpose of inducing the purchase of wrist watches, made the following representation, and representations of similar import, in advertisements for said watches inserted in periodicals:

Free. Handsome Expansion Band Included with your order.

By means of the above statement, respondent represented that an expansion wrist band was given without cost, free or as an unconditional gift to purchasers of a wrist watch. Said representation was misleading and deceptive. In truth and in fact, an expansion wrist band was not given without cost, free or as an unconditional gift but was only furnished in connection with the purchase of a wrist watch from respondent and its price was included in the price of the wrist watch.

PAR. 8. Respondent, in his advertising of some of his watches, makes use of the statement "Lifetime Written Guarantee." The use of such statement without setting forth the terms and conditions of the guarantee and the manner in which the guarantor would perform thereunder is confusing to the public and constitutes an unfair and deceptive practice.

PAR. 9. The use by respondent of the foregoing statements and representations has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of said watches because of such erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices, 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.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 25th, 1952, issued and subsequently served its complaint on the respondent named in the caption hereof, charging him with the use of unfair methods of com-

¹The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on March 26, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

Commissioners Mason and Carretta noting their objection only to the inhibition relating to the use of the word "free."

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Findings

petition and unfair and deceptive acts and practices in violation of the provisions of said Act.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, and review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

1. Admits all the jurisdictional allegations set forth in the complaint.

2. Consents that the Commission may enter the matters hereinafter set forth as its findings of facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion and order to cease and desist, specifically refrains from admitting or denying that he has engaged in any of the acts and practices stated therein to be in violation of law, and other than the jurisdictional findings, specifically refrains from admitting or denying any of the other said findings of fact.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission has reason to believe were unlawful, the conclusion based thereon and the order to cease and desist, all of which the respondent consents may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Jules Livingston is an individual trading as Maryland Distributors and as Maryland Distributing Company, by which names the said individual is known and under which his business is conducted at his principal place of business located at 501 East Baltimore Street, Baltimore, Maryland.

PAR. 2. Respondent is now and for several years last past has been engaged in the sale and distribution of watches. Respondent does a substantial volume of business in said watches and causes and has caused such watches when sold to be transported from his place of business in Baltimore, Maryland to purchasers thereof located in other States of the United States and in the District of Columbia.

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PAR. 3. In the course and conduct of his business as aforesaid, respondent is now and has been in substantial competition with corporations, firms and parties likewise engaged in the sale of watches in commerce between and among the various States of the United States and in the District of Columbia, who truthfully describe and advertise their respective products.

PAR. 4. The advertising of respondent consists of advertisements published in various magazines and periodicals and respondent's business is conducted as a mail order business. All orders are received through and shipments are made to customers by means of and through the United States mails.

PAR. 5. In the course and conduct of his business, and for the purpose of inducing the sale of his said watches in commerce, respondent has made numerous statements and representations with respect to said watches in advertisements inserted in various magazines and periodicals among and typical of which, but not all inclusive, are the following:

Practically wholesale—Direct to user
 17 Jewel Self Winding
 Factory Surplus
 Originally \$71.95 while stock lasts
 now only \$24.95

Waterproof * * Nonmagnetic

17 Jewel Shock Protected—Water Resist
 Factory Surplus Sacrifice
 Originally \$59.00
 Our Price Now Only \$16.95
 Nonmagnetic * *

17 Jewel Chronograph

Factory Surplus

Originally \$71.50

Our Price \$21.95 plus \$2.20 tax

Precision 4 in 1 time piece

Incablock shock resistant feature**

This is one of the finest 17 jewel
 movements in the World

PAR. 6. Through the use of the statements appearing in the aforesaid advertisements and others similar thereto, but not specifically set out herein, respondent represented, directly or by implication, that said watches had been purchased by him from factory surplus stocks and were offered for sale at prices lower than those at which such watches were sold in the ordinary and usual course of business; that \$71.95, \$59.00 and \$71.50 were the customary and usual retail prices, respectively, for said watches; that the watch designated

as "17 Jewel Chronograph" contained a movement of the finest quality; that the "17 Jewel Self-Winding" watch was waterproof and nonmagnetic; that the "17 Jewel Chronograph" watch contained the Incablock Shock Resistant Feature and was shock resistant.

PAR. 7. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, respondent did not purchase said watches from factory surplus stocks and the prices at which they were offered for sale were greatly in excess of wholesale prices. The prices \$71.95, \$59.00 and \$71.50 were not the customary or usual retail prices for said watches at the time they were offered for sale by respondent but were greatly in excess of such prices and were not less than the usual retail prices for said watches. No savings resulted to a purchaser buying these watches. The movement in the "17 Jewel Chronograph" was not of the finest quality. The "17 Jewel Self-Winding" watch was not waterproof or nonmagnetic. The "17 Jewel Shock Protected" watch was not nonmagnetic or water resistant. The "17 Jewel Chronograph" watch did not contain the "Incablock Shock Resistant Feature" and was not shock resistant.

PAR. 8. Respondent also, for the purpose of inducing the purchase of wrist watches, made the following representation and representations of similar import, in advertisements for said watches inserted in periodicals:

Free. Handsome Expansion Band Included with your order

By means of the above statement, respondent represented that an expansion wrist band was given without cost, free or as an unconditional gift to purchasers of a wrist watch. Said representation was misleading and deceptive. In truth and in fact, an expansion wrist band was not given without cost, free or as an unconditional gift but was only furnished in connection with the purchase of a wrist watch from respondent and its price was included in the price of the wrist watch.

PAR. 9. Respondent, in his advertising of some of his watches, makes use of the statement "Lifetime Written Guarantee." The use of such statement without setting forth the terms and conditions of the guarantee and the manner in which the guarantor would perform thereunder is confusing to the public and constitutes an unfair and deceptive practice.

PAR. 10. The use by respondent of the foregoing statements and representations has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representa-

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tions were true and into the purchase of substantial quantities of said watches because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices, 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 TO CEASE AND DESIST

It is ordered, That respondent Jules Livingston, trading as Maryland Distributors and as Maryland Distributing Company, or trading under any other name, his agents, representatives and employees, in connection with the offering for sale, sale and distribution of watches in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from :

1. Representing, directly or by implication :

(a) That the circumstances under which respondent's watches are acquired are other than what they are in fact.

(b) That any quoted price is less than that at which such watches are sold in the ordinary and usual course of business, contrary to the fact.

(c) That the movement in the "17 Jewel Chronograph" watch is of the finest quality.

(d) That the "17 Jewel Chronograph" watch is shock resistant and contains the Incablock feature.

(e) That the "17 Jewel Self Winding" watch is either waterproof or nonmagnetic.

(f) That the "17 Jewel Shock Protected" watch is nonmagnetic or water resistant.

2. Using the word "free" or any other word or words of similar import, to designate, describe or refer to merchandise which is not in truth and in fact a gift or gratuity, or is not given to the recipient thereof without requiring the purchase of other merchandise, or which is not given without requiring the performance of some service, inuring directly or indirectly to the benefit of the respondent.

3. Representing, directly or by implication, that the watches sold by respondent are guaranteed unless and until the nature and extent of the "guarantee" and manner in which the guarantor will perform are clearly and conspicuously disclosed.

It is further ordered, That respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report

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in writing setting forth in detail the manner and form in which he has complied with this order.

By /S/ JULES LIVINGSTON,
Jules Livingston,
Respondent.

Date

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and entered of record on this 26th day of March 1953.

Commissioners Mason and Carretta noting their objection only to the inhibition relating to the use of the word "free."

IN THE MATTER OF
BOSTWICK LABORATORIES, INC.

