

## Syllabus

IN THE MATTER OF  
JOSEPH GLUCK AND COMPANY, INC., ET AL.

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

*Docket 6038. Complaint, Sept. 4, 1952—Decision, Apr. 2, 1953*

The British Isles have for many years been a source of some of the finest fabrics imported into the United States and there is a preference on the part of a substantial portion of the purchasers of cloth in this country for suits made from fabrics imported from that source.

Where a corporation and its two officers, engaged in the purchase from mills and jobbers of fabrics which it cut into suit lengths and sold and distributed to dealers—

- (a) Represented directly and by implication that said fabrics were imported from England through labeling the separate lengths with such typical matter as "HEATH ENGLAND", accompanied by a representation of a lion and a unicorn within a diamond-shaped parallelogram, and followed by "SUF-FIELD LONDON"; notwithstanding the fact that said fabrics were woven and manufactured in the United States;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said fabrics were imported from England and thereby induce its purchase of substantial quantities thereof:

*Held*, That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce; and,

Where said corporation and individuals, engaged in the sale and distribution in commerce of wool products and defined in the Wool Products Labeling Act—

- (b) Misbranded certain of said products, not composed in whole of wool, in that they were not labeled to show the wool content as required by said Act;

With result of placing in the hands of retailers and others a means and instrumentality whereby members of the purchasing public had been and might be misled and deceived as above set forth:

*Held*, That aforesaid practices constituted a violation of the Wool Products Labeling Act and the rules and regulations promulgated thereunder, and unfair and deceptive acts and practices within the intent and meanings of the Federal Trade Commission Act.

As respects the charge in the complaint that respondents, engaged in the interstate sale and distribution of rayon fabrics which had the feel and appearance of wool, affirmatively and by implication represented the same as wool, and thereby misled and deceived a substantial portion of the purchasing public in said respect: said charge was not supported by reliable, probative

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and substantial evidence of record, and no finding as to violation could be made with respect thereto, nor order issued..

Before *Mr. J. Earl Cox*, hearing examiner.  
*Mr. J. J. McNally* and *Mr. George E. Steinmetz* for the Commission.  
*Halperin, Natanson, Shivitz & Scholer*, of New York City, 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 Joseph Gluck and Company, Inc., a corporation, and Abner Gluck and Ned Gluck, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Joseph Gluck and 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 principal place of business located at 305 Seventh Avenue, New York, New York. The individual respondents, Abner Gluck and Ned Gluck are President and Secretary-Treasurer, respectively, of the corporate respondent, Joseph Gluck and Company, Inc., and formulate, control and direct the affairs and policies of said corporate respondent. Said individual respondents have their offices at the same place as the corporate respondent.

PAR. 2. Said respondents are now, and for several years last past have been, engaged in the sale and distribution of woolen and of rayon fabrics to dealers for resale to the consuming public. Respondents cause said fabrics, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said fabrics in commerce among and between the various States of the United States.

Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1950, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in the Wool

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Products Labeling Act of 1939, wool products, as "wool products" are defined therein.

PAR. 3. In the course and conduct of their said business respondents purchased woolen fabrics and rayon fabrics from mills and jobbers. The said fabrics were then cut by respondents into lengths suitable for making a suit of clothes. The separate lengths were then falsely and deceptively labeled with respect to the country of origin of said fabrics, within the intent and meaning of the Federal Trade Commission Act and were thereafter sold and distributed in commerce, as "commerce" is defined in said Act.

Among and typical of such false and deceptive labeling stamped on the separate pieces of fabric are the following:

## BRADFORD-ENGLAND

(depiction resembling British coat-of-arms)

## ALL WOOL

## HEATH-ENGLAND

(depiction resembling British coat-of-arms)

Through the use of the labeling quoted above, respondents represented, directly and by implication, that said fabrics were imported from England. In truth and in fact said fabrics were not imported from England but were woven and manufactured in the United States.

PAR. 4. The British Isles have for many years been the source of some of the finest fabrics imported into the United States and there is a preference on the part of a substantial portion of the purchasers of clothing in this country for suits made from fabrics imported from that source. Respondents' said practice has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' said fabrics were imported from England and into the purchase of substantial quantities of said fabrics because of such erroneous and mistaken belief.

PAR. 5. Rayon is a chemical fiber which may be manufactured so as to simulate wool and other natural fibers in texture and appearance. Fabrics manufactured from such rayon fibers have the feel and appearance of wool. Many members of the purchasing public are unable to distinguish between such rayon fabrics and fabrics made of wool. Consequently, such rayon fabrics are readily accepted by members of the purchasing public as wool products.

PAR. 6. Those fabrics so sold and distributed by respondents that were composed of rayon simulated wool in texture and appearance. Respondents did not label or otherwise inform the consumers of their said rayon fabrics that they were composed of rayon. Moreover, those rayon fabrics bearing the first above-quoted label were affirmatively

represented as being wool. Respondents' said practice has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' rayon fabrics were composed of wool and into the purchase of substantial quantities of said rayon fabrics because of such erroneous and mistaken belief.

PAR. 7. Respondents' said wool products, including those composed in whole or in part of wool and those composed of rayon which simulated wool in texture and appearance and those which were affirmatively represented as being wool, were, and are, also misbranded in that they were and are not stamped, tagged or labeled as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939 in the manner and form prescribed by the rules and regulations promulgated under said Act.

PAR. 8. By their said acts and practices, respondents place in the hands of retailers and others a means and instrumentality whereby members of the purchasing public may be misled and deceived in the manner aforesaid.

PAR. 9. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public. Respondents' practice of falsely and deceptively labeling their fabrics with respect to the country of origin of said fabrics; of falsely representing that their fabrics composed of rayon are wool and of failing to disclose the rayon content of said fabrics, constitutes unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The practice of respondents of misbranding their wool products, including those composed in whole or in part of wool and those composed of rayon which simulated wool in texture and appearance and those which were affirmatively represented as being wool, by failing to attach to said products a stamp, tag or label containing the information required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939 were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder and also constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

#### DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated April 2, 1953, the initial decision in the instant matter of hearing examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

## INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission on September 4, 1952, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, in connection with the sale of woolen and rayon fabrics. After the filing of respondents' answer in this proceeding a hearing was held on January 23, 1953, before the above-named hearing examiner of the Commission, theretofore duly designated by it, at which a stipulation was entered into by and between Samuel L. Scholer, attorney for respondents, and George E. Steinmetz, attorney in support of the complaint, subject to the approval of the hearing examiner, whereby it was stipulated and agreed that a statement of facts agreed to on the record may be made a part of the record herein and may be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto; that the said hearing examiner may proceed upon said statement of facts to make his initial decision stating his findings as to the facts, including inferences which he may draw from the said stipulation of facts, and his conclusion based thereon, and enter his order disposing of the proceeding as to said respondents without the filing of proposed findings and conclusions or the presentation of oral argument. Said stipulation as to the facts expressly provides that upon appeal to or review by the Commission, said stipulation may be set aside by the Commission and this matter remanded for further proceedings under the complaint.

Thereafter, this proceeding regularly came on for final consideration by said hearing examiner upon the complaint, answer, and stipulation, said stipulation having been approved by the hearing examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Joseph Gluck and 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 principal place of business located at 305 Seventh Avenue, New York, New York. The individual respondents, Abner Gluck and Ned Gluck are Presi-

dent and Secretary-Treasurer, respectively, of the corporate respondent, Joseph Gluck and Company, Inc., and formulate, control and direct the affairs and policies of said corporate respondent. Said individual respondents have their offices at the same place as the corporate respondent.

PAR. 2. Said respondents are now, and for several years last past have been, engaged in the sale and distribution of woolen fabrics to dealers for resale to the consuming public. Respondents cause said fabrics, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said fabrics in commerce among and between the various States of the United States.

Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1950, respondents have 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 of 1939, wool products, as "wool products" are defined therein.

PAR. 3. In the course and conduct of their said business respondents purchased fabrics composed in whole or in part of wool from mills and jobbers. The said fabrics were then cut by respondents into lengths suitable for making suits of clothes. The separate lengths were then falsely and deceptively labeled with respect to the country of origin of said fabrics, within the intent and meaning of the Federal Trade Commission Act and were thereafter sold and distributed in commerce, as "commerce" is defined in said Act.

Among and typical of such false and deceptive labeling stamped on the separate pieces of fabric are the following:

**HEATH ENGLAND**

These words are accompanied by a representation of a lion and a unicorn enclosed within a diamond-shaped parallelogram.

**SUFFIELD**

**LONDON**

Through the use of the labeling quoted above, respondents represented, directly and by implication, that said fabrics were imported from England. In truth and in fact said fabrics were not imported from England but were woven and manufactured in the United States.

PAR. 4. The British Isles have for many years been the source of some of the finest fabrics imported into the United States and there is a preference on the part of a substantial portion of the purchasers of clothing in this country for suits made from fabrics imported from that source. Respondents' said practice has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' said fabrics were imported from England and into the purchase of substantial quantities of said fabrics because of such erroneous and mistaken belief.

PAR. 5. In connection with the respondents' said wool products which includes those composed in whole or in part of wool, respondents' practice was, and has been, to label as to content those products consisting entirely of wool, but none of the products consisting in part of wool have been labeled by the respondents to show the wool content thereof as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939 in the manner and form prescribed by the rules and regulations promulgated under said Act.

PAR. 6. By their said acts and practices, respondents place in the hands of retailers and others a means and instrumentality whereby members of the purchasing public have been and may be misled and deceived in the manner aforesaid.

#### CONCLUSION

The aforesaid acts and practices of respondents are all to the prejudice and injury of the public. Respondents' practice of falsely and deceptively labeling their fabrics with respect to the country of origin of said fabrics constitutes unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The practice of respondents of misbranding their wool products, including those composed in whole or in part of wool, by failing to attach to said products a stamp, tag or label containing the information required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939 were, and are, in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder and also constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

The reliable, probative and substantial evidence of record does not support the charges in the complaint that respondents have engaged in the sale and distribution in commerce of rayon fabrics having the feel and appearance of wool and have affirmatively and by implication

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represented such fabrics as being wool, thereby misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such rayon fabrics were composed of wool and into the purchase of substantial quantities thereof because of such belief. As to these charges there can be no finding that the respondents have violated any of the provisions of the Federal Trade Commission Act and no order can be or will be issued in reference thereto.

## ORDER

*It is ordered,* That the respondents, Joseph Gluck and Company, Inc., a corporation, and its officers, and Abner Gluck and Ned Gluck, individually and as officers of said corporation, and 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 fabrics, do forthwith cease and desist from representing, directly or by implication, that fabrics manufactured in the United States were manufactured in any other country.

*It is further ordered,* That the respondents, Joseph Gluck and Company, Inc., a corporation, and its officers, and Abner Gluck and Ned Gluck, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, of wool fabrics or other wool products, as such products are defined in and subject to said Act, 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 failing:

1. To affix securely 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 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 products 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 or distribution thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939;

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

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

ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered*. That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of April 2, 1953].

IN THE MATTER OF  
ISIDORE SANDBERG ET AL. TRADING AS SEYMOUR  
DRESS & BLOUSE COMPANY

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

*Docket 6059. Complaint, Nov. 18, 1952—Decision, Apr. 2, 1953*

Rayon is a chemical fiber which may be manufactured and finished in such manner as to simulate wool and other natural fibers in texture and appearance, and many members of the purchasing public are unable to distinguish between articles of wearing apparel, including dresses, made from such rayon fabrics and those manufactured from wool or other natural fibers; and readily accept wearing apparel made from rayon as made from wool or other natural fibers.

Where two individuals engaged in the manufacture and interstate sale and distribution to retailer purchasers of articles of women's wearing apparel, including dresses, made of rayon—

- (a) Failed to label or otherwise inform purchasers that said dresses were composed of rayon; and
- (b) Falsely represented and impliedly warranted that certain of said dresses, made from brushed rayon fabric, were safe to wear, through failing to reveal the highly inflammable characteristic of the material;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that said garments were made of wool and were suitable and safe for wearing as articles of clothing, and thereby into the purchase of substantial quantities thereof:

*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.

While it appeared that respondents, since about January 1952, had been labeling all garments made of rayon and other synthetic fabrics to show their synthetic fiber content, and stated that they were then fully complying with the Trade Practice Rules of the Commission applicable to the rayon and acetate textile industry, it was nevertheless in the public interest that cease and desist order issue in view of the inflammable characteristics of fabrics theretofore used in some of the wearing apparel made and distributed by them.

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

*Mr. George E. Steinmetz* for the Commission.

*Helman & Hurwitz*, 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 Isidore Sandberg and Seymour Sandberg, individually and doing business as a copartnership under the firm name of Seymour Dress & Blouse 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 are individuals trading and doing business as a copartnership under the firm name of Seymour Dress & Blouse Company with their office and principal place of business located at 462 Seventh Avenue, New York, New York. The home address of respondent Isidore Sandberg is 100 Riverside Drive, New York, New York, and the home address of respondent Seymour Sandberg is 404 Barnard Avenue, Cedarhurst, Long Island, New York.

PAR. 2. The respondents are now and for more than one year last past have been engaged in the manufacture, sale and distribution of articles of women's wearing apparel including dresses, which are composed of rayon. Respondents cause their products when sold to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce among and between the various States of the United States.

PAR. 3. Rayon is a chemical fiber which may be manufactured and finished in such manner as to simulate wool and other natural fibers in texture and appearance, and many members of the purchasing public are unable to distinguish between articles of wearing apparel, including dresses made from such rayon fibers, from those manufactured from wool or other natural fibers. Consequently, articles of wearing apparel made from such rayon fabrics are readily accepted by many members of the purchasing public as made from wool or other natural fibers.