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

Docket 5785. Complaint, June 26, 1950—Decision, Mar. 30, 1953

Where a corporation engaged in the interstate sale and distribution of four insecticides designated "Hep Aerosol Insect Killer", "Bostwick Super-Aerosol Insect Killer", "Bostwick Safe-lex Insect Killer", and "Bostwick Moth Proofer", in competition with other concerns similarly engaged; in advertising its said products through circulars and fliers, and counter display cards and advertising mats distributed to its wholesale distributors, who in turn distributed some of them to retailers for their use—

(a) Represented that its said "Hep" and "Super-Aerosol" products were safe and would not cause injury to humans, birds, fish, and pets, and, in the case of the latter, to plants;

The facts being that indiscriminate use of said preparations, by virtue of the percentages of DDT and petroleum distillate therein contained, might cause damage to the health of those exposed to the spray; and that they were safe only when used as directed on the label;

(b) Represented that said "Super-Aerosol" and said "Safe-lex" preparations would kill or destroy all crawling insects in the treated premises; the facts being that an average kill would be about eighty percent and thus repeated applications were necessary from time to time;

(c) Represented that said "Super-Aerosol" killed insects more quickly than other insecticides; the facts being its relative killing time was not much different from that of many other of the common aerosols nor from that of a wide variety of commercial insecticides;

(d) Represented that its said "Safe-lex", because of its methoxychlor content, killed practically every household insect twice as fast as DDT preparations and that it was safer for use under all circumstances than all other insecticides;

The facts being a housewife would not observe any difference between killing time of such an insecticide based on methoxychlor and one containing DDT, and other insecticides are as safe to use;

(e) Represented that its said "Safe-lex" would not stain materials which it contacted; the facts being that it would do so if held too close to surfaces being treated but not if directions for use on the label were observed;

(f) Represented that its said "Moth Proofer" was effective in protecting garments for a year and was the only preparation on the market which mothproofed;

The facts being that dry-cleaning or laundering reduced the effectiveness of a preceding treatment, the treated articles would be effectively mothproofed

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for the aforesaid or any other period only if not dry-cleaned or laundered during said period, and there are other preparations, including those applied by dipping and washing, which are as effective in mothproofing;

- (g) Represented that methoxychlor was more effective than DDT for killing insects, that the latter product has been barred for use near children and pets, that the Department of Agriculture had recommended that methoxychlor be substituted for DDT to control insect pests, and that the former killed more than the latter;

The facts being that the only restriction by said Department was one outlawing its use on dairy animals and in dairy barns to keep milk pure; the only recommendation of said Department in the matter was for the substitution of methoxychlor for DDT for the control of flies in dairy barns and on dairy animals; as respects the relative effectiveness of the two, in general methoxychlor was effective against a much smaller range of insects than DDT; and

- (h) Placed in the hands of distributors and dealers a means and instrumentality whereby the public might be misled as to the properties and value of its said insecticides through furnishing circulars, fliers, advertising mats, and display cards containing such representations;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers of respondent's said insecticides into the erroneous belief that such representations were true, whereby trade was unfairly diverted to it from its competitors who did not misrepresent their insecticides, thereby causing substantial injury to competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and respondent's competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

While it did not appear that the cautions and directions for use on the labels of the containers of respondent's various products were inadequate; and the failure of respondent's advertising to repeat certain cautions and directions with respect to some of its claims, and to refer to them in respect of other claims, left the advertising exaggerated, misleading and deceptive in most instances, and simply false in a few, and while the cessation of the latter and the qualification of the former by respondent, prior to the issuance of the complaint, was persuasive evidence of respondent's cognizance of the tendency of such representations to mislead and deceive and might to some extent indicate the lack of intention to do so: intent is immaterial in such a proceeding and constitutes no defense, as is also true in the case of voluntary cessation or modification.

As respects certain other charges in the complaint, there was no evidence that respondent had represented that its "Safe-lex" would not discolor, except in connection with the caution "when used as directed" or that the directions for use on the container label were not ample, truthful, and sufficient: representations that its said "Hep", "Super-Aerosol", and "Safe-lex" preparations would kill all flying insects on the premises were true for all practical purposes, and there was no substantial or satisfactory evidence that its "Safe-lex" was injurious or not safe.

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Before *Mr. Frank Hier*, hearing examiner.
Mr. George M. Martin for the Commission.
Cohen & Schine, of Bridgeport, Conn., 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 Bostwick Laboratories, Inc., 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 its charges in that respect as follows:

PARAGRAPH 1. Respondent Bostwick Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut with its office and principal place of business located at 706 Bostwick Avenue, Bridgeport 5, Connecticut.

PAR. 2. Respondent Bostwick Laboratories, Inc., is now and for several years last past has been engaged in the sale and distribution of four preparations designated as "Hep Aerosol Insect Killer," "Bostwick Super-Aerosol Insect Killer," "Bostwick Safe-lex Insect Killer" and "Bostwick Moth Proofer," all of which are advertised and represented as insecticides.

(1) The formula for Hep Aerosol Insect Killer and directions for use are as follows:

<i>Active Ingredients</i>	
	<i>Percent</i>
Pyrethrins.....	0.200
DDT (Dichlorodiphenyltrichloroethane).....	2.000
Sesame Oil Extractives:	
Sesamin.....	.166
Other Extractives.....	.834
Petroleum Distillate.....	11.800
 <i>Inert Ingredients</i> 	
Propellant.....	85.000

Directions for Use:

INSTRUCTIONS
FOLLOW CAREFULLY

GENERAL

To release mist, lift off protective cap, then press rubber-like button, holding container upright and away from you. Do not turn upside down. When using indoors, close doors and windows; open after 15 minutes.

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FLYING INSECTS

FLIES, MOSQUITOES, FLYING MOTHS, GNATS, SAND FLIES: Spray toward center of room with circular motion. For average room (10x10x10 feet) spray 5 or 6 seconds.

HORNETS, WASPS, LARGE FLYING INSECTS: Spray 12 seconds in average room.

CRAWLING INSECTS

ROACHES, WATERBUGS, SILVERFISH, FLEAS: Direct mist into cracks, crevices, and recesses behind cabinets, sink, stove, dark hiding places. Spray 45 to 60 seconds for average size room. Repeat when necessary.

BEDBUGS: Take bed apart, direct mist into tufts, folds, along seams. Spray bed frame and springs. Repeat as necessary.

ANTS: Spray ants and ant trails. When possible, envelope ants in mist.

CAUTION

1. Don't spray directly on skin or animals. In case of accidental contact, wash with soap and water.
2. Protect birds, fish and pets in rooms being sprayed. Remove from room or place protective covering over them.
3. Avoid contamination of food stuffs and cooking utensils.
4. To avoid possible staining, hold dispenser three feet away from object.
5. Avoid excessive inhalation.

(2) The formula for Bostwick Super-Aerosol Insect Killer and directions for use are as follows:

<i>Active Ingredients</i>	<i>Percent</i>
Methoxychlor (Technical)*-----	1.000
DDT (Dichlorodiphenyltrichlorethane)-----	1.000
Pyrethrins-----	.200
Sesame Oil Extractives:	
Sesamin-----	.166
Other Extractives-----	.834
Petroleum Distillate-----	11.800
<i>Inert Ingredients</i>	
Propellant-----	85.000
*0.88 percent 2, 2-bis (P-Methoxyphenyl) 1, 1, 1-Trichlorethane and 12 percent Other Isomers and Reaction Products	

Directions for Use:

GENERAL

To release mist—follow instructions on top of dispenser. Hold container upright and aim spray away from you.

FLYING INSECTS

FLIES, MOSQUITOES, FLYING MOTHS, GNATS, SAND FLIES: Spray toward center of room with circular motion. For average room (10x10x10 feet) spray 5 or 6 seconds.

HORNETS, WASPS, LARGE FLYING INSECTS: Spray 12 seconds in average room.

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CRAWLING INSECTS

ROACHES, WATERBUGS, SILVERFISH, FLEAS: Direct mist into cracks, crevices, and recesses behind cabinets, sink, stove, dark hiding places. Spray 45 to 60 seconds for average size room. Repeat when necessary.

BEDBUGS: Take bed apart, direct mist into tufts, folds, along seams. Spray bedframe and springs. Repeat as necessary.

ANTS: Spray ants and ant trails. When possible, envelop ants in mist.

CAUTION

1. Don't spray directly on skin or animals. In case of accidental contact, wash with soap and water.
2. Protect birds, fish and pets in rooms being sprayed. Remove from room or place protective covering over them.
3. Avoid contamination of food stuffs and cooking utensils.
4. To avoid possible staining, hold dispenser three feet away from object.
5. Avoid excessive inhalation.

(3) The formula for Bostwick Safe-lex Aerosol Insect Killer and directions for use are as follows:

<i>Active Ingredients</i>	<i>Percent</i>
Methoxychlor (Technical)*	3.000
Pyrethrins200
Petroleum Distillate	10.800
Sesame Oil Extractives:	
Sesamin166
Other Extractives834

<i>Inert Ingredients</i>	<i>Percent</i>
Propellant	85.000

* 2.64 percent 2, 2,—bis (P-Methoxyphenyl)
1, 1, 1—Trichlorethane and
.36 percent Other Isomers and Reaction Products.

Directions for Use:

DIRECTIONS

To release mist, lift off protective cap, then press rubber-like button, holding container upright and away from you. Do not turn upside down. When using indoors, close doors and windows; open after 15 minutes. To avoid possible staining, hold dispenser three feet away from object.

FLYING INSECTS

FLIES, MOSQUITOES, FLYING MOTHS, GNATS, SAND FLIES: Spray toward center of room with circular motion. For average room (10x10x10 feet) spray 5 or 6 seconds.

HORNETS, WASPS, LARGE FLYING INSECTS: Spray 12 seconds, in average room.

KILLS MOTHS

KILLS MOTHS, EGGS, LARVAE BY CONTACT. Spray Thoroughly, Pay Particular Attention to Seams and Folds. Repeat monthly unless

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articles are stored in Moth-Tight Container. Spray interior surfaces of containers, closets and trunks.

CRAWLING INSECTS

ROACHES, WATERBUGS, SILVERFISH, FLEAS: Direct mist into cracks, crevices, and recesses behind cabinets, sink, stove, dark hiding places, baseboards, floor coverings, wall cracks; and in the case of fleas—sleeping quarters of animals. Spray 45 to 60 seconds for average size room. Repeat when necessary.

ANTS: Spray ant trails in areas around door sills and window frames. Repeat as required.

BEDBUGS: Take bed apart, direct mist into tufts, folds, along seams. Spray bed-frame and springs. Aim spray into cracks and crevices and about the base boards, walls and floors of bedrooms.

(4) The formula for Bostwick Moth Proofer and directions for use are as follows:

<i>Active Ingredients</i>	<i>Percent</i>
Methoxychlor, Technical* -----	5
Petroleum Distillate -----	26
Inert Ingredients -----	69

* 5 percent Methoxychlor equivalent to
4.4 percent, 2, 2, 2,—bis (P-Methoxyphenyl)
1, 1, 1,—trichloroethane and
0.6 percent Other Isomers and Reaction Products

Directions for Use:

GENERAL INSTRUCTIONS

1. Articles to be treated should be clean.
2. Spray from a distance of 18 inches to 24 inches in a room free from drafts. Avoid prolonged inhalation of spray.
3. Treatment should be repeated after dry cleaning or laundering to assure continued effectiveness.
4. When treating garments, *treat in accordance with detail instructions given in attached booklet.*
5. To spray moth proofer—aim away from body. Hold container upright and away from you. Move dispenser uniformly and continuously over articles treated. Follow instructions on top of dispenser.

The respondent causes and has caused its said insecticides, when sold, to be shipped from its place of business located in the State of Connecticut to retail purchasers and distributors thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said insecticides, 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 its said business and for the purpose of inducing the purchase of its said insecticides in commerce

as aforesaid, respondent has made and is now making numerous statements and representations concerning said products through the medium of circulars and fliers, counter display cards and advertising mats, all of which are distributed to its distributors and retail customers. Said distributors and retailers use said circulars, fliers, and display cards and advertising mats for the purpose of advertising respondent's products. Among and typical of the statements and representations contained in said advertising matter are the following:

(1) Hep Aerosol Insect Killer

Safe—Hep is . . . non-injurious . . .

Economical—when used according to directions rids average size room of flying insects up to 75 times.

(2) Bostwick Super-Aerosol Insect Killer

New Double-quick Killer
Kills, many more insects Faster!

Here's a new, more powerful insect killer that really gets 'em all! Gets 'em double-quick—with half the work! One whiff and they're through.

* * * Harmless to animals, plants.

* * * Safe for man, animals. * * *

New * * * faster, super-killer gets 'em all!

This season, every home can be free of flying and crawling pests.

(3) Safe-lex Aerosol Insect Killer

Won't stain or discolor * * *

For faster action—for freedom from flying and crawling pests.

Safe-lex . . . this wonder push-button spray, contains the sensational Dupont discovery—Methoxychlor—that kills practically every household insect twice as fast as DDT.

Now, the first safe insect killer is here! It's safe near children, pets and food!

New, Non-Poisonous Insect Killer! Safer near children, food and pets. (In connection with said advertisement there appears a picture of a woman spraying said preparation over the heads of children, a dog and over food.)

(4) Bostwick Moth Proofer

Amazing new formula mothproofs suit or coat for one Year.

* Warning. Beware of terms like "Moth-Treated." Only Bostwick "Moth-Proofs".

(5) General Representations:

Already DDT is barred for use near children, food, pets.

In its warning statement the Dept. of Agriculture makes this recommendation . . . "the entomologists now recommend that methoxychlor, another effective insecticide, be substituted for DDT to control insect pests".

Wonder ingredient Methoxychlor—KILLS MORE . . . FASTER!

PAR. 4. By and through the use of the foregoing statements and representations and others of the same import, respondent represented

1. that its Hep Aerosol Insect Killer is safe and will not cause injury to humans, birds, fish and pets and that its use as directed will kill all flying insects which may be in the treated premises.

2. that Bostwick Super-Aerosol Insect Killer is non-toxic and safe when used in the presence of humans, plants and animals; keeps the premises free of flying and crawling pests and kills insects quicker than other insecticides.

3. that Safe-lex Aerosol Insect Killer will not stain or discolor materials which it contacts; will destroy all flying and crawling pests located in the treated premises; that, because of its methoxychlor content, it kills practically every household insect twice as fast as DDT preparations; is non-poisonous and safe for use; that it may be sprayed over the heads of children and pets and over food without possibility of ill effects and is safer for use under all circumstances than all other insecticides.

4. that Bostwick Moth Proofer is effective in protecting garments from moth damage for a year and is the only preparation on the market which mothproofs.

5. that DDT has been barred for use near children and pets; that the Department of Agriculture has recommended that methoxychlor be substituted for DDT to control insect pests and that methoxychlor kills more insects than DDT.

PAR. 5. The aforesaid representations are grossly exaggerated, misleading and deceptive. In truth and in fact:

1. Hep Aerosol Insect Killer is safe only when used strictly in accordance with the directions. Its use cannot be depended upon to kill all flying insects in the treated premises.

2. Bostwick Super-Aerosol Insect Killer is non-toxic and safe only when used strictly in accordance with the directions. It cannot be depended upon to keep the treated premises free of flying and crawling pests. It will not kill insects in a significantly quicker time than many other insecticides.

3. Safe-lex Aerosol Insect Killer will stain or discolor materials which it contacts unless used strictly in accordance with the directions and cannot be depended upon to destroy all flying and crawling pests located in treated premises. The killing action of methoxychlor is not significantly quicker than DDT. This preparation may be harmful if sprayed over the heads of children, pets and over food. It is safe and non-poisonous only when used strictly as directed. There are other insecticides which are as safe to use as Safe-lex.

4. Bostwick Moth Proofer is not ordinarily effective in protecting garments from moth damage for a year because of the fact that its effectiveness is destroyed when garments previously treated are washed or dry cleaned. There are other preparations on the market which are equally effective from the mothproofing standpoint.

5. DDT has not been barred for use near children and pets. The Department of Agriculture has not recommended that methoxychlor be substituted for DDT to control insect pests except for spraying dairy cows. Methoxychlor preparations are more effective against certain species of insects than DDT while there are other species of insects against which DDT preparations are more effective. It cannot be truthfully stated, therefore, that methoxychlor preparations possess greater effectiveness than DDT preparations as to all insects.

PAR. 6. By furnishing the circulars, display cards and advertising mats containing the statements and representations set out in Paragraph Three hereof to its distributors and dealers, respondent placed in the hands of said distributors and dealers a means and instrumentality by and through which the public may be misled as to the properties and value of its insecticides.

PAR. 7. In the course and conduct of its aforesaid business, respondent has been and is now engaged in direct and substantial competition with various corporations, partnerships and individuals likewise engaged in the sale and distribution in commerce of insecticides designed for similar purposes as those sold and distributed by respondent as aforesaid, and particularly insecticides containing DDT.

PAR. 8. The use by the respondent of said false and misleading statements and representations in connection with the sale of its aforesaid insecticides had the tendency and capacity to mislead and deceive purchasers and prospective purchasers of respondent's said insecticides into the erroneous and mistaken belief that such statements and representations were true, and because of such erroneous and mistaken belief to purchase substantial quantities of respondent's said insecticides. In consequence of all of the foregoing, trade has been unfairly diverted to said respondent from its competitors who do not misrepresent their insecticides, and thereby substantial injury is being and has been done to competition in commerce.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 26, 1950, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging it with the use of unfair methods of competition in commerce 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 a hearing examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel, and said hearing examiner on November 14, 1951, filed his initial decision.