PAR. 4. Some of the dresses manufactured and distributed by the respondents are made from a particular type of brushed rayon fabric which is highly inflammable. Respondents do not label or otherwise inform the purchasers thereof that they are composed of rayon nor do they reveal in any manner the highly inflammable characteristics thereof.

PAR. 5. Purchasers of brushed rayon dresses manufactured by respondents include retail stores which resell the same to the general public, and the failure of respondents to reveal that such articles are made of rayon, and failing to reveal that they are made of highly inflammable material, places in the hands of retailers and others a means and instrumentality whereby members of the purchasing public may be misled and deceived in the manner above set forth.

PAR. 6. By failing to label or tag their said brushed rayon dresses as rayon, and by failing to reveal or disclose the inflammable characteristics thereof, respondents have represented and impliedly warranted that said dresses are safe to wear. In truth and in fact, dresses and other articles of wearing apparel made of such brushed rayon material are dangerous and unsafe to be worn because they are highly inflammable.

PAR. 7. The practices of respondents of failing to reveal that their garments are made of rayon and of failing to reveal that some of their garments made of a particular type of brushed rayon are highly inflammable and are unsafe to be worn as articles of clothing had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said garments were made of wool and were suitable and safe to be worn as articles of clothing and into the purchase of substantial quantities of their garments because of such erroneous and mistaken belief.

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

#### DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated April 2, 1953, the initial decision in the instant matter of hearing examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

#### INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 18, 1952, issued and subsequently served its complaint in this proceeding upon the respondents Isidore Sandberg and Seymour Sandberg, individually and as partners trading as Seymour Dress & Blouse Company, charging

them with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of said Act. After the filing of respondents' answer in this proceeding a hearing was held on January 21, 1953, before the above-named hearing examiner of the Commission, theretofore duly designated by it, at which a stipulation was entered into by and between Jacob E. Hurwitz, attorney for respondents, and George E. Steinmetz, attorney in support of the complaint, subject to the approval of the hearing examiner, whereby it was stipulated and agreed that a statement of facts agreed to on the record may be made a part of the record herein and may be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto; that the said hearing examiner may proceed upon said statement of facts to make his initial decision stating his findings as to the facts, including inferences which he may draw from the said stipulation of facts, and his conclusion based thereon, and enter his order disposing of the proceeding as to said respondents without the filing of proposed findings and conclusions or the presentation of oral argument. Said stipulation as to the facts expressly provides that upon appeal to or review by the Commission, said stipulation may be set aside by the Commission and this matter remanded for further proceedings under the complaint.

Thereafter, this proceeding regularly came on for final consideration by said hearing examiner upon the complaint, answer, and stipulation, said stipulation having been approved by the hearing examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents are individuals trading and doing business as a copartnership under the firm name of Seymour Dress & Blouse Company with their office and principal place of business located at 462 Seventh Avenue, New York, New York. The home address of respondent Isidore Sandberg is 100 Riverside Drive, New York, New York, and the home address of respondent Seymour Sandberg is 404 Barnard Avenue, Cedarhurst, Long Island, New York.

PAR. 2. The respondents are now and for more than one year last past have been engaged in the manufacture, sale and distribution of articles of women's wearing apparel, including dresses, which are composed of rayon. Respondents cause their products when sold to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United

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

PAR. 3. Rayon is a chemical fiber which may be manufactured and finished in such manner as to simulate wool and other natural fibers in texture and appearance, and many members of the purchasing public are unable to distinguish between articles of wearing apparel, including dresses, made from such rayon fabrics and those manufactured from wool or other natural fibers. Consequently, articles of wearing apparel made from such rayon fabrics are readily accepted by many members of the purchasing public as made from wool or other natural fibers.

PAR. 4. Some of the dresses manufactured and distributed by the respondents were made from a particular type of brushed rayon fabric which burns rapidly or intensely and is highly inflammable. Respondents did not label or otherwise inform the purchasers thereof that they were composed of rayon nor did they reveal in any manner the highly inflammable characteristics thereof.

PAR. 5. Purchasers of brushed rayon dresses manufactured by respondents include retail stores which resell the same to the general public, and the failure of respondents to reveal that such articles were made of rayon, and the failure to reveal that they were made of highly inflammable material, places in the hands of retailers and others a means and instrumentality whereby members of the purchasing public may have been misled and deceived.

PAR. 6. By failing to label or tag their said brushed rayon dresses as rayon, and by failing to reveal or disclose the inflammable characteristics of some of their fabrics and garments, respondents have represented and impliedly warranted that said dresses were and are safe to wear. In truth and in fact, dresses and other articles of wearing apparel made of such brushed rayon material were and are dangerous and unsafe to be worn because they were and are highly inflammable.

PAR. 7. The practices of respondents of failing to reveal that their garments were made of rayon and of failing to reveal that some of their garments made of a particular type of brushed rayon were and are highly inflammable and unsafe to be worn as articles of clothing had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said garments were made of wool and were suitable and safe to be worn as articles of clothing and into the purchase of substantial quantities of their garments because of such erroneous and mistaken belief.

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## CONCLUSION

The aforesaid acts and practices of respondents as hereinabove 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.

The respondents have since about January 1952 labeled all garments made of rayon and other synthetic fabrics to show the synthetic fiber content thereof, and further state that they are now fully complying with the Trade Practice Rules of the Federal Trade Commission applicable to the rayon and acetate textile industry. However, because of the inflammable characteristics of the fabrics heretofore used in some of the wearing apparel manufactured and distributed by the respondents, it is in the public interest that a cease and desist order be issued.

## ORDER

*It is ordered,* That the respondents Isidore Sandberg and Seymour Sandberg, individually and trading and doing business as Seymour Dress & Blouse Company, or under any other name or names, and their respective representatives, agents 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 dresses or any other garments, do forthwith cease and desist from:

1. Offering for sale or selling any garments composed in whole or in part of rayon without clearly disclosing thereon, or on tags or labels affixed thereto, such rayon content.

2. Offering for sale or selling any garments made of highly inflammable materials without clearly and affirmatively disclosing thereon, or on tags or labels affixed thereto, that said garments are highly inflammable and are dangerous and unsafe to be worn as articles of clothing.

## ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered,* That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of April 2, 1953].

IN THE MATTER OF  
PHILLIPS, INC. 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

*Docket 6021. Complaint, Dec. 15, 1952<sup>1</sup>—Decision, Apr. 7, 1953*

Where a corporation and its three officers, engaged in the sale, among other things, of freezers to purchasers in the District of Columbia and adjacent States, after making arrangements whereby purchasers of said products were enrolled in a food distributing organization operated by an unaffiliated concern which entitled members to purchase frozen food items in bulk—

- (a) Represented through radio broadcasts, oral statements of their salesmen, and other advertising, that they were engaged in the operation of a food purchasing plan, that said plan was offered by them to assist participants in buying their food at wholesale prices, and that participants in such plan could eliminate the retailer and buy at wholesale prices or from a wholesaler; When in fact their sole connection with the food business was that they enrolled purchasers of their freezers in said plan to promote the sale of their freezers; the food distributing organization was not a wholesaler, and participants could not eliminate the retailer since many normal food requirements were not available under the plan; and the prices at which participants purchased were not wholesale prices;
- (b) Falsely represented as aforesaid that participants in the plan could effect over-all monetary savings through the general use of frozen foods in place of other forms; the facts being that frozen foods, purchased ordinarily in increased quantity through the plan, in the main cost more per edible pound than other forms;
- (c) Falsely represented that any family could reduce its expenditure for food by \$30 or more per month by participation in the plan, and that participants could purchase for 70c meat or frozen food which would cost \$1.00 at retail and thus save 30%;

The facts being that many common articles of food are not available under the plan; a participant would effect his maximum saving only by continuing to purchase no greater amounts of meat and frozen foods than were purchased through retail channels theretofore; difference in food prices was small; the monthly food bill of a family prior to participation would have to be far in excess of the usual cost for many to permit any such saving; and prices of many meats and frozen foods available through the plan were more than 70% of the retail prices;

- (d) Falsely and misleadingly represented that monetary savings could be effected by all who purchased and used their freezers, and that installment payments, calculated on a daily basis, represented cost of food consumed and also payment on a freezer;

<sup>1</sup> Amended.



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## Complaint

When in fact a substantial number of instances, purchase and use of a freezer would not result in net monetary savings; increase in expenses, including financing, operation, maintenance, and depreciation costs, would eliminate savings which might be effected through purchase of food in bulk; and

(e) Falsely represented that a participant in the plan received a freezer free or as a gift;

With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby induce the purchase of substantial quantities of their freezers:

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

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

*Mr. John J. McNalley* for the Commission.

*Mr. Myer Koonin*, of Washington, D. C., for respondents.

## AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Phillips, Inc., a corporation, and Phillip Filderman, Mike Filderman and William Pinson, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Phillips, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal offices and place of business located at 937 F Street, N. W., Washington, D. C. The individual respondents, Phillip Filderman, Mike Filderman and William Pinson are President, Vice President and Secretary-Treasurer, respectively, of the corporate respondent, Phillips, Inc., and formulate, control and direct the affairs and policies of said corporate respondent. Said individual respondents have their offices at the same place as the corporate respondent.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale of electrical appliances, including freezers. Respondents have made arrangements whereby purchasers of said freezers are enrolled in a food distributing organization, operated by a concern not affiliated with respondents, which entitles members to purchase certain food items in bulk quantities.

PAR. 3. In the course and conduct of their business, respondents cause their freezers, when sold, to be transported to the purchasers thereof at their places of residence in the District of Columbia and in States adjacent thereto, and at all times material herein have maintained a course of trade in said freezers in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents, through the use of radio broadcasts and other means of advertising, and through oral statements of their salesman, have made certain representations, of which the following are typical:

. . . The Food Savings Club has one important purpose in mind. That's to make every 70 cents you spend on food do the work of a dollar. Countless Washington homeowners and homedwellers who have joined this club are doing exactly that right now! Saving 30 to 60 dollars a month, 300 to 700 dollars a year—and at the same time these families are enjoying better food than they've had in years. More steaks, and good rich meat, more nutritious vegetables, fruits and seafoods while they're saving 30 cents on every food dollar. You can do it too. Get the whole story right now—call Republic 0606. The Food Savings Club at Republic 0606.

All you do to get complete information is call Republic 0606 . . . and get the facts on the FOOD SAVINGS CLUB—an organization especially formed to help you buy your foods WHOLESALE! That's right—I said WHOLESALE prices. Save 30 cents on every food dollar. Enough in a few years time to maybe buy an automobile or pay off the mortgage on your home! . . .

. . . The PHILLIP'S WHOLESALE FOOD PLAN offers you an unprecedented opportunity to save money on food every single month of your life. This we guarantee. Through the PHILLIP'S WHOLESALE FOOD PLAN, you eat better while spending less for food—and here's how! With the cooperation of leading home freeze manufacturers and food distributors, the PHILLIP'S WHOLESALE FOOD PLAN brings to your home YOUR CHOICE of any famous make home freezer . . . PLUS an unlimited selection of frozen foods in the fruit and vegetable lines—PLUS your choice of Government graded cuts of steaks, prime ribs, Kansas City beef and lamb, pork, veal, chicken, turkey and seafood—freely delivered to your door at the total cost to you of as low as one dollar a day! Now the largest single profit in the food industry is the retail store—PHILLIP'S WHOLESALE FOOD PLAN eliminates the retail store . . . and this eliminates the profit . . .

. . . All of this delivered to your home at a total cost to you ranging as low as one dollar a day. That's not just for the freezer alone . . . not just for the food alone . . . but for BOTH . . . the food AND the freezer . . . All yours on easy terms as low as \$1 a DAY! How is this possible? It's simple when you understand that the retail store takes the largest single profit there is in the food industry. Phillip's Whole Food Plan eliminates the retail store—and thereby eliminates that profit. Another thing—Phillip's Wholesale Food Plan delivers right to your home . . . FREE OF CHARGE . . . thereby saving you time as well as money. To get all the facts about this unusual plan . . . phone Republic 0606.

## Complaint

Please accept your FREEZER FREE  
 (depiction of a freezer)  
 A "GIFT" from the savings in your food costs  
 during the first 18 months.

Under our system you do two things. Number one, you circumvent the retailer and buy direct from the wholesaler; and number two, you eliminate the waste in food. You do that by a greater use of frozen foods . . . every day more and more of the people are learning that frozen foods are the freshest of all foods, the healthiest of all foods, the tastiest of all foods, and actually the cheapest of all foods.

- 1) . . . You can buy day old bread at less than half price.
- 2) . . . Take advantage of seasonable buying, when certain foods are at the lowest price . . .
- 3) . . . Fix large containers of soup at a time and put it up in containers . . .
- 4) . . . Never throw away leftovers, just make sandwiches with leftovers. Wrap it, label it and freeze it . . .
- 5) . . . If you do any hunting, you don't have to give your bag surplus away. Freeze it and you can have venison . . . all year around . . .