Within the time permitted by the Commission's Rules of Practice, counsel for the respondent and counsel supporting the complaint filed with the Commission appeals from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including briefs in support of and in opposition to said appeals and oral arguments of counsel; and the Commission having granted the appeal of counsel supporting the complaint in substance and having denied the appeal of counsel for the respondent 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 and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Bostwick Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 706 Bostwick Avenue, Bridgeport 5, Connecticut.

PAR. 2. Respondent Bostwick Laboratories, Inc., is now and for several years last past has been engaged in the sale and distribution of four preparations designated as "Hep Aerosol Insect Killer," "Bostwick Super-Aerosol Insect Killer," "Bostwick Safe-lex Insect

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Killer" and "Bostwick Moth Proofer," all of which are advertised and represented as insecticides.

(1) The formula for Hep Aerosol Insect Killer and directions for use are as follows:

<i>Active Ingredients</i>	<i>Percent</i>
Pyrethrins -----	0.200
DDT (Dichlorodiphenyl-trichloroethane) -----	2.000
Sesame Oil Extractives:	
Sesamin -----	.166
Other Extractives -----	.834
Petroleum Distillate -----	11.800
 <i>Inert Ingredients</i> 	
Propellant -----	85.000

Directions for Use:

INSTRUCTIONS
FOLLOW CAREFULLY

GENERAL

To release mist, lift off protective cap, then press rubber-like button, holding container upright and away from you. Do not turn upside down. When using indoors, close doors and windows; open after 15 minutes.

FLYING INSECTS

FLIES, MOSQUITOES, FLYING MOTHS, GNATS, SAND FLIES: Spray toward center of room with circular motion. For average room (10x10x10 feet) spray 5 or 6 seconds.

HORNETS, WASPS, LARGE FLYING INSECTS: Spray 12 seconds in average room.

CRAWLING INSECTS

ROACHES, WATERBUGS, SILVERFISH, FLEAS: Direct mist into cracks, crevices, and recesses behind cabinets, sink, stove, dark hiding places. Spray 45 to 60 seconds for average size room. Repeat when necessary.

BEDBUGS: Take bed apart, direct mist into tufts, folds, along seams. Spray bed frame and springs. Repeat as necessary.

ANTS: Spray ants and ant trails. When possible, envelope ants in mist.

CAUTION

1. Don't spray directly on skin or animals. In case of accidental contact, wash with soap and water.

2. Protect birds, fish and pets in rooms being sprayed. Remove from room or place protective covering over them.

3. Avoid contamination of foodstuffs and cooking utensils.

4. To avoid possible staining, hold aerosol dispenser three feet away from object.

5. Avoid excessive inhalation.

(2) The formula for Bostwick Super-Aerosol Insect Killer and directions for use are as follows:

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<i>Active Ingredients</i>		<i>Percent</i>
Methoxychlor (Technical)*-----		1.000
DDT (Dichlorodiphenyltrichlorethane)-----		1.000
Pyrethrins-----		.200
Sesame Oil Extractives:		
Sesamin-----		.166
Other extractives-----		.834
Petroleum Distillate-----		11.800
<i>Inert Ingredients</i>		
Propellant-----		85.000
* .88 Percent 2, 2,—bis (P-Methoxyphenyl) 1, 1, 1,—Trichlorethane and 12 Percent Other Isomers and Reaction Products		

Directions for Use:

GENERAL

To release mist—follow instructions on top of dispenser. Hold container upright and aim spray away from you.

FLYING INSECTS

FLIES, MOSQUITOES, FLYING MOTHS, GNATS, SAND FLIES: Spray toward center of room with circular motion. For average room (10x10x10 feet) spray 5 or 6 seconds.

HORNETS, WASPS, LARGE FLYING INSECTS: Spray 12 seconds in average room.

CRAWLING INSECTS

ROACHES, WATERBUGS, SILVERFISH, FLEAS: Direct mist into cracks, crevices, and recesses behind cabinets, sink, stove, dark hiding places. Spray 45 to 60 seconds for average size room. Repeat when necessary.

BEDBUGS: Take bed apart, direct mist into tufts, folds, along seams. Spray bedframe and springs. Repeat when necessary.

ANTS: Spray ants and ant trails. When possible, envelope ants in mist.

CAUTION

1. Don't spray directly on skin or animals. In case of accidental contact, wash with soap and water.

2. Protect birds, fish and pets in rooms being sprayed. Remove from room or place protective covering over them.

3. Avoid contamination of food stuffs and cooking utensils.

4. To avoid possible staining, hold dispenser three feet away from object.

5. Avoid excessive inhalation.

(3) The formula for Bostwick Safe-lex Aerosol Insect Killer and directions for use are as follows:

<i>Active Ingredients</i>		<i>Percent</i>
Methoxychlor (Technical)*-----		3.000
Pyrethrins-----		.200
Petroleum Distillate-----		10.800
Sesame Oil Extractives:		
Sesamin-----		.166
Other Extractives-----		.834

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Inert Ingredients

Propellant----- 85.000

* 2.64 percent 2, 2,—bis (P-Methoxyphenyl)
 1, 1, 1—Trichlorethane and
 .36 percent Other Isomers and Reaction Products.

Directions for Use:

DIRECTIONS

To release mist, lift off protective cap, then press rubber-like button, holding container upright and away from you. Do not turn upside down. When using indoors, close doors and windows; open after 15 minutes. To avoid possible staining, hold dispenser three feet away from object.

Flying Insects

FLIES, MOSQUITOES, FLYING MOTHS, GNATS, SAND FLIES: Spray toward center of room with circular motion. For average room (10x10x10 feet) spray 5 or 6 seconds.

HORNETS, WASPS, LARGE FLYING INSECTS: Spray 12 seconds, in average room.

Kills Moths

KILLS MOTHS, EGGS, LARVAE BY CONTACT. Spray Thoroughly, Pay Particular Attention to Seams and Folds. Repeat monthly unless articles are stored in Moth-Tight Container. Spray interior surfaces of containers, closets and trunks.

Crawling Insects

ROACHES, WATERBUGS, SILVERFISH, FLEAS: Direct mist into cracks, crevices, and recesses behind cabinets, sink, stove, dark hiding places, baseboards, floor coverings, wall cracks; and in the case of fleas—sleeping quarters of animals. Spray 45 to 60 seconds for average size room. Repeat when necessary.

ANTS: Spray ant trails in areas around door sills and window frames. Repeat as required.

BEDBUGS: Take bed apart, direct mist into tufts, folds, along seams. Spray bed-frame and springs. Aim spray into cracks and crevices and about the baseboards, walls and floors of bedrooms.

(4) The formula for Bostwick Moth Proofer and directions for use are as follows:

<i>Active Ingredients</i>	<i>Percent</i>
*Methoxychlor, Technical-----	5
Petroleum Distillate-----	26
Inert Ingredients-----	69

*5% Methoxychlor equivalent to
 4.4%, 2, 2, 2,—bis (P-Methoxyphenyl)
 1, 1, 1,—Trichloroethane and
 0.6% Other Isomers and Reaction
 Products.

Directions for Use:

GENERAL INSTRUCTIONS

1. Articles to be treated should be clean.
 2. Spray from a distance of 18 inches to 24 inches in a room free from drafts.
- Avoid prolonged inhalation of spray.

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3. Treatment should be repeated after dry cleaning or laundering to assure continued effectiveness.

4. When treating garments, *treat in accordance with detail instructions given in attached booklet.*

5. To spray moth-proofer—aim away from body. Hold container upright and away from you. Move dispenser uniformly and continuously over articles treated. Follow instructions on top of dispenser.

The respondent causes and has caused its said insecticides, when sold, to be shipped from its place of business located in the State of Connecticut to retail purchasers and distributors thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said insecticides, 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 its said business and for the purpose of inducing the purchase of its said insecticides in commerce as aforesaid, respondent has made numerous statements and representations concerning said products through the medium of circulars and fliers, counter display cards and advertising mats, all of which are distributed to its wholesale distributors who, in turn, distribute some of said material to retailers. Said distributors and retailers use said circulars, fliers and display cards and advertising mats for the purpose of advertising respondent's products. Among and typical of the statements and representations contained in said advertising matter are the following:

(1) Hep Aerosol Insect Killer

Safe—Hep is * * * noninjurious * * *

Economical—when used according to directions rids average size room of flying insects up to 75 times.

(2) Bostwick Super-Aerosol Insect Killer

New double-quick Killer

Kills many more insects Faster! Here's a new, more powerful insect killer that really gets 'em all! Gets 'em double-quick—with half the work! One whiff and they're through.

New . . . faster super-killer gets 'em all!

This season, every home can be free of flying and crawling pests.

Non-toxic, non-flammable and won't stain when used as directed. * * *
Harmless to Animals, Plants * * * and safe for man, animals * * * Safe
New Insecticide * * *

It's non-inflammable, non-toxic and non-staining (see directions) * * *
3. Safe . . . non-inflammable.

(3) Safe-lex Aerosol Insect Killer

Non-staining

For faster action—for freedom from flying and crawling pests.

Safe-lex . . . this wonder push-button spray, contains the sensational Dupont discovery—Methoxychlor—that kills practically every household insect twice as fast as DDT.

Now, the first safe insect killer is here! It's safe near children, pets and food!

New, Non-Poisonous Insect Killer! Safer near children, food and pets. (In connection with said advertisement there appears a picture of a woman spraying said preparation over the heads of children, a dog and over food.)

(4) Bostwick Moth Proofer

Amazing new formula mothproofs suit or coat for one Year.

*Warning. Beware of terms like "Moth-Treated." Only Bostwick "Moth-Proofs."

(5) General Representations:

Already DDT is barred for use near children, food, pets.

In its warning statement the Dept. of Agriculture makes this recommendation . . . "the entomologists now recommend that methoxychlor, another effective insecticide, be substituted for DDT to control insect pests."

Wonder ingredient Methoxychlor—KILLS MORE . . . FASTER!

PAR. 4. By and through the use of the foregoing statements and representations and others of the same import, respondent represented:

1. that its Hep Aerosol Insect Killer is safe and will not cause injury to humans, birds, fish and pets and that its use as directed will kill all flying insects which may be in the treated premises;

2. that its Super Aerosol Insect Killer is non-toxic, and safe, and will not injure humans, plants or animals; and that said product keeps the premises free of flying and crawling pests and kills insects more quickly than other insecticides;

3. that Safe-lex Aerosol Insect Killer will not stain materials which it contacts; that it will destroy all flying and crawling pests located in the treated premises; that, because of its methoxychlor content, it kills practically every household insect twice as fast as DDT preparations; that it is non-poisonous and safe for use; that it may be sprayed over the heads of children and pets and over food without possibility of ill effects and is safer for use under all circumstances than all other insecticides:

4. that Bostwick Moth Proofer is effective in protecting garments from moth damage for a year and is the only preparation on the market which mothproofs;

5. that DDT has been barred for use near children and pets; that the Department of Agriculture has recommended that methoxychlor

be substituted for DDT to control insect pests and that methoxychlor kills more insects than DDT.

PAR. 5. Some of the aforesaid representations are exaggerated, misleading, false and deceptive.

Hep Aerosol Insect Killer and Bostwick Super-Aerosol Insect Killer have as active ingredients DDT and petroleum distillate. The indiscriminate use of said aerosol preparations containing the percentages of DDT and petroleum distillate stated above may cause damage to the health of human beings who may be exposed to the spray by virtue of three factors. (1) Inhalation of these materials continually may produce, in susceptible individuals, direct injury to the lungs from the petroleum distillate. The injury would consist of a chronic type of lung irritation. (2) Continued inhalation of the DDT suspended in the air as a mist may cause systemic effects, including irritation of the nervous system and possible liver damage. Both items are to be feared especially in elderly people who would be more susceptible to the effects. (3) Constant contact of petroleum distillates with the skin is known to produce dermatitis in susceptible individuals. This result especially is to be feared in the case of the skin of babies.

However, the evidence indicates that the danger from the distillate stated in (1) and (3), as the products are used, is not significantly real.

The said insecticides are safe, non-toxic, and non-injurious to human beings, birds, fish, and animals only when used as directed on the label. Indiscriminate use will be avoided if the cautions in the directions for use printed on the label are observed.

Bostwick Super-Aerosol Insect Killer and Safe-lex Aerosol Insect Killer will not kill or destroy all crawling insects in the treated premises. The average kill will be about eighty percent. Since there is normally a residue of the insects, repeated applications are necessary from time to time, but even this treatment would not obtain one-hundred-percent kill as a practical matter.

The relative killing time of insects by Bostwick Super-Aerosol Insect Killer is not much different from many of the other common aerosols on the market and as a practical matter is not any different in killing time than a wide variety of commercial insecticides.

While on the basis of laboratory tests there may be some increased and faster killing of flies by methoxychlor over DDT, it is not twice as fast. As a practical matter a housewife would not observe any difference between the killing time of an insecticide such as Safe-lex Aerosol Insect Killer based on methoxychlor and an insecticide or an aerosol containing DDT.

Aerosols such as Safe-lex Aerosol Insect Killer will stain materials if held too close to surfaces that are being treated. However, the di-

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rections for use set forth on the Safe-lex label direct that the dispenser be held three feet away from the object, and this distance is sufficient to prevent staining or discoloring. There are other insecticides on the market which are as safe to use as respondent's Safe-lex Aerosol Insect Killer.

Respondent's instructions for the use of Bostwick Moth Proofer provide that treated articles should be re-treated after dry cleaning or laundering. It is apparent that the processes of dry cleaning or laundering either destroy or to a substantial degree reduce the effectiveness of the preceding treatment, and that the treated article will be effectively mothproofed for a period of a year, or any other period, after treatment only if it is not dry cleaned or laundered during the period. There are other preparations on the market which are as effective as Bostwick Moth Proofer from the mothproofing standpoint, including those applied by dipping and washing.

DDT has not been barred for use near children and pets. In 1949 the United States Department of Agriculture outlawed the use of DDT on dairy animals and in dairy barns to keep milk pure, and this is the only restrictive regulation in effect.

The only definite recommendation of the United States Department of Agriculture for the substitution of methoxychlor for DDT is for the control of flies in dairy barns and the control of flies on dairy animals.

With respect to the relative effectiveness of methoxychlor and DDT preparations for killing insects, there are some instances where methoxychlor is effective and DDT is not. This is true on Mexican bean beetles. On roaches, however, methoxychlor is less effective than DDT. In general methoxychlor is effective against a much smaller range of insects than DDT.

PAR. 6. There is no evidence that respondent has represented that its product Safe-lex Aerosol Insect Killer will not discolor except in connection with the caution "when used as directed," or that the directions for use on the container label are not ample, truthful and sufficient.

PAR. 7. The representations that respondent's Hep Aerosol Insect Killer, Bostwick Super-Aerosol Insect Killer and Safe-lex Aerosol Insect Killer will kill all flying insects in the treated premises, for all practical purposes, are true.

PAR. 8. There is no substantial or satisfactory evidence that respondent's Safe-lex Aerosol Insect Killer is injurious or not safe. The evidence to this effect is speculative and far-fetched.

PAR. 9. By furnishing the circulars, display cards and advertising mats containing the statements and representations set out in Para-

graph Three hereof to its distributors and dealers, respondent placed in the hands of said distributors and dealers a means and instrumentality by and through which the public may be misled as to the properties and value of its insecticides.

PAR. 10. In the course and conduct of its aforesaid business, respondent has been and is now engaged in direct and substantial competition with various corporations, partnerships and individuals likewise engaged in the sale and distribution in commerce of insecticides designed for similar purposes as those sold and distributed by respondent as aforesaid, and particularly insecticides containing DDT.

PAR. 11. The use by the respondent of said false and misleading statements and representations in connection with the sale of its aforesaid insecticides has had the tendency and capacity to mislead and deceive purchasers and prospective purchasers of respondent's said insecticides into the erroneous and mistaken belief that such statements and representations were true, and because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said insecticides. In consequence of all of the foregoing, trade has been unfairly diverted to said respondent from its competitors who do not misrepresent their insecticides, and thereby substantial injury is being and has been done to competition in commerce.

PAR. 12. In 1949 respondent qualified the representations hereinabove set out in Paragraph Three (1) as to its product Hep Aerosol Insect Killer by adding the words "when used as directed" or "follow directions" and by listing the insects which it will kill in lieu of the words "all flying insects," and has not since then used such representations except as so qualified.

PAR. 13. Respondent in 1949 discontinued as unprofitable the manufacture and sale of its product Super-Aerosol Insect Killer and has not since that time advertised it as hereinabove described in Paragraph Three (2).

PAR. 14. Respondent since June, 1950, has not advertised its product Safe-lex nor made any of the representations hereinabove described in Paragraph Three (3).