PAR. 5. Through the use of the foregoing statements and representations and others of the same import, but not specifically set out herein, respondents represented, directly or by implication:

1. That they are engaged in the operation of a food purchasing plan.
2. That the said plan is offered by respondents to assist participants in buying their food at wholesale prices.
3. That participants in such plan can eliminate the retailer and buy at wholesale prices or from a wholesaler.
4. That participants in such plan can effect over-all monetary savings through the general use of frozen foods in place of corresponding foods in other forms.
5. That any family can reduce its expenditure for food by \$30.00 or more per month by participation in the plan offered by respondents.
6. That participants in such plan can purchase for 70¢ any meat or frozen food which, if purchased through usual retail channels, would cost \$1.00, and thus save 30 percent on the cost of meats and frozen foods.
7. That net monetary savings can be effected by all who purchase and use respondents' freezers.
8. That the installment payments, stated on a daily basis, made by a participant in such plan, represent the cost, on the same basis, of food consumed and also a payment on a freezer.
9. That a participant in such plan receives a freezer free or as a gift.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

1. Respondents are engaged in the sale of freezers and other appliances; not in the food business. Their sole connection with the food business is that they enroll the purchasers of their freezers in a food purchasing plan operated by another concern with which they are in no way affiliated.

2. The food plan is not offered by respondents to assist participants in buying their food at wholesale prices. The offer is made by respondents solely for the purpose of inducing and promoting the sale of its freezers.

3. Participants in said plan cannot eliminate or discontinue patronizing retail establishments inasmuch as many of their normal food requirements are not available under said plan. The food distributing organization from which participants purchase is not a wholesaler and the prices at which participants purchase are not wholesale prices.

4. Participation in said plan for quantity purchases of meats and frozen foods requires the use of a freezer. Respondents, in advertising said plan, are seeking to sell freezers to members of the public who do not own them. Acquisition of a freezer will ordinarily be followed by increased consumption of frozen foods, such as are available under said plan, and as a consequence, a decrease in consumption of foods in other forms. In the main, frozen foods will cost more per edible pound, whether purchased through such a plan or otherwise, than corresponding foods in other available forms normally consumed by the public. No over-all saving in food costs will be accomplished by the general substitution of frozen foods for corresponding foods in other forms.

5. Many common and usual articles of food are not available under the said plan, and in consequence, a family can save nothing on the cost of those articles by participation in the plan

A participant in the plan will effect his maximum saving only by continuing to consume no greater amounts of meat and frozen foods than were purchased through usual retail channels before participation. The food plan prices are in some instances higher, in some lower and in others identical with the usual retail prices for the same food items of the same or other brands; in any case, the difference in price is small.

For a saving of \$30 per month on the family food bill effected by participation in the plan, the family's monthly food bill prior to participation must have been far in excess of that which is usual for many families, and such participation will not in any substantial number of instances result in a saving of \$30 per month.

6. The prices of many meats and frozen foods available through said plan are more than 70 percent of the prices thereof in usual retail channels. The differences between food plan prices and current retail prices for such foods vary; prices of individual items under the food plan are sometimes the higher, and participation in the plan will not, in any substantial number of instances, result in a saving of 30 percent of the cost of meats and frozen foods.

7. In a substantial number of instances, the purchase and use of a freezer will not result in net monetary savings. In such instances the increase in expenses directly attributable to the purchase and use of a freezer will eliminate savings, if any, which may be effected through the purchase of food in bulk quantities. Among the expenses which will be thus incurred are the costs of financing where credit is used, and the costs of operation, maintenance and depreciation of the freezer.

8. Installment payments, calculated on a daily basis, which, under said plan, are applied to the cost of a freezer and an initial supply of food, do not constitute a measure of the cost, on a daily basis, to the participant of food consumed.

9. The freezers acquired by participants in said plan are not free or gifts but must be paid for.

PAR. 7. The use by respondents of the said false and misleading statements and representations has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein are true and to induce the purchase of substantial quantities of respondents' freezers by reason of such erroneous and mistaken belief.

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

#### CONSENT SETTLEMENT<sup>1</sup>

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 5, 1952, issued its complaint and on December 15, 1952, issued its amended complaint, both of

<sup>1</sup>The Commission's "Notice of Acceptance of Consent Settlement and Order to File Report of Compliance" in said matter 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 7, 1953 subject only to the condition that the respondents comply with the requirements of the following paragraph with respect to the filing of a report showing the manner and form in which they have complied with the order to cease and desist; and subject to such condition, said consent

which were duly served 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 Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule 5 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 the answer to said amended complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby:

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

2. Consents that the Commission may enter the matter 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. 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 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. Phillips, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal offices and place of business located at 937 F Street, NW., Washington, D. C. The individual respondents, Phillip Filderman, Mike Filderman and William Pinson are President, Vice President and Treasurer, and Secretary, respectively, of

settlement was ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

*It is accordingly ordered,* That the respondents, Phillips, Inc., a corporation, and Phillip Filderman, Mike Filderman and William Pinson, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this notice and 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 contained in the consent settlement entered herein.

the corporate respondent, Phillips, Inc., and formulate, control and direct the affairs and policies of said corporate respondent. Said individual respondents have their offices at the same place as the corporate respondent.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale of electrical appliances, including freezers. Respondents have made arrangements whereby purchasers of said freezers are enrolled in a food distributing organization, operated by a concern not affiliated with respondents, which entitles members to purchase certain food items in bulk quantities.

PAR. 3. In the course and conduct of their business, respondents cause their freezers, when sold, to be transported to the purchasers thereof at their places of residence in the District of Columbia and in States adjacent thereto, and at all times material herein have maintained a course of trade in said freezers in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents, through the use of radio broadcasts and other means of advertising, and through oral statements of their salesmen, have made certain representations, of which the following are typical:

. . . The Food Savings Club has one important purpose in mind. That's to make every 70¢ you spend on food do the work of one dollar. Countless Washington homeowners and homedwellers who have joined this club are doing exactly that right now! Saving 30 to 60 dollars a month, 300 to 700 dollars a year—and at the same time these families are enjoying better food than they've had in years. More steaks, and good rich meat, more nutritious vegetables, fruits and seafood while they're saving 30 cents on every food dollar. You can do it too. Get the whole story right now—call Republic 0606. The Food Savings Club at Republic 0606.

All you do to get complete information is call Republic 0606 . . . and get the facts on the FOOD SAVINGS CLUB—an organization especially formed to help you buy your foods WHOLESALÉ That's right—I said WHOLESALÉ prices. Save 30 cents on every food dollar. Enough in a few years time to maybe buy an automobile or pay off the mortgage on your home! . . .

. . . The PHILLIP'S WHOLESALÉ FOOD PLAN offers you an unprecedented opportunity to save money on food every single month of your life. This we guarantee. Through the PHILLIP'S WHOLESALÉ FOOD PLAN, you eat better while spending less for food—and here's how! With the cooperation of leading home freeze manufacturers and food distributors, the PHILLIP'S WHOLESALÉ FOOD PLAN brings to your home YOUR CHOICE of any famous make home freezer . . . PLUS an unlimited selection of frozen foods in the fruit and vegetable lines—PLUS your choice of Government graded cuts of steaks, prime ribs, Kansas City beef and lamb, pork, veal, chicken, turkey and seafood—freely delivered to your door at the total cost to you of as low as one dollar a day! Now the largest single profit in the food industry is the retail store—PHILLIP'S WHOLESALÉ FOOD PLAN eliminates the retail store . . . and this eliminates the profit . . .

## Findings

49 F. T. C.

. . . All of this delivered to your home at a total cost to you ranging as low as one dollar a day. That's not just for the freezer alone . . . not just for the food alone . . . but for BOTH . . . the food AND the freezer . . . All yours on easy terms as low as \$1 a DAY! How is this possible? It's simple when you understand that the retail store takes the largest single profit there is in the food industry. Phillip's Wholesale Food Plan eliminates the retail store—and thereby eliminates that profit. Another thing—Phillip's Wholesale Food Plan delivers right to your home . . . FREE OF CHARGE . . . thereby saving you time as well as money. To get all the facts about this unusual plan . . . phone Republic 0606.

Please accept your FREEZER FREE

(depiction of a freezer)

A "GIFT" from the savings in your food costs  
during the first 18 months.

Under our system you do two things. Number one, you circumvent the retailer and buy direct from the wholesaler; and number two, you eliminate the waste in food. You do that by a greater use of frozen foods . . . every day more and more of the people are learning that frozen foods are the freshest of all foods, the healthiest of all foods, the tastiest of all foods, and actually the cheapest of all foods.

- . . . 1) . . . You can buy day old bread at less than half price.  
2) . . . Take advantage of seasonable buying, when certain foods are at the lowest price . . .  
3) . . . Fix large containers of soup at a time and put it up in containers . . .  
4) . . . Never throw away leftovers, just make sandwiches with leftovers. Wrap it, label it and freeze it . . .  
5) . . . If you do any hunting, you don't have to give your bag surplus away. Freeze it and you can have venison . . . all year around . . .

PAR. 5. Through the use of the foregoing statements and representations and others of the same import, but not specifically set out herein, respondents represented, directly or by implication:

1. That they are engaged in the operation of a food purchasing plan.
2. That the said plan is offered by respondents to assist participants in buying their food at wholesale prices.
3. That participants in such plan can eliminate the retailer and buy at wholesale prices or from a wholesaler.
4. That participants in such plan can effect over-all monetary savings through the general use of frozen foods in place of corresponding foods in other forms.
5. That any family can reduce its expenditure for food by \$30 or more per month by participation in the plan offered by respondents.
6. That participants in such plan can purchase for 70 cents any meat or frozen food which, if purchased through usual retail channels, would cost \$1, and thus save 30 percent on the cost of meats and frozen foods.



7. That net monetary savings can be effected by all who purchase and use respondents' freezers.

8. That the installment payments, stated on a daily basis, made by a participant in such plan, represent cost, on the same basis, of food consumed and also a payment on a freezer.

9. That a participant in such plan receives a freezer free or as a gift.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

1. Respondents are engaged in the sale of freezers and other appliances; not in the food business. Their sole connection with the food business is that they enroll the purchasers of their freezers in a food purchasing plan operated by another concern with which they are in no way affiliated.

2. The food plan is not offered by respondents to assist participants in buying their food at wholesale prices. The offer is made by respondents solely for the purpose of inducing and promoting the sale of its freezers.

3. Participants in said plan cannot eliminate or discontinue patronizing retail establishments inasmuch as many of their normal food requirements are not available under said plan. The food distributing organization from which participants purchase is not a wholesaler and the prices at which participants purchase are not wholesale prices.

4. Participation in said plan for quantity purchases of meats and frozen foods requires the use of a freezer. Respondents, in advertising said plan, are seeking to sell freezers to members of the public who do not own them. Acquisition of a freezer will ordinarily be followed by increased consumption of frozen foods, such as are available under said plan, and as a consequence, a decrease in consumption of foods in other forms. In the main, frozen foods purchased through said plan will cost more per edible pound than corresponding foods in other available forms normally consumed by the public. No overall saving in food costs will be accomplished by the general substitution of frozen foods available under said plan for corresponding foods in other forms.

5. Many common and usual articles of food are not available under the said plan, and in consequence, a family can save nothing on the cost of those articles by participation in the plan.

A participant in the plan will effect his maximum saving only by continuing to consume no greater amounts of meat and frozen foods than were purchased through usual retail channels before participation. The food plan prices are in some instances higher, in some lower, and in others identical with the usual retail prices for the same

food items of the same or other brands; in any case, the difference in price is small.

For a savings of \$30 per month on the family food bill effected by participation in the plan, the family's monthly food bill prior to participation must have been far in excess of that which is usual for many families, and such participation will not in any substantial number of instances result in a saving of \$30 per month.

6. The prices of many meats and frozen foods available through said plan are more than 70 percent of the prices thereof in usual retail channels. The differences between food plan prices and current retail prices for such foods vary; prices of individual items under the food plan are sometimes the higher, and participation in the plan will not, in any substantial number of instances, result in a saving of 30 percent of the cost of meats and frozen foods.

7. In a substantial number of instances, the purchase and use of a freezer will not result in net monetary savings. In such instances the increase in expenses directly attributable to the purchase and use of a freezer will eliminate savings, if any, which may be effected through the purchase of food in bulk quantities. Among the expenses which will be thus incurred are the costs of financing where credit is used, and the costs of operation, maintenance and depreciation of the freezer.

8. Installment payments, calculated on a daily basis, which, under said plan, are applied to the cost of a freezer and an initial supply of food, do not constitute a measure of the cost, on a daily basis, to the participant of food consumed.

9. The freezers acquired by participants in said plan are not free or gifts but must be paid for.

PAR. 7. The use by respondents of the said false and misleading statements and representations has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein are true and to induce the purchase of substantial quantities of respondents' freezers by reason of such erroneous and mistaken belief.

#### CONCLUSION

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

## ORDER TO CEASE AND DESIST

*It is ordered,* That respondents, Phillips, Inc., a corporation, and its officers, and Phillip Filderman, Mike Filderman and William Pinson, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of freezers in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of such terms as "Phillip's Wholesale Food Plan" or otherwise, that they are engaged in the operation of a plan for the purchasing of food.

2. Representing, directly or by implication, that such plan is offered for any reason other than the promotion of the sale of respondents' freezers.

3. Representing, directly or by implication, that participants in such plan can eliminate the retailer or buy at wholesale prices or from a wholesaler.

4. Representing, directly or by implication, that over-all monetary savings may be effected through the general use of frozen foods in place of corresponding foods in other forms.

5. Representing, directly or by implication, that any over-all monetary saving can be effected through participation in such plan unless, in immediate connection therewith, the amount of the expenditure for foods available through said plan which is necessary to effect such saving is disclosed.

6. Misrepresenting the difference between the price of foods available under the plan and the price of such foods in usual retail channels, or the percentage of food costs which can be saved by participation in such plan.

7. Representing that net monetary savings, however expressed, can be effected by the use of freezers purchased from respondents, unless the costs of operation, maintenance and depreciation and, in the event that the freezer is purchased on credit, the costs of such credit, are taken into account.

8. Representing that the amount of an installment payment on the purchase of a freezer or of a supply of food constitutes a measure of the cost to the participants of food consumed during such installment period.