PAR. 15. As to respondent's product Bostwick Moth Proofer, the representation that it is the only preparation on the market which mothproofs as hereinabove found in Paragraph Three (4) was discontinued in 1950 and has not since been used. The representation that this product gives year-round protection from moths has since 1950 been qualified by the words "simply follow directions," which directions state that re-treatment of the garment must be given if the garment is laundered or dry-cleaned.

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PAR. 16. Since the latter part of 1949 or early part of 1950, the first and third representations hereinabove described in Paragraph Three (5) have been discontinued.

CONCLUSIONS

1. The record herein does not show that the labels on the containers of respondent's various products contain cautions and directions for use, which are not adequate. The failure of respondent's advertising to repeat in its advertisements these cautions and directions in respect of some claims or to refer to them in respect of other claims leaves the advertising exaggerated, misleading and deceptive in most instances. In a few instances the representations are simply false. The cessation of the latter and the qualification of the former by respondent, prior to the issuance of the complaint, is persuasive evidence of respondent's cognizance of the tendency of these representations to mislead and deceive; it may to some extent indicate a lack of intention by respondent to mislead or deceive. Intent to deceive, of course, is immaterial in this proceeding and constitutes no defense.

2. Voluntary cessation or modification is neither defense to the proceeding nor a bar to an order requiring that which has already been voluntarily done (*Hershey Chocolate Co. v. Federal Trade Commission*, 121 F. (2d) 968).

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

ORDER

It is ordered, That respondent Bostwick Laboratories, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their insecticidal preparations designated as "Hep Aerosol Insect Killer," "Bostwick Super-Aerosol Insect Killer," "Bostwick Safe-lex Aerosol Insect Killer," and "Bostwick Moth Proofer," or any other insecticide of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name or names, do forthwith cease and desist from:

1. Representing, directly or by implication, that Hep Aerosol Insect Killer is safe and will not cause injury to human beings, birds,

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fish, and pets unless, wherever such statement or statements are made, it is clearly disclosed in immediate connection therewith that said product is safe only when used in accordance with the directions set out on the label;

2. Representing, directly or by implication, that Bostwick Super-Aerosol Insect Killer kills all crawling insects in the treated premises;

3. Representing, directly or by implication, that Bostwick Super-Aerosol Insect Killer kills insects in a faster time than other insecticides now on the market;

4. Representing, directly or by implication, that Bostwick Super-Aerosol Insect Killer is safe or is non-toxic or is harmless to human beings, plants or animals unless, wherever such statement or statements are made, it is clearly disclosed in immediate connection therewith that said product is safe, non-toxic or harmless to human beings and animals only when used in accordance with the directions set out on the label;

5. Representing, directly or by implication, that Safe-lex Aerosol Insect Killer kills all crawling insects in the treated premises;

6. Representing, directly or by implication, that Safe-lex Aerosol Insect Killer kills insects faster than insecticides containing DDT;

7. Representing, directly or by implication, that Safe-lex Insect Killer will not stain materials unless, wherever such statement or statements are made, it is clearly disclosed in immediate connection therewith that said insecticide will not stain materials which it contacts only when used in accordance with the directions set out on the label;

8. Representing, directly or by implication, that Safe-lex Aerosol Insect Killer is safer for use than all other commercial insecticides;

9. Representing, directly or by implication, that Bostwick Moth Proofer is effective in protecting woolen materials from moths for one year, or any specified period, unless, wherever such statement or statements are made, it is clearly disclosed in immediate connection therewith that said woolen materials must be re-treated after dry-cleaning or laundering;

10. Representing, directly or by implication, that Bostwick Moth Proofer is the only insecticide on the market that mothproofs;

11. Representing, directly or by implication, that DDT has been barred for use near children and pets by the United States Government or any other official agency or organization;

12. Representing, directly or by implication, that the United States Department of Agriculture has recommended that methoxychlor be substituted for DDT except for the control of flies around dairy barns and on dairy cows;

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13. Representing, directly or by implication, that methoxychlor kills more insects than DDT.

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 this order.

Commissioner Carretta not participating for the reason that oral argument in this proceeding was heard prior to his becoming a member of the Commission.

Complaint

IN THE MATTER OF

RICE COAT & SUIT COMPANY ET AL.

COMPLAINT, SETTLEMENT, FINDINGS, AND ORDER 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 6069. Complaint, Dec. 12, 1952—Decision, Mar. 31, 1953

Where a corporation and its three officers, engaged in the manufacture and interstate sale and distribution of wool products as defined in the Wool Products Labeling Act—

- (a) Misbranded ladies' coats in that they were not stamped, tagged or labeled as required by said Act and the Rules and Regulations promulgated thereunder; and
- (b) Misbranded certain of said coats in that they were labeled or tagged as containing "100 Percent Wool Interlining", notwithstanding the fact that said interlinings were not 100% wool as "wool" is defined by said Act but were composed of reused or reprocessed wool, together with substantial quantities of nonwoolen fibers:

Held, That such acts and practices, under the circumstances set forth, constituted misbranding of wool products in violation of said Act and Rules and Regulations, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

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

Mr. George E. Steinmetz for the Commission.

Brown & Koralchik, of Kansas City, Mo., for respondents.

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 Rice Coat & Suit Company, a corporation, and Frank Rice, Louis Rice and Joseph Koralchik, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, 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 Rice Coat & Suit Company is a corporation, organized and existing under and by virtue of the laws of the State of Missouri; and respondents Frank Rice, Louis Rice and Joseph Koralchik are the president, vice-president-treasurer and secretary, respectively, of the said respondent corporation, and as such,

direct and control the policies, acts and practices of the corporate respondent. The offices and principal place of business of all respondents is located at 617 Wyandotte Street, Kansas City, Missouri.

PAR. 2. Subsequent to the effective date of the said Wool Products Labeling Act and more especially since 1947, 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 described as ladies' coats were misbranded in that the fiber content of the interlinings contained therein was not separately set forth on the labels or tags attached thereto as required under the provisions of Section 4(a) (2) of the Wool Products Labeling Act of 1939 and Rule 24 of the Rules and Regulations promulgated under said Act.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of certain of the constituent fibers contained therein. Among the misbranded wool products aforementioned were ladies' coats labeled or tagged by respondent corporation as containing "100 Per Cent Wool Interlining," when in truth and in fact the said interlinings were not 100 per cent wool, as "wool" is defined in the Wool Products Labeling Act of 1939, but contained reused or reprocessed wool, together with substantial quantities of non-woolen fibers.

PAR. 5. The acts and practices of the respondents, as herein alleged, constitute misbranding of wool products and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder; and all of the aforesaid acts and practices, as herein alleged, 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.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on March 31, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

Commission, on December 12, 1952, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in violation of the provisions of said Acts.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.

2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

3. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in Paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Rice Coat & Suit Company is a corporation organized and existing under and by virtue of the laws of the State of Missouri. Respondents Frank Rice, Louis Rice and Joseph Koralchik are the President, Vice President and Treasurer, and Secretary, respectively, of said respondent corporation. Respondents Frank Rice and Louise Rice as officers of said corporate respondent formulate, direct and control its policies, acts and practices. Their address is 617 Wyandotte Street, Kansas City, Missouri.

PAR. 2. Respondent Joseph Koralchik, whose address is 311 Land Bank Building, Kansas City, Missouri has filed his affidavit herein, setting forth that he has never, at any time during his tenure of office as Secretary of respondent corporation participated in the manage-

Conclusion

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ment, direction or control thereof, and has never taken part in the formulation or execution of any of the acts or policies hereinabove complained of.

By reason of the matters set out in said affidavit the Commission finds that the said complaint, insofar as it relates to the respondent Joseph Koralchik as an individual should be dismissed.

PAR. 3. Subsequent to the effective date of the said Wool Products Labeling Act and more especially since 1947, respondents, other than Joseph Koralchik, 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. 4. Certain of said wool products described as ladies' coats were misbranded in that the fiber content of the interlinings contained therein was not separately set forth on the labels or tags attached thereto as required under the provisions of section 4 (a) (2) of the Wool Products Labeling Act of 1939 and Rule 24 of the Rules and Regulations promulgated under said Act.

PAR. 5. Certain of said wool products were misbranded within the intent and meaning of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of certain of the constituent fibers contained therein. Among the misbranded wool products aforementioned were ladies' coats labeled or tagged by respondent corporation as containing "100 Percent Wool Interlining," when in truth and in fact the said interlinings were not 100 percent wool, as "wool" is defined in the Wool Products Labeling Act of 1939, but contained reused or reprocessed wool, together with substantial quantities of non-woolen fibers.