Order

49 F. T. C.

9. Representing that freezers which must be paid for are free or are gifts.

PHILLIPS, INC.

By [S] PHILIP FILDERMAN  
President

[S] PHILIP FILDERMAN  
Philip Filderman, Individually and as *President* of Phillips, Inc.

[S] MIKE FILDERMAN  
Mike Filderman, Individually and as *Vice President and Treasurer* of Phillips, Inc.

[S] WILLIAM PINSON  
William Pinson, Individually and as *Secretary* of Phillips, Inc.

[S] MYER KOONIN  
Myer Koonin, *Attorney for Respondent*.

Washington, D. C.

FEBRUARY 17, 1953

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 7th day of April, 1953, subject only to the condition that the respondents shall, within sixty (60) days after service upon them of a copy of this consent settlement, 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 contained in said consent settlement.

Syllabus

IN THE MATTER OF  
 BELVEDERE SEWING MACHINE COMPANY, INC. 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

*Docket 5941. Complaint, Jan. 18, 1952—Decision, Apr. 9, 1953*

When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public not marked to show that they are of foreign origin, or if markings are concealed, the 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 machine heads.

Substantial numbers of distributors, dealers, and the purchasing public prefer to deal with concerns which manufacture the product they sell.

Where two corporations and their officers, engaged respectively in the sale and distribution of (1) sewing machine heads imported from Japan, upon which the words "Made in Occupied Japan" or "Japan" on the back of the vertical arm were covered in attaching the motor to the head, and of complete sewing machines of which such heads were a part, and of (2) similar portable sewing machines—

- (a) Failed adequately to disclose such foreign origin on the aforesaid heads; and
- (b) Represented falsely that they manufactured the sewing machine heads and sewing machines sold by them, through inclusion of the word "Manufacturers" on their letterheads;

With result that dealers were thereby provided with the means to mislead the purchasing public as to the place of origin of said heads; and with tendency and capacity to lead members of that public into the erroneous belief that said products were of domestic origin and manufactured by them, and thus induce purchase thereof; whereby trade was unfairly diverted to them from their competitors, including makers and sellers of domestic machines, and sellers of the imported products, of whom some adequately informed the public as to the source or origin of their said products:

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

*Mr. Franklin D. Laven*, of Los Angeles, Calif., and *Crawford & Heath*, of Pasadena, Calif., for respondents.

*Herbst & Herbst*, of New York City, also represented Ben Krisiloff.

Complaint

49 F. T. C.

## 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 Belvedere Sewing Machine Company, Inc., a corporation, and Joseph Primanti, Richard H. Turner and Lewis P. Reiterman, individually and as officers of said Belvedere Sewing Machine Company, Inc., and Belvedere Sales Corporation, a corporation, and Ben Krisiloff, Richard H. Turner and Joseph Primanti, individually and as officers of said Belvedere Sales 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 Belvedere Sewing Machine Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business located at 1945 South Flower Street, Los Angeles, California. Respondents Joseph Primanti, Richard H. Turner and Lewis P. Reiterman are President, Vice President, and Secretary-Treasurer, respectively, of this corporate respondent and acting as such officers formulate, direct and control the policies, acts and practices of said corporation. The address of these individual respondents is the same as that of the corporate respondent, Belvedere Sewing Machine Company, Inc.

Respondent Belvedere Sales Corporation is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business located at 1929 South Figueroa Street, Los Angeles, California. Respondents Ben Krisiloff, Richard H. Turner and Joseph Primanti are President, Vice President, and Secretary-Treasurer, respectively, of this corporate respondent and acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of these individual respondents is the same as that of corporate respondent Belvedere Sales Corporation.

PAR. 2. Respondent Belvedere Sewing Machine Company, Inc., a corporation, is now engaged, among other things, principally in the sale and distribution of sewing machine heads imported from Japan and complete sewing machines, of which sewing machine heads imported from Japan are a part, under the brand or trade name "Bel Air Imperial," to distributors and also to retailers who, in turn, sell to the purchasing public.

Respondent Belvedere Sales Corporation, a corporation, is engaged, among other things, in the sale and distribution of portable sewing machines of which heads imported from Japan are a part. The said portable sewing machines are sold and distributed through the said Belvedere Sales Corporation under the trade or brand name "Bel Air Bantam."

PAR. 3. In the course and conduct of their businesses respondents cause their said products, when sold, to be transported from their place of business in the State of California to purchasers thereof located in various other States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 4. When the sewing machine heads are received by respondents, the words "Made in Occupied Japan" or "Japan" appear 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 words are covered by the motor so that they are not visible.

PAR. 5. 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.

PAR. 6. 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 machine heads.

PAR. 7. Respondents on letterheads make the following statement:

Manufacturers-Cabinets-Sewing Machines  
Supplies-Motors-Wholesalers

"Through the use of the word "manufacturers" respondents represent that they manufacture the sewing machine heads and sewing machines sold by them. In truth and in fact, respondents do not own or control a factory in which their products are manufactured. Substantial numbers of distributors, dealers and the purchasing public prefer to deal with concerns which manufacture the products sold by them.

PAR. 8. Respondents, by placing in the hands of dealers their said imported sewing machine heads and completed sewing machines, of which said heads are a part, provide said dealers a means and instru-

mentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads.

PAR. 9. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the makers and sellers of domestic machines, as well as the sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said product.

PAR. 10. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan and also the use of the word "manufacturers" have the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said products are of domestic origin and are manufactured by them and to induce members of the purchasing public to purchase sewing machines, of which said heads are a part, because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 11. 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 methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

#### CONSENT SETTLEMENT <sup>1</sup>

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 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 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

<sup>1</sup> 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 9, 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.



settlement hereinafter set forth and in lieu of answer to said complaint, filed February 18, 1952, hereby admit:

(1) 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 respondents consent may be entered herein in final disposition of this proceeding, are as follows:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Belvedere Sewing Machine Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business located at 1945 South Flower Street, Los Angeles, California. Respondents Joseph Primanti, Richard H. Turner and Lewis P. Reiterman are President, Vice President and Secretary-Treasurer, respectively, of this corporate respondent and acting as such officers formulate, direct and control the policies, acts and practices of said corporation. The address of these individual respondents is the same as that of the corporate respondent, Belvedere Sewing Machine Company, Inc.

Respondent Belvedere Sales Corporation is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business located at 1929 South Figueroa Street, Los Angeles, California. Respondents Ben Krisiloff, Richard H. Turner and Joseph Primanti are President, Vice President, and Secretary-Treasurer, respectively, of this corporate respondent and acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of these individual respondents is the same as that of corporate respondent Belvedere Sales Corporation.

PAR. 2. Respondent Belvedere Sewing Machine Company, Inc., a corporation, is now engaged, among other things, principally in the

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sale and distribution of sewing machine heads imported from Japan and complete sewing machines, of which sewing machine heads imported from Japan are a part, under the brand or trade name "Bel Air Imperial," to distributors and also to retailers who, in turn, sell to the purchasing public.

Respondent Belvedere Sales Corporation, a corporation, is engaged, among other things, in the sale and distribution of portable sewing machines of which heads imported from Japan are a part. The said portable sewing machines are sold and distributed through the said Belvedere Sales Corporation under the trade or brand name "Bel Air Bantam."

PAR. 3. In the course and conduct of their business respondents cause their said products, when sold, to be transported from their place of business in the State of California to purchasers thereof located in various other States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 4. When the sewing machine heads are received by respondents, the words "Made in Occupied Japan" or "Japan" appear 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 words are covered by the motor so that they are not visible.

PAR. 5. 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.

PAR. 6. 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 machine heads.

PAR. 7. Respondents on letterheads make the following statement:

Manufacturers—Cabinets—Sewing Machines  
Supplies—Motors—Wholesalers

Through the use of the word "manufacturers" respondents represent that they manufacture the sewing machine heads and sewing machines sold by them. In truth and in fact, respondents do not own or control a factory in which their products are manufactured. Substantial

numbers of distributors, dealers and the purchasing public prefer to deal with concerns which manufacture the products sold by them.

PAR. 8. Respondents, by placing in the hands of dealers their said imported sewing machine heads and completed sewing machines, of which said heads are a part, provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads.

PAR. 9. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the makers and sellers of domestic machines, as well as the sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said product.

PAR. 10. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in Japan and also the use of the word "manufacturers" have the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said products are of domestic origin and are manufactured by them and to induce members of the purchasing public to purchase sewing machines, of which said heads are a part, because of such erroneous and mistaken belief. As a result thereof, trade 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' 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 respondents Belvedere Sewing Machine Company, Inc., a corporation, and its officers, and Joseph Primanti, Richard H. Turner and Lewis P. Reiterman, individually and as officers of said corporation, and Belvedere Sales Corporation, a corporation and its officers, and Ben Krisiloff, Richard H. Turner and Joseph Primanti, individually and as officers of said corporation, and respondents' 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 :

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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, in such a manner that it will not be hidden or obliterated, the country of origin thereof.

2. Representing, through the use in advertising of the word "manufacturers," or any other word or term of similar import or meaning, or in any other manner, that said respondents are the manufacturers of the sewing machine heads or sewing machines sold by them, unless and until such respondents actually own and operate, or directly and absolutely control, a manufacturing plant wherein said products are manufactured by them.

*It is further ordered,* That the respondents, Belvedere Sewing Machine Company, Inc., a corporation, and Joseph Primanti, Richard H. Turner, and Lewis P. Reiterman, individually and as officers of said corporation, and Belvedere Sales Corporation, a corporation, and Ben Krisiloff, Richard H. Turner, and Joseph Primanti, individually and as officers of said corporation, 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.

[S] RICHARD H. TURNER

*Vice President of BELVEDERE SEWING MACHINE COMPANY, INC., a corporation, with its office and principal place of business at 1945 South Flower Street, Los Angeles, California, and*

[S] JOSEPH PRIMANTI BY  
[S] RICHARD H. TURNER  
[S] LEWIS P. REITERMAN

JOSEPH PRIMANTI,  
RICHARD H. TURNER, and  
LEWIS P. REITERMAN,  
Individually and as officers of  
said corporation, and

[S] HARRY J. CRAWFORD per [S] RICHARD H. TURNER  
CRAWFORD & HEATH

*Vice President of BELVEDERE SALES CORPORATION a corporation, with office and principal place of business at 1929 South Figueroa Street, Los Angeles, California ; and,*

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[S] BEN KRISILOFF By [S] RICH- ARD H. TURNER	BEN KRISILOFF,
[S] RICHARD H. TURNER,	RICHARD H. TURNER, and
[S] JOSEPH PRIMANTI By [S] RICHARD H. TURNER	JOSEPH PRIMANTI, Individually and as officers of said corporation.
Attorney for respondents.	Respondents.

[S] HARRY J. CRAWFORD

December 17, 1952

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 9th day of April, 1953.

IN THE MATTER OF  
DARCO WOOL CORPORATION 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 6075. Complaint, Jan. 7, 1953—Decision, Apr. 14, 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 certain of said products described as batts or battings in that they were not stamped, tagged, or labeled as required by said Act and the Rules and Regulations promulgated thereunder; and
- (b) Misbranded batts or battings in that—marked, stamped, or labeled as “100 per cent reused wool” and “100 per cent reprocessed wool”—they contained substantial quantities of fibers other than wool:

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

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

*Mr. George E. Steinmetz* for the Commission.

*Mr. Myron Goldman*, of New York City, 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 Darco Wool Corporation, a corporation, and Max Dabek, David Racine and Jack Dabek, 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 Darco Wool Corporation is a corporation, organized and existed under and by virtue of the laws of the State of New Jersey, with its office and principal place of business at 1417 Hudson Boulevard, North Bergen, New Jersey.

The individual respondents Max Dabek, David Racine and Jack Dabek are president, secretary and treasurer, respectively of respond-

ent corporation, and as such, maintain their place of business at the same location as the corporate respondent; and in their respective capacities as officers thereof individually, jointly and severally formulate, direct and control, the acts, practices and policies of said corporate respondent.

PAR. 2. Subsequent to the effective date of said Wool Products Labeling Act and more especially since June of 1951, 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 batts or battings were misbranded in that they were not stamped, tagged or labeled as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of said Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively marked, stamped or labeled with respect to the character and amount of the constituent fibers contained therein. Among the misbranded articles aforementioned were batts or battings marked, stamped or labeled by respondents as "100% reused wool" and "100% reprocessed wool" when in truth and in fact such batts or battings were not 100% reused wool and 100% reprocessed wool but contained substantial quantities of fibers other than wool.

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

#### CONSENT SETTLEMENT <sup>1</sup>

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission on January 7, 1953 issued and subsequently served its com-

<sup>1</sup>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 14, 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.

plaint 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 the answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement is to be withdrawn from the record, 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 respondents, 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.
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 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 Darco Wool Corporation is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with its office and principal place of business at 1417 Hudson Boulevard, North Bergen, New Jersey.

The individual respondents Max Dabek, David Racine and Jack Dabek are president, secretary and treasurer, respectively of respondent corporation, and as such, maintain their place of business at the same location as the corporate respondent; and in their respective capacities as officers thereof individually, jointly and severally formulate, direct and control, the acts, practices and policies of said corporate respondent.

PAR. 2. Subsequent to the effective date of said Wool Products Labeling Act and more especially since June of 1951, respondents



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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 batts or battings were misbranded in that they were not stamped, tagged or labeled as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of said Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively marked, stamped or labeled with respect to the character and amount of the constituent fibers contained therein. Among the misbranded articles aforementioned were batts or battings marked, stamped or labeled by respondents as "100% reused wool" and "100% reprocessed wool" when in truth and in fact such batts or battings were not 100% reused wool and 100% reprocessed wool but contained substantial quantities of fibers other than wool.

#### CONCLUSION

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

#### ORDER TO CEASE AND DESIST

*It is ordered.* That the respondent, Darco Wool Corporation, a corporation, and its officers, and respondents, Max Dabek, David Racine and Jack Dabek, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, of wool batts or battings or other wool products, as such products are defined in and subject to said Act, 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 wool products by:

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

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

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total 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 nonfibrous 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, or distribution thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939. *Provided*, that the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; *and provided further*, that nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

*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

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and form in which they have complied with the order to cease and desist.

DARCO WOOL CORP.  
DARCO WOOL CORPORATION

By DAVID RACINE  
(Name)

*Secretary*  
(Title)

MAX DABEK

Max Dabek, individually, and as an officer of  
Darco Wool Corporation, a corporation.

DAVID RACINE

David Racine, individually, and as an officer  
of Darco Wool Corporation, a corporation.

JACK DABEK

Jack Dabek, individually, and as an officer of  
Darco Wool Corporation, a corporation.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 14th day of April, 1953.

IN THE MATTER OF  
FEDERAL CORDAGE COMPANY, 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 5951. Complaint, Jan. 25, 1952—Decision, Apr. 28, 1953*

The preference existing among a substantial segment of the consuming public for merchandise which is composed of new and unused materials is common knowledge and obtains in virtually all fields of merchandising; and in the absence of adequate disclosure or explanation, merchandise which resembles and has the appearance of merchandise composed of new material, but which in fact is composed of reclaimed materials, may be selected and purchased by the public as products composed of new and unused material.

Rope and cordage made from new and unused manila fiber is more desirable than that made from used or reclaimed fiber, the yarns made of the new fiber having greater tensile strength than do those obtained from used hawsers and ropes; and while the difference in appearance between rope and cordage made from new and unused fiber and that made from used or reclaimed fiber is such that it can generally be detected by an expert in the trade, a substantial portion of the purchasing public would find it difficult to determine such difference, particularly where they do not have before them both types of rope to compare.

"Manila" is a fiber obtained from a plant grown mainly in the Philippine Islands and the East Indies and used in the manufacture of rope, and the word "Manila", when used in referring to rope or cordage, used alone and without any qualifying language or other words of disclosure, is understood in the rope and cordage business and among a substantial portion of the purchasing public, to refer to rope or cordage made of new and unused Manila fiber.

Where a corporation and its two officers, engaged in the manufacture of rope and cordage of which a substantial portion was made from fibers reclaimed from hawsers and rope, mostly previously used, purchased from the Maritime Commission, the Navy, and other government agencies, and, to a lesser extent, from other dealers in rope and which was composed also to a substantial extent of Manila fiber; and in the interstate sale and distribution thereof to customers who frequently resold it in the same package in which it was received from them, in competition with others engaged in the manufacture and sale or distribution of rope and cordage—

(a) Made use of the word "Manila" in identifying such rope in sales to dealers, jobbers, distributors, and others, through such statements as "Manila Rope" or "Manila" on the corporate invoices, upon which appeared, beneath the corporate name, the words "Manufacturers of Reprocessed Cordage", but without any qualifying language indicating that said product was made from used or reclaimed Manila fiber; and

(b) Similarly designated, without disclosure, through the stenciled or printed word "Manila", the burlap or paper containers or wrappers in which the product was packed, and within which containers, and thus not ordinarily seen by the customer prior to removal, there was enclosed at the end of each coil a tag giving instructions as to the method by which the rope should be removed from the package, with the words "Reprocessed Cordage" at the bottom:

With the result of placing in the hands of dealers a means and instrumentality whereby they might mislead the purchasing public as to the nature and quality of said products; and with tendency and capacity to mislead and deceive a substantial portion of said public into the erroneous belief that their rope and cordage were made from new and unused Manila fiber, and thereby induce its purchase of a substantial quantity; whereby trade in commerce was diverted unfairly to them from their competitors, and substantial injury was done by them 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 competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

While the record contained indication that the corporate respondent might be the only concern currently engaged in fabricating rope and cordage from fibers reclaimed from previously fabricated and used rope and cordage, respondents' products, when sold, were distributed through channels generally similar to those through which other rope and cordage products were marketed, and respondents, in the course and conduct of their business, were therefore in active and substantial competition with concerns engaged in the manufacture and sale or distribution of rope and cordage.

The fact that, as respondents contended, they were widely known in the trade as reprocessors of cordage, as disclosed at the top of their invoices, did not relieve them of the duty to make a full disclosure with respect to the contents of their products identified solely as "Manila", or overcome the tendency and capacity of their method of identification to mislead and deceive their customers, some of whom might not previously have dealt with them, particularly since respondents admittedly sold new, as well as rope and cordage fabricated from previously used and other rope.

The fact that the aforesaid tag used by them contained the language "Reprocessed Cordage" was not sufficient to overcome the misleading and deceptive character of their method of identifying their product on its package as "Manila", since it was clear from its wording that the tag was intended primarily as a method of instructing the customer how to remove the rope from the package and not to advise him expressly of the fiber content of the product, and since the tag, moreover, as above noted, was enclosed within the package and would ordinarily not be seen until the customer was about to remove the rope.

As respects the allegation of the complaint that manufacturers, distributors, and sellers of rope and cordage have adopted generally the custom of marking or branding their products so as to indicate the presence of used or reclaimed fiber, and that failure to so mark or brand leads purchasers to believe that the product contains only new fiber; the record did not indicate

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that there were any concerns other than corporate respondent then engaged in processing reclaimed rope, and the testimony contained indicated that distributors or other resellers of respondents' rope and cordage affixed no additional markings upon the wrappers of such merchandise to adequately disclose that the fiber had been reclaimed from previously used or other rope.

In the foregoing proceeding, the Commission was of the view that, irrespective of whether any generic name for the particular reclaimed fiber or fibers contained in respondents' products might be used in advertising for or on such merchandise, the public interest required that respondents, in connection with the future conduct of their business, be directed to adequately reveal the presence of reclaimed fibers in their rope and cordage containing reclaimed Manila fibers and the presence of other reclaimed fibers contained in other of their rope and cordage, the appearance of which simulated merchandise made of new and unused materials.

Before *Mr. John Lewis*, hearing examiner.

*Mr. Edward F. Downs* for the Commission.

*Mr. Milton B. Gould* and *Mr. Harry W. Pitt*, 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 Federal Cordage Company, Inc., a corporation, and Seymour Guttman and Abe Weinstein, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Federal Cordage Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business is located at 57-02 48th Street, Maspeth, Queens, Long Island, New York.

Respondents, Seymour Guttman and Abe Weinstein, are president and treasurer, and vice president and secretary, respectively, of respondent, Federal Cordage Company, Inc., and as such formulate, direct and control its policies and practices. Their business address is the same as that of the corporate respondent.

PAR. 2. The corporate respondent is now, and for more than one year last past has been, engaged in the business of manufacturing remade rope and cordage from reclaimed Manila fiber, and in the sale and distribution thereof. Respondent causes said rope and cord-

age, when sold, to be transported from its place of business in the State of New York to its customers located in other States of the United States.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said rope and cordage sold and distributed by it in commerce among and between the various States of the United States. Its business in such commerce has been and is substantial.

PAR. 3. In the course and conduct of its business, respondent is in active and substantial competition with other corporations, and with firms, partnerships and individuals engaged in the sale and distribution of rope and cordage in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business and for the purpose of identifying and describing their rope and cordage, respondents caused the word "Manila" to be placed on announcements and invoices sent to dealers, jobbers and distributors and stenciled on the containers of said products.

PAR. 5. A substantial portion of the purchasing public believe that the word "Manila," used in connection with the rope and cordage, serves as a representation and means that the product is rope or cordage made of new and unused manila fiber.

PAR. 6. The use by respondents of the word "Manila" as aforesaid, is false, misleading and deceptive. In truth and in fact, respondents' rope and cordage is not manufactured from new and unused manila fibers but the fibers from which it is made are obtained from reclaimed or used rope and hawsers, which fact is not disclosed in any manner by respondents prior to the purchase of their product.

PAR. 7. While there is a difference in the appearance of rope or cordage manufactured from new material from that manufactured from used or reclaimed material which an expert in the rope trade might detect, a substantial portion of the purchasing public cannot determine such difference by the appearance of the rope or cordage.

PAR. 8. Manufacturers, distributors and sellers of rope and cordage have adopted generally the custom and practice, which is known to purchasers and users of such products, of so marking or branding their products as to indicate the presence of used or reclaimed fiber when such fiber is used in the manufacture thereof and to fail to so mark or brand such products containing used or reclaimed fiber leads purchasers to believe that such rope and cordage contains no used or reclaimed fiber but contains only new fiber.

PAR. 9. The cost to respondents of manufacturing their rope and cordage from used or reclaimed fiber is much less than the cost of manufacturing said products using new fiber and respondents are

thereby enabled to sell their said rope and cordage to retailers, jobbers, wholesalers and to the purchasing public at substantially lower prices than can manufacturers of manila rope and cordage made from new material.

PAR. 10. Rope and cordage made from new and unused manila fiber is more desirable in many respects than when made from used and reclaimed fiber. There is a preference on the part of the purchasing public for such products made from new and unused over that made from used or reclaimed fiber.

PAR. 11. Respondents' practice of selling and distributing their rope and cordage without disclosing that it is made from used or reclaimed fibers places in the hands of dealers a means and instrumentality by which they may mislead and deceive the purchasing public as to the quality and value of said products.

PAR. 12. The use by respondents of the word "Manila" in describing their rope and cordage, as hereinabove set out, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that their said rope and cordage are made from new and unused manila fiber, and because of such mistaken and erroneous belief to purchase a substantial quantity of respondents' said rope and cordage, with the result that trade in commerce has been diverted unfairly to the respondents from their competitors. As a consequence thereof, substantial injury has been done and is now being done by respondents to competition in commerce among and between the various States of the United States.

PAR. 13. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' 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 January 25, 1952, issued and subsequently served its complaint in this proceeding upon respondents Federal Cordage Company, Inc., a corporation, and Seymour Guttman and Abe Weinstein, as officers of said corporation, charging them 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 that Act. After the filing by respondents of their joint answer to the complaint, hearings were held at which testimony and other evi-



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dence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission, theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. On July 1, 1952, the hearing examiner filed his initial decision.

The Commission, having reason to believe that the initial decision did not constitute an appropriate disposition of the proceedings, placed this case on the Commission's own docket for review and on February 18, 1953, it issued and thereafter served upon the parties its order affording the respondents an opportunity to show cause why the initial decision should not be altered in the manner and to the extent shown in the tentative decision attached to said order. Respondents not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration by the Commission upon the record herein on review; and it appearing upon such consideration that the order contained in said tentative decision was directed to the individuals therein named both in their capacity as individuals and in their representative capacity as officers of the respondent corporation whereas said order should have been limited to naming them in their representative capacity aforesaid; and the Commission, having duly considered this case 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 Federal Cordage 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 located at 57-02 48th Street, Maspeth, Queens, Long Island, New York. Respondents Seymour Guttman and Abe Weinstein are president and treasurer, and vice-president and secretary, respectively, of respondent Federal Cordage Company, Inc., and as such formulate, direct and control its policies and practices. Their business address is the same as that of the corporate respondent.

PAR. 2. The corporate respondent is now and for more than one year last past has been, engaged in the business of manufacturing rope and cordage, and in the sale and distribution thereof. A substantial portion of the rope and cordage which it fabricates is made from reclaimed fibers obtained from hawsers and rope which it purchases from the Maritime Commission, the Navy, and other Government

agencies, and to a lesser extent from other dealers in rope. Most of the hawsers and rope purchased for this purpose have previously been used but a minor portion, although in fabricated form, has not actually been used.

Respondents cause their said rope and cordage, when sold, to be transported from their place of business in the State of New York to customers located in other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said rope and cordage sold and distributed by them in commerce among and between the various States of the United States. Their business in such commerce has been and is substantial.

Although the record herein contains indication that the corporate respondent may be the only concern currently engaged in fabricating rope and cordage from fibers reclaimed from previously fabricated and used rope and cordage, respondents' aforesaid products, when sold, are distributed however through channels generally similar to those through which other rope and cordage products are marketed. In the course and conduct of their business, as aforesaid, respondents are in active and substantial competition, therefore, with corporations, firms, partnerships and individuals engaged in the manufacture and sale of the distribution of rope and cordage.

PAR. 3. A substantial portion of the rope processed and sold by the corporate respondent is made from previously used and other rope composed of Manila fiber. In identifying such rope in sales to dealers, jobbers, distributors and others, respondents have, on the invoices of the corporate respondent, described such rope as "Manila Rope" or as "Manila." Such identification on invoices of the product sold has not contained any qualifying language indicating that said rope is made from used or reclaimed Manila fiber. There does, however, appear at the top of the invoices of the corporate respondent, immediately underneath its name, the words "Manufacturers of Reprocessed Cordage."

After processing has been completed, the said rope is packed, in coil or half-coil quantities, in burlap or paper containers or wrappers on which is stenciled or printed the identifying language "Manila," without any disclosure being imprinted thereon to indicate that the rope enclosed within is made from Manila fibers reclaimed from previously used or other rope. However, at the end of each coil of rope enclosed within the package, respondents have attached a tag giving instructions as to the method by which such rope should be removed from the package, at the bottom of which tag appear the words "Reprocessed Cordage."