CONCLUSION

The acts and practices of the respondents Rice Coat & Suit Company, a corporation, and Frank Rice and Louis Rice, individually, and as officers of said respondent corporation, and Joseph Koralchik as an officer of said respondent corporation, as herein found, constitute misbranding of wool products and as such are in violation of the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder; and all of the aforesaid acts and practices, as herein found, 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.

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Order

ORDER TO CEASE AND DESIST

It is ordered, That the respondent, Rice Coat & Suit Company, a corporation, and its officers, and respondents Frank Rice and Louis Rice, individually and as officers of said corporation, and Joseph Koralechik as an officer of said corporation and 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 Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of ladies' coats 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:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included 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 percentum 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 percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage 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 delivery for shipment thereof in commerce as "commerce" is defined in the Wool Products Labeling Act of 1939;

3. Failing to separately set forth on the required stamp, tag, label or other means of identification the character and amount of the constituent fibers appearing in the interlinings of such wool products, as provided in Rule 24 of the Rules and Regulations promulgated under the said Act.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a)

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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;

It is further ordered, That the complaint herein insofar as it relates to Joseph Koralchik individually be, and the same is hereby dismissed.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

[sgd] FRANK RICE
Rice Coat & Suit Company,
a corporation

By [sgd] FRANK RICE
(Name)
President
(title)

[sgd] FRANK RICE
Frank Rice, individually,
and as an officer of Rice
Coat & Suit Company, a
corporation.

[sgd] LOUIS RICE
Louis Rice, individually,
and as an officer of Rice
Coat & Suit Company, a
corporation.

[sgd] JOSEPH KORALCHIK
Joseph Koralchik, individu-
ally and as an officer of
Rice Coat & Suit Company,
a corporation.

Date: February 12, 1953

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 31st day of March, 1953.

Syllabus

IN THE MATTER OF
ANTHONY AND LENA OLIVERIO D. B. A. DEL MAR
SEWING MACHINE COMPANY

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

Docket 6013. Complaint, July 18, 1952—Decision, Apr. 2, 1953

When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public, and such articles are not marked, or are not adequately marked, showing that they are of foreign origin, or if marked, and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

There is among members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machines.

The words "Universal" and "Majestic" and other well-known domestic names are the names or parts of the names of, or used as trade names, marks or brands by, one or more business organizations transacting and doing business in the United States, which are and have been well and favorably known to the purchasing public, and which are and have been well and long established in various industries; and there is a preference among members of the purchasing public for products manufactured by well and favorably known and long established concerns whose identity is connected with the words "Universal" and "Majestic" and other well known domestic names.

Where two partners engaged in the competitive interstate sale and distribution of sewing machines of which heads imported from Japan were a part—

- (a) Failed adequately to disclose such foreign origin on their said sewing machine heads, upon which the word "Japan", displayed on the back of the arm when imported, became concealed through attachment of a motor and, where displayed on a medallion, on the front of the arm, in some instances, was so small and indistinct as not to constitute adequate notice to the public, and upon which no other mark was placed to inform the public of said origin;
- (b) Falsely represented through the featured use of the words "Universal", "Majestic" and other well known domestic trade or brand names on the front horizontal arm of the head, and use in advertising of such names, that the product was manufactured by or connected in some way with the well and favorably known firm long associated with the particular name, and thereby also enhanced the public belief that the sewing machines were of domestic origin;

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(c) Represented, directly or by implication, that they were making a bona fide offer to sell Singer, White, Domestic, and New Home portable sewing machines for \$25, and that said machines were being offered during a clearance sale at a reduced price and for a limited time only, through such statements as "CLEARANCE SALE! WHILE THEY LAST! REBUILT PORTABLE ELECTRIC SEWING MACHINES, SINGERS, WHITES, DOMESTICS, NEW HOMES, \$25. Hurry! Only a few machines left to clear out at this price. * * *";

The facts being that said offer was not a genuine, bona fide offer, but was made to obtain leads as to persons interested in buying machines; after obtaining such leads they made no effort to sell the machines advertised, but attempted to sell different and more expensive ones, particularly those of which heads made in Japan were a part; the alleged clearance sales actually were continuous offers over long periods of time; and the price set out in their advertisements was the usual and customary one for said rebuilt machines; and

(d) Represented that their portable machines were customarily sold to members of the public for \$169.50 through their advertising; when in fact said sum was wholly fictitious and greatly in excess of the amount usually charged:

With tendency and capacity to mislead a substantial portion of the purchasing public and thus induce numbers thereof to purchase said machines and with effect of unfairly diverting to them substantial trade in commerce from their competitors, among whom were included sellers of domestic sewing machines, and sellers also of the imported product, of whom some adequately indicated the foreign origin of the product or parts; to the injury of competition in commerce:

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

Before *Mr. John Lewis*, hearing examiner.

Mr. William L. Taggart for the Commission.

Depaoli & Nicco, of San Francisco, Calif., 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 Anthony Oliverio and Lena Oliverio, copartners, doing business as Del Mar Sewing Machine 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 Anthony Oliverio and Lena Oliverio are copartners doing business under the name of Del Mar Sewing Machine

Company with their office and principal place of business located at 3230 Mission Street, San Francisco, California.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machines, of which heads imported from Japan are a part, to members of the purchasing public. In the course and conduct of their business respondents cause their said product, when sold, to be transported from their place of business in the State of California to the purchasers thereof located in various other States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. When the sewing machine heads are received by respondents, the word "Japan" appears on the back of the vertical arm. Before the heads are sold to the purchasing public as a part of a complete sewing machine, it is necessary to attach a motor to the head in the process of which the aforesaid word is covered by the motor so that it is not visible. In some instances, said heads, when received by respondents, are marked with a medallion placed on the front of the vertical arm upon which the word "Japan" appears. This word is, however, so small and indistinct that it does not constitute adequate notice to the public that the heads are imported. Respondents place no other marks on their imported sewing machine heads or on complete sewing machines, showing foreign origin, or otherwise inform the public that the heads are imported, before they are offered for sale to the public.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public, and such articles are not marked, or are not adequately marked, showing that they are of foreign origin, or if marked, and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machines.

PAR. 5. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin and to cause substantial numbers of the purchasing public to purchase sewing machines, of which said heads are a part, because of said erroneous and mistaken belief.

As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

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PAR. 6. Respondents use the words "Universal" and "Majestic" and other well known domestic names as trade or brand names for their sewing machine heads and complete sewing machines, which words are printed or embossed on the front horizontal arm of the head in large, conspicuous letters and use said trade or brand names in their advertising matter. The words "Universal" and "Majestic" and the other well known domestic names are the names, or parts of the names of, or used as trade names, marks or brands by one or more business organizations transacting and doing business in the United States, which are and have been well and favorably known to the purchasing public and which are and have been well and long established in various industries.

PAR. 7. By using trade or brand names such as "Universal" and "Majestic" and other well known domestic names, respondents represent, directly or by implication, that their product is manufactured by, or connected in some way with, the well and favorably known American firm or firms with which said names have long been associated, which is contrary to the fact.

PAR. 8. There is a preference among members of the purchasing public for products manufactured by well and favorably known and long established concerns whose identity is connected with the words "Universal" and "Majestic" and other well known domestic names. The use of said trade or brand names by respondents on their sewing machines and heads enhances the belief on the part of the public that the said sewing machines are of domestic origin.

PAR. 9. Respondents, in their advertising, make the following statements:

CLEARANCE	SALE!
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WHILE THEY LAST!

REBUILT PORTABLE ELECTRIC
SEWING MACHINES

SINGERS

WHITES

DOMESTICS

\$25.00

NEW HOMES

. New Motor . New Foot Control!

New Case! . New Wiring and Plugs!

5-Year Parts Guarantee!

Hurry! Only a few machines left to clear

out at this price. First come — first

served. Sorry, cash and carry only!

Open Monday Eve. 'Till 9

DEL MAR SEWING MACHINE CO.

Sales and Service Authorized Necchi Dealer

3230 Mission Street Near Valencia . MI. 7-5143

By and through the use of the aforementioned statements, respondents represented, directly or by implication, that they were making a bona fide offer to sell Singer, White, Domestic and New Home rebuilt portable electric sewing machines for the sum of \$25.00 and that said machines were being offered during a clearance sale at a reduced price and for a limited time only.