PAR. 4. "Manila" is a fiber obtained from a plant, grown mainly in the Philippine Islands and the East Indies, which is used in the manufacture of rope. In the rope and cordage business and among a substantial portion of the purchasing public, the word "Manila," when used in referring to rope or cordage, is understood to refer to rope or cordage made of new and unused Manila fiber. Although it may be, as respondents contend upon the basis of the instant record, that rope made from reclaimed Manila fibers is still generically Manila rope, it is nevertheless clear therefrom, and it is so found, that when the word "Manila" is used alone, without any qualifying language or other words of disclosure, it is understood to mean rope and cordage made from new and unused Manila fiber.

PAR. 5. The use by respondents of the word "Manila," as found above, is false, misleading and deceptive since a substantial portion of the rope manufactured by them is not made from new and unused fiber but from used or reclaimed fiber, which fact is not adequately revealed by respondents in the sale of their product. The fact that, as respondents contend, they are widely known in the trade as reproducers of cordage, which fact is made known at the top of their invoices, does not relieve them of the duty to make a full disclosure with respect to the contents of their product identified solely as "Manila," or overcome the tendency and capacity of their method of identification to mislead and deceive their customers, some of whom may not have previously dealt with respondents, particularly since respondents admittedly sell new as well as rope and cordage fabricated from previously used and other rope. The fact that the tag used by them contains the language "Reprocessed Cordage" is not sufficient to overcome the misleading and deceptive character of their method of identifying their product on its package as "Manila," since it is clear from its wording that the tag is intended primarily as a method of instructing the customer how to remove the rope from the package, not to advise him expressly of the fiber content of respondents' product, and, moreover, such tag is enclosed within the package and would ordinarily not be seen until the customer was about to remove the rope.

PAR. 6. There is some difference in appearance between rope and cordage manufactured from new fiber and that made from used or reclaimed fiber, the former being of somewhat lighter color and smoother texture than the latter. The difference between these two types of rope, particularly with respect to color, depends in large measure on the extent to which the rope from which the reprocessed rope is made has previously been used. Thus, a reprocessed rope made from a hawser which has been used in the water for a considerable period of time would be much darker than one made from a hawser

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that had not actually been used or had only been in the water for a short period of time. Rope made from the latter type of hawser would more nearly tend to resemble rope made from virgin fiber. Although the difference in appearance between rope and cordage made from new and unused fiber and that made from used or reclaimed fiber is such that it can generally be detected by an expert in the trade, a substantial portion of the purchasing public would find it difficult to determine such difference, particularly where they do not have before them both types of rope to compare.

PAR. 7. Rope and cordage made from new and unused Manila fiber is more desirable than that made from used or reclaimed fiber. Yarns composed of new fiber have greater tensile strength than do those obtained from used hawsers and rope.

PAR. 8. The record discloses that respondents' customers frequently resell the rope and cordage in the same package in which it was received from respondents. It is therefore obvious, and it is so found, that respondents' practice of selling and distributing their rope and cordage identified on the package solely as "Manila," without disclosing that it is made from used or reclaimed fiber, has placed in the hands of dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the nature and quality of said products.

PAR. 9. The use by respondents of the word "Manila" in describing their rope and cordage, as hereinabove found, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that their said rope and cordage are made from new and unused Manila fiber, and because of such mistaken and erroneous belief to purchase a substantial quantity of respondents' said rope and cordage, with the result that trade in commerce has been diverted unfairly to the respondents from their competitors. As a consequence thereof, substantial injury has been done and is now being done by respondents to competition in commerce among and between the various States of the United States.

PAR. 10. The complaint has alleged also that manufacturers, distributors and sellers of rope and cordage have adopted generally the custom of marking or branding their products in such manner as to indicate the presence of used or reclaimed fiber and that failure to so mark or brand such products leads purchasers to believe that such rope and cordage contains no used or reclaimed fibers, but only new fiber. As previously noted, respondents' disclosure respecting the presence of used or reclaimed fiber in its products has not been adequate. The record does not indicate that there are any concerns other than corporate respondent presently engaged in processing reclaimed rope.

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The testimony adduced, moreover, contains indication that distributors or other resellers of respondents' rope and cordage affix no additional markings upon the wrappers of such merchandise to adequately disclose that the fiber has been reclaimed from previously used or other rope. From its inspection of samples of respondents' rope introduced as exhibits in this proceeding, one of which was manufactured from new and unused Manila fibers and the other processed from reclaimed Manila fibers, the Commission notes that, while these articles are not entirely identical in appearance, rope made from reclaimed fibers simulates in substantial measure the appearance of rope made of new and unused fibers.

In the absence of adequate disclosure or explanation, merchandise which resembles and has the appearance of merchandise composed of new materials but which, in fact, is composed of reclaimed materials may be selected and purchased by the public as products composed of new and unused materials. The preference existing among a substantial segment of the consuming public for merchandise which is composed of new and unused materials is, of course, common knowledge and obtains in virtually all fields of merchandising. In these circumstances, the Commission is of the view that, irrespective of whether any generic name for the particular reclaimed fiber or fibers contained in respondents' products may be used in advertising for or on such merchandise, the public interest requires that respondents, in connection with the future conduct of their business, be directed to adequately reveal the presence of reclaimed fibers in their rope and cordage containing reclaimed Manila fibers and the presence of other reclaimed fibers contained in other of their rope and cordage, the appearance of which latter merchandise simulates merchandise made of new and unused materials.

## CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' 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 the respondent Federal Cordage Company, Inc., a corporation, and its officers, agents, representatives and employees, and the respondents Seymour Guttman and Abe Weinstein, as officers of said corporation, directly or through any corporate or other device,

in connection with the offering for sale, sale or distribution of rope or cordage in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication, that rope or cordage made in whole or in part of used or reclaimed fiber is made of new or unused fiber.

(2) Using the word "Manila" or any word of similar import or meaning to designate, describe, or refer to rope or cordage not composed wholly of new and unused Manila fibers; *provided, however,* that nothing herein shall prevent respondents from using the word "Manila," when properly qualified, to describe any product composed in part of new and unused Manila fibers, nor shall it prevent respondents from using such word to describe any used or reclaimed Manila fibers contained in their rope and cordage if it is clearly disclosed in immediate conjunction therewith on the same invoice, package, container, label, tag, or other physical instrument on which said word appears, and in connection with any oral statement in which such word is used, that said rope or cordage is made, in whole or in part, from used or reclaimed fibers.

(3) Offering for sale, selling, or delivering to dealers, or others, rope or cordage containing used or reclaimed Manila fibers, or any rope or cordage containing reclaimed fibers other than reclaimed Manila fibers, the appearance of which latter product simulates rope or cordage composed of new and unused materials, unless it is disclosed, in words plainly legible to purchasers, on any invoices therefor and upon said rope and coil wrapper that said products are made, in whole or in part, of reclaimed or used fibers.

*It is further ordered,* That the respondents 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.

Commissioner HOWREY not participating.

## Syllabus

IN THE MATTER OF  
SORITE SEWING MACHINE COMPANY, INC. ET AL.COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 6049. Complaint, Sept. 26, 1952—Decision, Apr. 28, 1953*

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

There is among the members of the purchasing public a large 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 machine heads imported from Japan.

There are among retailers and ultimate purchasers, many persons who prefer to deal directly with the manufacturer of sewing machines.

There is a preference among many members of the purchasing public for products manufactured by well-known and long-established American concerns.

Where two corporations and their common officers, engaged in the competitive interstate sale and distribution of sewing machines, and of imported sewing machine heads, on the back of the vertical arm of which the word "Japan" became covered in attaching the motor, and on the front of some of which a readily removable medallion displayed the word in so small and indistinct fashion as not to constitute adequate public notice that said heads were imported—

(a) Failed adequately to disclose on their said sewing machine heads by marks which could not be removed, hidden, or obliterated, that they were manufactured in Japan;

With tendency and capacity to lead members of the purchasing public into the erroneous belief that the product was of domestic origin and thereby cause substantial numbers thereof to purchase the complete machines of which said heads were a part;

(b) Represented falsely, directly and by implication, in their advertising, and by letterheads and invoices that they manufactured the sewing machine heads and sewing machines sold by them, through the use of the word "manufacturers" as included in the statements: "Manufacturers \* \* \* sewing machines \* \* \*"; "MR. RETAILER: Deal directly with the manufacturers. Eliminate the middlemen and save the distributors mark-up.";

(c) Falsely represented that certain of their machines and heads were manufactured in Washington, D. C., through displaying thereon the legend "Simplex Sewing Machine Company, Simplex, Washington, D. C."; notwith-

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standing the fact that the name "Simplex Sewing Machine Company" was only a trade name used by them in their business;

With capacity and tendency to enhance the belief on the part of the public that such machines were of domestic origin;

- (d) Represented falsely that their said machines were manufactured by or connected with well and favorably known American firms through the use of such words as "Admiral" and other well known domestic names as featured trade or brand names on some of them, and in their advertising matter;
- (e) Falsely represented that many of their said machines were made by the Singer Manufacturing Corporation, manufacturer and seller of a well and favorably known make, through shipment of many of their machines in cartons or boxes upon which was printed or stenciled the word "Singer"; and
- (f) Confusingly and misleadingly represented that their product was guaranteed by the manufacturer for twenty years through inclusion in an advertising brochure of a "20-year guarantee bond" which was merely a form of guarantee not executed by the manufacturer, and for the performance of which the manufacturer was under no liability;

With effect of placing in the hands of retailers and others the means whereby ultimate purchasers of said heads and complete machines were deceived as above set forth, and of unfairly diverting substantial trade in commerce to themselves from their competitors, among whom were included those engaged in the sale of sewing machines and sewing machine heads made in the United States, and those engaged in the sale of such imported products:

*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.

As respects charges in the complaint that respondents, through the use of statements in their advertising literature, falsely represented that they ordinarily sold their said machines to members of the purchasing public at \$159.50, \$179.50, and \$189.50, when in fact such prices were greatly in excess of the retail prices usually charged for said product and were wholly fictitious: said charges were not supported by introduction of any evidence in substantiation thereof and therefore failed for want of proof.

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

*Mr. William L. Taggart* and *Mr. Ames W. Williams* for the Commission.

*Mr. Myer Koonin*, of Washington, D. C., 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 Sorite Sewing Ma-



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chine Company, Inc., a corporation, and Samuel Berenson, Solomon Berenson and Etta Berenson, individually and as officers of Sorite Sewing Machine Company, Inc., and Cleanrite Vacuum Stores, Inc., a corporation, and Samuel Berenson and Etta Berenson, individually and as officers of Cleanrite Vacuum Stores, Inc., 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, Sorite Sewing Machine Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Maryland with its office and principal place of business located at 2147 Queens Chapel Road, N. E., Washington, D. C. Respondents Samuel Berenson, Solomon Berenson and Etta Berenson are President, Vice President and Secretary-Treasurer, respectively, of this corporate respondent and acting as such officers formulate, direct and control the policies, acts and practices of said corporation. The address of these individual respondents is the same as that of the corporate respondent Sorite Sewing Machine Company, Inc.

Respondent Cleanrite Vacuum Stores, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Maryland with its office and principal place of business located at 925 F Street, N. W., Washington, D. C. Respondents, Samuel Berenson and Etta Berenson are President and Secretary-Treasurer, respectively, of this corporate respondent and acting as such officers formulate, direct and control the policies, acts and practices of said corporation. These individual respondents also have offices at the same address as that of the Cleanrite Vacuum Stores, Inc. The respondents cooperate and act together in carrying out the policies and practices hereinafter set forth.

PAR. 2. Respondent Sorite Sewing Machine Company, Inc., a corporation, is now engaged, among other things, in the sale and distribution of sewing machine heads imported from Japan and completed sewing machines, of which said imported sewing machine heads are a part, to distributors and retailers.

Respondent, Cleanrite Vacuum Stores, Inc., a corporation, is engaged, among other things, as the District of Columbia sales agent of the Sorite Sewing Machine Company in the wholesale and retail sale of sewing machines and sewing machine heads imported from Japan.

PAR. 3. In the course and conduct of their said businesses, respondents cause said products, when sold, to be transported from their place of business in the District of Columbia to purchasers thereof located in the District of Columbia and in various States of the United States

and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce in the District of Columbia and among and between the various States of the United States. Their volume of trade in said commerce has been, and is, substantial.

PAR. 4. Respondents are now, and at all times hereinafter mentioned have been, in substantial competition in commerce with other persons, firms and corporations engaged in the sale of sewing machines and sewing machine heads made in the United States and also with other persons, firms and corporations engaged in the sale of imported sewing machines and sewing machine heads.

PAR. 5. When the sewing machine heads were received by respondents, the word "Japan" appeared on the back of the vertical arm. Before the heads were sold to the purchasing public as a part of a complete sewing machine, it was necessary to attach a motor to the head in the process of which the aforesaid word was covered by the motor so that it was not visible. In some instances, said heads, when received by respondents, were marked with a medallion placed on the front of the vertical arm upon which the word "Japan" appeared. This word was, however, so small and indistinct that it did not constitute adequate notice to the public that the heads were imported. Furthermore, said medallion can be readily removed and when the medallion is so removed, no visible mark of origin of the head appears on the complete sewing machine.

PAR. 6. 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, the markings are covered or otherwise concealed, such purchasing public understands and believes such articles to be wholly of domestic origin.

PAR. 7. There is among the members of the purchasing public a large 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 machine heads imported from Japan.

PAR. 8. The failure of respondents to adequately disclose on the sewing machine heads, in a manner which cannot be removed, hidden or obliterated, that they were manufactured in Japan has had and now has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product was 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.