The aforesaid representations were false, misleading and deceptive. In truth and in fact the offer to sell rebuilt Singer, White, Domestic and New Home Sewing Machines for \$25.00 was not a genuine or bona fide offer, but was made for the purpose of obtaining leads as to persons interested in purchasing sewing machines. After obtaining such leads, respondents make no effort to sell the sewing machines advertised but attempt to sell different and more expensive sewing machines, particularly machines of which heads made in Japan are a part. Respondents' alleged clearance sales were not clearance sales at a reduced price for a limited time only, but actually were continuous offers over long periods of time and the price set out in their advertisements was the usual and customary price at which said rebuilt sewing machines were offered for sale.

PAR. 10. Respondents, in their advertising, make further statements, such as the following:

(Picturization of portable electric sewing machine)
(Electric Sewing machines \$169.50)

By and through the use of the aforementioned statements, respondents represented, directly or by implication, that their portable electric sewing machines were customarily sold to members of the purchasing public for the sum of \$169.50. In truth and in fact, the sum of \$169.50 is a wholly fictitious price and greatly in excess of the amount usually and ordinarily charged for said sewing machines by respondents.

PAR. 11. The use by respondents of the foregoing false, misleading and deceptive statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations were and are true and to induce the purchase of substantial quantities of said sewing machines as a result of this erroneous and mistaken belief.

PAR. 12. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the sellers of domestic sewing machines and also sellers of imported sewing machines, some of whom adequately disclose to the public that their machines or parts thereof are of foreign origin.

PAR. 13. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan and also

the use of trade or brand names such as "Universal" and "Majestic" and other prominent domestic names have the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin and is manufactured by the well and favorably known firm or firms with which said trade or brand names have long been associated and to induce members of the purchasing public to purchase sewing machines, of which said heads are a part, because of this erroneous and mistaken belief.

As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 14. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 18, 1952, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth and in lieu of answer to said complaint, hereby

(1) Admit all the jurisdictional allegations set forth in the complaint.

(2) Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on April 2, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

(3) Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in Paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Anthony Oliverio and Lena Oliverio are copartners doing business under the name of Del Mar Sewing Machine Company with their office and principal place of business located at 3230 Mission Street, San Francisco, California.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machines, of which heads imported from Japan are a part, to members of the purchasing public. In the course and conduct of their business respondents cause their said product, when sold, to be transported from their place of business in the State of California to the purchasers thereof located in various other States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. When the sewing machine heads are received by respondents, the word "Japan" appears on the back of the vertical arm. Before the heads are sold to the purchasing public as a part of a complete sewing machine, it is necessary to attach a motor to the head in the process of which the aforesaid word is covered by the motor so that it is not visible. In some instances, said heads, when received by respondents, are marked with a medallion placed on the front of the vertical arm upon which the word "Japan" appears. This word is, however, so small and indistinct that it does not constitute adequate notice to the public that the heads are imported. Respondents place no other marks on their imported sewing machine heads or on complete sewing machines, showing foreign origin, or otherwise inform the public that the heads are imported, before they are offered for sale to the public.

PAR. 4. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public, and such articles are not marked, or are not adequately marked, showing that they are of foreign origin, or if marked, and the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products originating in the United States over products originating in whole or in part in foreign countries, including sewing machines.

PAR. 5. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin and to cause substantial numbers of the purchasing public to purchase sewing machines, of which said heads are a part, because of said erroneous and mistaken belief.

As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 6. Respondents use the words "Universal" and "Majestic" and other well known domestic names as trade or brand names for their sewing machine heads and complete sewing machines, which words are printed or embossed on the front horizontal arm of the head in large, conspicuous letters and use said trade or brand names in their advertising matter. The words "Universal" and "Majestic" and the other well known domestic names are the names, or parts of the names of, or used as trade names, marks or brands by one or more business organizations transacting and doing business in the United States, which are and have been well and favorably known to the purchasing public and which are and have been well and long established in various industries.

PAR. 7. By using trade or brand names such as "Universal" and "Majestic" and other well known domestic names, respondents represent, directly or by implication, that their product is manufactured by, or connected in some way with, the well and favorably known American firm or firms with which said names have long been associated, which is contrary to the fact.

PAR. 8. There is a preference among members of the purchasing public for products manufactured by well and favorably known and long established concerns whose identity is connected with the words "Universal" and "Majestic" and other well known domestic names.

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Findings

The use of said trade or brand names by respondents on their sewing machines and heads enhances the belief on the part of the public that the said sewing machines are of domestic origin.

PAR. 9. Respondents, in their advertising, make the following statements:

CLEARANCE SALE!

WHILE THEY LAST!

REBUILT PORTABLE ELECTRIC
SEWING MACHINES

SINGERS

WHITES

DOMESTICS

NEW HOMES

\$25.00

New Motor . . . New Foot Control!

New Case! . . . New Wiring and Plugs!

5-Year Parts Guarantee!

Hurry! Only a few machines left to clear
out at this price. First come—first
served. Sorry, cash and carry only!

Open Monday Eve. 'Till 9

DEL MAR SEWING MACHINE CO.

Sales and Service Authorized Necchi Dealer
3230 Mission Street Near Valencia. MI. 7-5143

By and through the use of the afore-mentioned statements, respondents represented, directly or by implication, that they were making a bona fide offer to sell Singer, White, Domestic and New Home rebuilt portable electric sewing machines for the sum of \$25.00 and that said machines were being offered during a clearance sale at a reduced price and for a limited time only.

The aforesaid representations were false, misleading and deceptive. In truth and in fact the offer to sell rebuilt Singer, White, Domestic and New Home Sewing Machines for \$25.00 was not a genuine or bona fide offer, but was made for the purpose of obtaining leads as to persons interested in purchasing sewing machines. After obtaining such leads, respondents make no effort to sell the sewing machines advertised but attempt to sell different and more expensive sewing machines, particularly machines of which heads made in Japan are a part. Respondents' alleged clearance sales were not clearance sales at a reduced price for a limited time only, but actually were continuous offers over long periods of time and the price set out in their advertisements was the usual and customary price at which said rebuilt sewing machines were offered for sale.

PAR. 10. Respondents, in their advertising, make further statements, such as the following:

(Picturization of portable electric sewing machine)
(Electric Sewing machines \$169.50)

By and through the use of the aforementioned statements, respondents represented, directly or by implication, that their portable electric sewing machines were customarily sold to members of the purchasing public for the sum of \$169.50. In truth and in fact, the sum of \$169.50 is a wholly fictitious price and greatly in excess of the amount usually and ordinarily charged for said sewing machines by respondent.

PAR. 11. The use by respondents of the foregoing false, misleading and deceptive statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations were and are true and to induce the purchase of substantial quantities of said sewing machines as a result of this erroneous and mistaken belief.

PAR. 12. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the sellers of domestic sewing machines and also sellers of imported sewing machines, some of whom adequately disclose to the public that their machines or parts thereof are of foreign origin.

PAR. 13. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan and also the use of trade or brand names such as "Universal" and "Majestic" and other prominent domestic names have the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product is of domestic origin and is manufactured by the well and favorably known firm or firms with which said trade or brand names have long been associated and to induce members of the purchasing public to purchase sewing machines, of which said heads are a part, because of this erroneous and mistaken belief.

As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents'

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competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, That the respondents, Anthony Oliverio and Lena Oliverio, individually and as copartners doing business as Del Mar Sewing Machine Company, or trading under any other name, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machine heads or sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing foreign-made sewing machine heads, or sewing machines of which foreign-made heads are a part, without clearly and conspicuously disclosing on the heads the country of origin thereof.

2. Using the words "Universal" or "Majestic," or any simulations thereof, as brand or trade names to designate, describe or refer to their sewing machines or sewing machine heads; or representing, through the use of any other words or in any other manner, that their sewing machines or sewing machine heads are made by anyone other than the actual manufacturer.

3. Representing, directly or by implication, that certain amounts are the prices of their sewing machines when such amounts are in excess of the prices at which their said sewing machines are ordinarily sold in the usual and regular course of business.

4. Representing that certain sewing machines are offered for sale, when such offer is not a bona fide offer to sell the machines so offered.

5. Representing, directly or by implication, that the price at which any of respondents' products are offered for sale is a reduced price, or for a limited time only, or offered only during a clearance sale, when such price is, in fact, the customary price at which said products are regularly offered for sale.

It is further ordered, That the respondents, Anthony Oliverio and Lena Oliverio, copartners doing business as Del Mar Sewing Machine Company, shall within sixty days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

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[S] ANTHONY OLIVERIO

AND

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ners doing business as DEL
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fornia.

Attorney for Respondents.

Respondents.

DECEMBER 18, 1952

DECEMBER 18, 1952

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 2nd day of April, 1953.