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PAR. 9. Respondents in their advertising and on their letterheads and invoices made the following statement:

MANUFACTURERS AND WHOLESALE DISTRIBUTORS  
SEWING MACHINES, VACUUM CLEANERS AND SUPPLIES

MR. RETAILER:

Deal directly with the manufacturers.  
Eliminate the middlemen and save the  
distributors mark-up.

Through the use of the word "manufacturers," respondents represented, directly and by implication, that they manufactured the sewing machine heads and sewing machines sold by them. In truth and in fact, respondents did not and do not own or control a factory or facilities for manufacturing sewing machines.

On the front of some of their sewing machines and sewing machine heads respondents placed, or caused to be placed, medallions upon which is inscribed or printed the following:

Simplex Sewing Machine Company  
Simplex  
Washington, D. C.

Through such wording respondents represented, directly and by implication, contrary to the facts, that their sewing machines so marked are manufactured in Washington, D. C. Simplex Sewing Machine Company is only a trade name used by respondents in their business. The use by respondents of such wording as above set forth has had and now has the capacity and tendency to enhance the belief on the part of the public that said sewing machines were of domestic origin.

PAR. 10. Respondents also used the word "Admiral" and other well known domestic names as trade or brand names on some of their sewing machine heads, and complete sewing machines, which words were printed or embossed on the front horizontal arm of the head in large conspicuous letters and were used in their advertising matter. The word "Admiral" and the other prominent 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 long established in various industries. Through the use of such trade or brand names as aforesaid respondents represented, directly and by implication, contrary to the facts, that their sewing machines and sewing machine heads were manufactured by or connected in some way with the well and favorably known American firm with which the name on such machine has long been associated.

Respondents also shipped many of their machines in cartons or boxes on which was printed or stenciled the word "Singer" thereby

representing, contrary to the facts, that such sewing machine was made by the Singer Manufacturing Corporation which manufactures and sells a make of sewing machine that is well and favorably known.

PAR. 11. There are among retailers and ultimate purchasers many persons who prefer to deal with the manufacturer of sewing machines.

There is also a preference among many members of the purchasing public for products manufactured by well known and long established American concerns. The use of such trade or brand names by respondents, as above set forth, has had and now has the tendency and capacity to further enhance the belief on the part of the public that said sewing machines were of domestic origin.

PAR. 12. Respondents in an advertising brochure used to describe their sewing machines, included what is called a "20-year guarantee bond" which purported to be a guarantee of the machine by the manufacturer for twenty years for family sewing and further purported to guarantee the replacement of all parts of the machine, if defective, except certain parts named therein. However, this was merely a form for a guarantee. It was not executed by the manufacturer and there was no liability on the manufacturer for the performance of such guarantee contrary to the impression conveyed. Its use was confusing and misleading to the purchasing public.

PAR. 13. By and through the use of the statements in advertising literature and brochures showing the price of their machines at \$159.50, \$179.50, and \$189.50, respondents represented, directly and by implication, that their sewing machines were ordinarily sold to members of the purchasing public for said above prices.

The aforesaid representations were false, misleading and deceptive. In truth and in fact the sums of \$159.50, \$179.50 and \$189.50 were greatly in excess of the retail price usually and ordinarily charged for the said sewing machines and were wholly fictitious prices.

PAR. 14. The use by the respondents of the foregoing false, deceptive and misleading representations has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and to induce the purchase of substantial quantities of their sewing machines and sewing machine heads because of such erroneous and mistaken belief.

As a result of respondents' practices above set forth, substantial trade in commerce has been unfairly diverted to respondents from their competitors and as a consequence thereof substantial injury has been and is being done to competition in commerce.

PAR. 15. Respondents' aforesaid practices also placed in the hands of retail dealers and others the means and instrumentality whereby

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the ultimate purchasers of said sewing machine heads and completed sewing machines may be deceived as aforesaid.

PAR. 16. 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 methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

#### DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated April 28, 1953, the initial decision in the instant matter of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

#### INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 26, 1952, issued and subsequently served its complaint in this proceeding upon respondents Sorite Sewing Machine Company, Inc., a corporation, and Samuel Berenson, Solomon Berenson and Etta Berenson, individually and as officers of Sorite Sewing Machine Company, Inc.; and Cleanrite Vacuum Stores, Inc., a corporation, and Samuel Berenson and Etta Berenson, individually and as officers of Cleanrite Vacuum Stores, Inc., 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 said Act. After respondents filed their answer in this proceeding a hearing was held in Washington, D. C., on March 12, 1953, before the above-named Hearing Examiner theretofore duly designated by the Commission, at which hearing a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by Myer Koonin, Esq., counsel for the respondents, and William L. Taggart and Ames W. Williams, Esqs., approved by W. M. King, Esq., Chief, Division of Litigation, attorneys for the Federal Trade Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of and in opposition to the charges stated in the complaint, and that the said statement of facts may serve as the basis for findings as to the facts, conclusion based thereon and order disposing of the proceeding without presentation of proposed findings and conclusions or oral argument.

Said stipulation as to the facts expressly provides that upon appeal to or review by the Commission said stipulation may be set aside by the Commission and this matter remanded for further proceedings under the complaint.

Thereafter, this proceeding regularly came on for final consideration by said Hearing Examiner upon the complaint, answer, and stipulation, and said stipulation having been approved by the Hearing Examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Sorite Sewing Machine Company, Inc., is a corporation existing by virtue of the laws of the State of Maryland, with its office and principal place of business located at 2147 Queens Chapel Road, N. E., Washington, D. C. Respondents, Samuel Berenson, Solomon Berenson and Etta Berenson are President, Vice President and Secretary-Treasurer, respectively, of this corporate respondent and, acting as such officers, have formulated, directed and controlled the policies, acts and practices of said corporation. The address of the individual respondents is the same as that of the corporate respondent Sorite Sewing Machine Company, Inc.

Respondent, Cleanrite Vacuum Stores, Inc., is a corporation existing by virtue of the laws of the State of Maryland, with its office and principal place of business located at 925 F Street, N. W., Washington, D. C. Respondents, Samuel Berenson and Etta Berenson are President and Secretary-Treasurer, respectively, of this corporate respondent and, acting as such officers, have formulated, directed and controlled the policies, acts and practices of said corporation. These individual respondents also have offices at the same address as that of the Cleanrite Vacuum Stores, Inc. The respondents cooperate and act together in carrying out the policies and practices hereinafter set forth.

PAR. 2. Respondent Sorite Sewing Machine Company, Inc., a corporation, is now and has been engaged, among other things, in the sale and distribution of sewing machine heads imported from Japan and completed sewing machines, of which said imported sewing machine heads are a part, to distributors and retailers.

Respondent, Cleanrite Vacuum Stores, Inc., is now and has been engaged, among other things, as the District of Columbia sales agent of the Sorite Sewing Machine Company in the wholesale and retail sale of sewing machines and sewing machine heads imported from Japan.

PAR. 3. In the course and conduct of their said businesses, respondents cause said products, when sold, to be transported from their places of business in the District of Columbia to purchasers thereof located in the District of Columbia and in various States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce in the District of Columbia and among and between the various States of the United States. Their volume of trade in said commerce has been, and is, substantial.

PAR. 4. Respondents are in substantial competition in commerce with other persons, firms and corporations engaged in the sale of sewing machines and sewing machine heads made in the United States and also with other persons, firms and corporations engaged in the sale of imported sewing machines and sewing machine heads.

PAR. 5. When the sewing machine heads were received by respondents, the word "Japan" appeared on the back of the vertical arm. Before the heads were sold to the purchasing public as a part of a complete sewing machine, it was necessary to attach an electrical motor to the head, in the process of which the aforesaid word "Japan" was covered by the motor so that same was not visible. In some instances, said heads, when received by respondents, were marked with a medallion placed on the front of the vertical arm upon which the word "Japan" appeared. This word was, however, so small and indistinct that it did not constitute adequate notice to the public that the heads were imported. Furthermore, said medallion can be readily removed and, when the medallion is so removed, no visible mark of the country of origin of the head appears on the complete sewing machine.

PAR. 6. When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public, and such articles are not adequately marked to disclose that they are of foreign origin, or if marked, the markings are covered or otherwise concealed, the purchasing public understands and believes such articles to be wholly of domestic origin.

PAR. 7. There is among the members of the purchasing public a large 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 machine heads imported from Japan.

PAR. 8. The failure of respondents to adequately disclose on the sewing machine heads, in a manner which cannot be removed, hidden or obliterated, that they were manufactured in Japan has had the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product was 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.

PAR. 9. Respondents in their advertising and on their letterheads and invoices made the following statement:

MANUFACTURERS AND WHOLESALE DISTRIBUTORS  
SEWING MACHINES, VACUUM CLEANERS AND SUPPLIES  
MR. RETAILER:

Deal directly with the manufacturers.

Eliminate the middlemen and save the distributors mark-up.

Through the use of the word "manufacturers," respondents represented, directly and by implication, that they manufactured the sewing machine heads and sewing machines sold by them. In truth and in fact, respondents did not own or control a factory or facilities for manufacturing sewing machines.

On the front of some of their sewing machines and sewing machine heads respondents placed, or caused to be placed, medallions upon which was described or printed the following:

Simplex Sewing Machine Company  
Simplex  
Washington, D. C.

Through such wording respondents represented, directly and by implication, contrary to the facts, that their sewing machines so marked were manufactured in Washington, D. C. Simplex Sewing Machine Company is only a trade name used by respondents in their business. The use by respondents of such wording as above set forth has had the capacity and tendency to enhance the belief on the part of the public that said sewing machines were of domestic origin.

PAR. 10. There are and were among retailers and ultimate purchasers many persons who prefer to deal directly with the manufacturer of sewing machines.

PAR. 11. Respondents also used the word "Admiral" and other well known domestic names as trade or brand names on some of their sewing machine heads, and complete sewing machines, which words were printed or embossed on the front horizontal arm of the head in large conspicuous letters and were used in their advertising matter. The word "Admiral" and the other prominent 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 long established in various industries. Through the use of such trade or brand names as aforesaid, respondents represented, directly and by implication, contrary to the facts, that their sewing machines and sewing machine heads were manufactured by or connected in some way with the well



and favorably known American firm with which the name on such machine has long been associated.

Respondents also shipped many of their machines in cartons or boxes on which was printed or stenciled the word "Singer," thereby representing, contrary to the facts, that such sewing machine was made by the Singer Manufacturing Corporation which manufactures and sells a make of sewing machine that is well and favorably known.

PAR. 12. There is and was a preference among many members of the purchasing public for products manufactured by well known and long established American concerns. The use of such trade or brand names by respondents, as above set forth, has had the tendency and capacity to further enhance the belief on the part of the public that said sewing machines were of domestic origin.

PAR. 13. Respondents, in an advertising brochure used to describe their sewing machines, included what they designated a "20-year guarantee bond" which purported to be a guarantee of the machine by the manufacturer for twenty years for family sewing, and further purported to guarantee the replacement of all parts of the machine, if defective, excepting certain parts named therein. However, this was merely a form of guarantee, not executed by the manufacturer, and there was no liability on the manufacturer for the performance of such guarantee contrary to the impression conveyed. Its use was confusing and misleading to the purchasing public.

PAR. 14. Respondents' aforesaid practices also placed in the hands of retail dealers and others the means and instrumentality whereby the ultimate purchasers of said sewing machine heads and completed sewing machines were deceived as aforesaid.

PAR. 15. The charges contained in Paragraph Thirteen of the Complaint, having to do with allegedly false, misleading and deceptive representations of fictitious prices and values of respondents' merchandise, were not supported by introduction of any evidence in substantiation thereof and hence fail for want of proof.

#### CONCLUSIONS

The acts and practices of respondents as above found have resulted in substantial trade in commerce being unfairly diverted to the respondents from their competitors and as a consequence thereof substantial injury has been, and is being, done to competition in commerce.

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition and unfair

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

## ORDER

*It is ordered,* That the respondents, Sorite Sewing Machine Company, Inc., a corporation, and its officers, and Samuel Berenson, Solomon Berenson and Etta Berenson, individually and as officers of Sorite Sewing Machine Company, Inc., and Cleanrite Vacuum Stores, Inc., a corporation, and its officers, and Samuel Berenson and Etta Berenson, individually and as officers of Cleanrite Vacuum Stores, Inc., and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of sewing machines or sewing machine heads 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 and in such a manner that it cannot readily be hidden or obliterated;

2. Using the word "Admiral," or any simulations thereof, as a brand or trade name to designate, describe or refer to their sewing machines or swing machine heads; or representing, through the use of any other word or in any other manner, that their sewing machines or sewing machine heads are made by anyone other than the actual manufacturers thereof.

3. Using cartons or boxes or cases for shipping their sewing machines or sewing machine heads which bear or contain the name, or portion of the name, of the manufacturer of any well known brand of sewing machine.

4. Representing, through the use of the word "manufacturer," or any other word or term of similar import or meaning, or in any other manner, that said respondents are the manufacturers of the sewing machine heads or sewing machines sold by them, unless and until such respondents actually own and operate, or directly and absolutely control, a factory wherein said products are manufactured by them.

5. Representing, directly or by implication, that any sewing machine head, or sewing machine, sold or offered for sale by respondents is guaranteed by the manufacturer, unless the manufacturer is obligated by a guarantee which sets forth clearly and conspicuously the nature and extent of the obligation and the manner in which the guarantor will perform thereunder.

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## Order

*It is further ordered,* That that portion of the complaint charging misrepresentation as to retail value or price in excess of that at which respondents' sewing machines are customarily sold is hereby dismissed because of lack of proof.

## ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered,* That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of April 28, 1953].

Mr. Carretta not participating.

IN THE MATTER OF  
EXPERT RAYON COMPANY, INC. 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 6007. Complaint, July 14, 1952—Decision, Apr. 30, 1953*

Rayon is a chemical fiber which may be manufactured so as to simulate wool and other natural fibers in texture and appearance; fabrics and articles of wearing apparel manufactured from such rayon fibers have the feel and appearance of wool; and many members of the purchasing public are unable to distinguish between articles of wearing apparel manufactured from such rayon fabrics and those manufactured from wool, so that the former are readily accepted by members of the purchasing public as wool products.

Wearing apparel and other products manufactured from wool, which is not highly inflammable and is a desirable material for women's hats and other wearing apparel, have long held and still hold great public esteem and confidence because of their outstanding qualities.

Where a corporation and its two officers, engaged in the manufacture and interstate sale and distribution of fabrics composed of various fibers, including a particular type of brushed rayon which was highly inflammable and which simulated wool in texture and appearance, to purchasers who used them in making women's hats and other wearing apparel for sale to the purchasing public—

- (a) Falsely represented and impliedly warranted that their said brushed rayon fabrics were suitable for use in the manufacture of women's hats and other wearing apparel and were safe to wear, through failing to reveal the inflammable characteristics thereof;

With result of placing in the hands of retailers and others a means and instrumentality whereby members of the purchasing public might be misled and deceived as above set forth:

*Held*, That such practices constituted unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act: and

Where said corporation and officers, engaged in the manufacture and in the sale and distribution therein of "wool products" as defined in the Wool Products Labeling Act of 1939—

- (b) Misbranded certain woolen jersey fabrics in that they were not stamped, tagged, or labeled as required by said Act and the Rules and Regulations promulgated thereunder:

*Held*, That aforesaid acts and practices were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act, and were in violation of said Wool Products Labeling Act and Rules and Regulations.

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## Complaint

Before *Mr. James A. Purcell*, hearing examiner.  
*Mr. George E. Steinmetz* for the Commission.  
*Mr. Milton H. Goldstricker*, of New York City, 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 the Expert Rayon Company, Inc., a corporation, and Sol Kokol and Harry Irwin, 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 Expert Rayon Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with the principal place of business located at 165-08 Liberty Avenue, Jamaica, Long Island, New York.

The individual respondents, Sol Kokol and Harry Irwin, are president and secretary-treasurer, respectively, of the corporate respondent, Expert Rayon Company, Inc., and formulate, direct and control the affairs and policies of said corporate respondent. Said individual respondents have their offices at the same place as corporate respondent.

PAR. 2. The respondent Expert Rayon Company, Inc., is now, and for several years last past has been, engaged in the manufacture, sale and distribution of fabrics composed of various fibers, including rayon and combinations thereof. Respondents cause said fabrics when sold to be transported from the place of business of respondent, Expert Rayon Company, Inc., in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said fabrics in commerce among and between the various States of the United States.

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

PAR. 3. Rayon is a chemical fiber which may be manufactured so as to simulate wool and other natural fibers in texture and appearance.

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Fabrics and articles of wearing apparel manufactured from such rayon fibers have the feel and appearance of wool. Many members of the purchasing public are unable to distinguish between articles of wearing apparel manufactured from such rayon fabrics and articles of wearing apparel manufactured from wool. Consequently, articles of wearing apparel manufactured from such rayon fabrics are readily accepted by members of the purchasing public as wool products.

PAR. 4. Some of the rayon fabrics manufactured, sold, and distributed by the respondents are a particular type of brushed rayon which is highly inflammable. Such fabrics simulate wool in texture and appearance. Respondents do not label or otherwise inform the purchasers of their said fabrics that they are composed of rayon, nor do they reveal in any manner the highly inflammable characteristics of their said fabrics.

Purchasers of respondents' said fabrics use them in making women's hats and other articles of wearing apparel for sale to members of the purchasing public. Such products, resembling wool products, are readily accepted by many members of the purchasing public as wool products.

PAR. 5. Wearing apparel and other products manufactured from wool have for many years held and still hold great public esteem and confidence because of their outstanding qualities. Wool is not highly inflammable and is a desirable material for women's hats and other wearing apparel.

PAR. 6. By failing to label their said brushed rayon fabrics, which resemble wool, as rayon, and by failing to reveal the inflammable characteristics of their said brushed rayon fabrics, respondents have represented and impliedly warranted that said fabrics are suitable to be used in the manufacture of women's hats and other wearing apparel that are safe to wear. In truth and in fact, hats and other articles of wearing apparel made of this material are dangerous and unsafe to be worn because they are highly inflammable.

Respondents' said practices place in the hands of retailers and others a means and instrumentality whereby members of the purchasing public may be misled and deceived in the manner aforesaid.

PAR. 7. Certain of said wool products were misbranded in that they were not stamped, tagged or labeled as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form as prescribed by the Rules and Regulations promulgated under such Act. Among respondents' wool products so misbranded were woolen jersey fabrics.

PAR. 8. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public. The practices with respect to

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## Consent Settlement

respondents' rayon fabrics set forth above constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. The practices with respect to respondents' wool products set forth above were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and also constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

CONSENT SETTLEMENT <sup>1</sup>

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission on July 14, 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 the answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record 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 respondents, 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.
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.

<sup>1</sup> 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 30, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusions, 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.

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 ordered herein in final disposition of this proceeding are as follows :

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Expert Rayon Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with the principal place of business located at 165-08 Liberty Avenue, Jamaica, Long Island, New York.

The individual respondents, Sol Kokol and Harry Irwin, are president and secretary-treasurer, respectively, of the corporate respondent, Expert Rayon Company, Inc., and formulate, direct and control the affairs and policies of said corporate respondent. Said individual respondents have their offices at the same place as corporate respondent.

PAR. 2. The respondent Expert Rayon Company, Inc., is now, and for several years last past has been engaged in the manufacture, sale and distribution of fabrics composed of various fibers, including rayon and combinations thereof. Respondents cause said fabrics when sold to be transported from the place of business of respondent, Expert Rayon Company, Inc., in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said fabrics in commerce among and between the various States of the United States.

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

PAR. 3. Rayon is a chemical fiber which may be manufactured so as to simulate wool and other natural fibers in texture and appearance. Fabrics and articles of wearing apparel manufactured from such rayon fibers have the feel and appearance of wool. Many members of the purchasing public are unable to distinguish between articles of wearing apparel manufactured from such rayon fabrics and articles of wearing apparel manufactured from wool. Consequently, articles of wearing apparel manufactured from such rayon fabrics are readily accepted by members of the purchasing public as wool products.



PAR. 4. Some of the rayon fabrics manufactured, sold and distributed by the respondents are of a particular type of brushed rayon which is highly flammable. Such fabrics simulate wool in texture and appearance and respondents do not disclose or otherwise inform the purchasers thereof in any manner of the highly flammable characteristics of their said fabrics.

Purchasers of respondents' said fabrics use them in making women's hats and other articles of wearing apparel for sale to members of the purchasing public. Such products, resembling wool products, are readily accepted by many members of the purchasing public as wool products.

PAR. 5. Wearing apparel and other products manufactured from wool have for many years held and still hold great public esteem and confidence because of their outstanding qualities. Wool is not highly inflammable and is a desirable material for women's hats and other wearing apparel.

PAR. 6. By failing to reveal the flammable characteristics of their said brushed rayon fabrics, respondents have represented and impliedly warranted that said fabrics are suitable to be used in the manufacture of women's hats and other wearing apparel that are safe to wear. In truth and in fact, hats and other articles of wearing apparel made of this material are dangerous and unsafe to be worn because they are highly inflammable.

Respondents' said practices place in the hands of retailers and others a means and instrumentality whereby members of the purchasing public may be misled and deceived in the manner aforesaid.

PAR. 7. Certain of said wool products were misbranded in that they were not stamped, tagged or labeled as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form as prescribed by the Rules and Regulations promulgated under such Act. Among respondents' wool products so misbranded were woolen jersey fabrics.

PAR. 8. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public. The practices with respect to respondents' rayon fabrics set forth above constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. The practices with respect to respondents' wool products set forth above were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and also constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

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## CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder.

## ORDER TO CEASE AND DESIST

*It is ordered*, That the respondents, Expert Rayon Company, Inc., a corporation, and its officers and Sol Kokol and Harry Irwin, individually and as officers of said corporation, and 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 fabrics composed of rayon or other fibers or any combination thereof, do forthwith cease and desist from:

1. Offering for sale or selling any fabric that is highly flammable without clearly stating thereon that it is highly flammable.

*It is further ordered*, That the respondents, Expert Rayon Company, Inc., a corporation, and its officers, and Sol Kokol and Harry Irwin, individually and as officers of said corporation, and respondents' 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 Wool Products Labeling Act of 1939, of wool jersey fabrics or other wool products, as such products are defined in and subject to the said Act, 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. 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 percentages of the total weight of such wool product of any non-fibrous loading, filling, or adulterating matter;

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## Order

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

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

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

*It is further ordered,* That the respondents 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 said order.

[sgd] EXPERT RAYON COM. INC.  
Expert Rayon Company, Inc.

By [sgd] SOL KOKOL  
(Name)  
President  
(Title)

[sgd] SOL KOKOL  
Sol Kokol, individually, and as  
*President, Expert Rayon Com-*  
*pany, Inc.*

[sgd] HARRY IRWIN  
Harry Irwin, individually and as  
*Secretary-Treasurer, Expert*  
*Rayon Company, Inc.*

9/27/52  
(Date)

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 30th day of April, A. D., 1953.

IN THE MATTER OF  
JAPAN AMERICA TRADING AGENCY, INC. 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

*Docket 6014. Complaint, July 21, 1952—Decision, Apr. 30, 1953*

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

There are 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 machine heads.

Where a corporation and its four officers, engaged in the competitive interstate sale and distribution to distributors and retailers of complete sewing machines, and of sewing machine heads imported by them from Japan upon which the word "Japan" on the back of the vertical arm became covered by the motor attached to complete the machine, and, displayed in some cases on a readily removable medallion on the front of said arm, was so small and indistinct as not to constitute adequate notice that the heads were imported—

Failed to disclose adequately on said heads in such manner that the marks could not readily be removed, hidden, or obliterated that they were manufactured in Japan:

With tendency and capacity to lead members of the purchasing public into the erroneous belief that their said product was of domestic origin and thereby cause substantial purchase of machines, of which said heads were a part:

Whereby substantial trade in commerce was unfairly diverted to them from their competitors, including makers and sellers of domestic machines and also sellers of imported machines, of whom some adequately informed the public as to said products' source or origin, and substantial injury was done 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 respondents' competitors and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce.

Before *Mr. John Lewis*, hearing examiner.

*Mr. William L. Taggart* and *Mr. John C. Williams* for the Commission.

*Mr. Edward J. Ennis*, of New York City, and *Chuman, McKibbin & Yokozecki*, of Los Angeles, 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 Japan America Trading Agency, Inc., a corporation, and Fred I. Wada, Eijui Sasajima, Fred T. Kobayashi, and George L. Eastman, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Japan America Trading Agency, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business located at 324-26 East Olympic Boulevard, Los Angeles, California. Respondents Fred I. Wada, Eijui Sasajima, Fred T. Kobayashi, and George L. Eastman are President, Secretary, Treasurer, and Vice President, respectively, of corporate respondent and acting as such officers formulate, direct and control the policies, acts and practices of said corporation. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for some time last past, engaged in the sale of sewing machine heads imported by them from Japan and complete sewing machines of which said heads are a part, to distributors and also to retailers who, in turn, sell the complete sewing machines to 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 and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States. 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 con-

stitute adequate notice to the public that the heads are imported. Furthermore, said medallion can be readily removed and when the medallion is so removed, no visible mark of origin appears on the machine.

Respondents place no other mark on their imported sewing machine heads or complete sewing machines of which said heads are a part showing foreign origin, or otherwise inform the public that the heads are of foreign origin 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.

PAR. 5. 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 machine heads.

PAR. 6. Respondents, by placing in the hands of dealers their said sewing machine heads and complete sewing machines, provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads.

PAR. 7. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the makers and sellers of domestic sewing machines and also with sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said product.

PAR. 8. The failure of respondents to adequately disclose on the sewing machine heads, in a manner which cannot readily be removed, hidden or obliterated, 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. 9. 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<sup>1</sup>

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 21, 1952, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in violation of the provisions of said 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 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 respondent consents may be entered herein in final disposition of this proceeding, are as follows:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Japan America Trading Agency, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business located at 324-26 East Olympic Boulevard, Los Angeles, California. Respondents Fred I. Wada, Eijui Sasajima and George

<sup>1</sup>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 30, 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.

L. Eastman are President, Secretary-Treasurer and Vice-President, respectively, of corporate respondent and acting as such officers formulate, direct and control the policies, acts and practices of said corporation. Respondent Fred T. Kobayashi formerly was Treasurer of corporate respondent. The address of the individual respondents, except that of Fred T. Kobayashi, is the same as that of the corporate respondent. The address of Fred T. Kobayashi is 1787 West Adams Street, Los Angeles, California.

PAR. 2. Respondents are now, and have been for some time last past, engaged in the sale of sewing machine heads imported by them from Japan and complete sewing machines of which said heads are a part, to distributors and also to retailers who, in turn, sell the complete sewing machines to the purchasing public. In the course and conduct of their business respondents caused 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 and have maintained a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been substantial.

PAR. 3. When the sewing machine heads were received by respondents, the word "Japan" appeared on the back of the vertical arm. Before the heads were sold to the purchasing public as a part of a complete sewing machine, it was necessary to attach a motor to the head in the process of which the aforesaid word was covered by the motor so that it was not visible. In some instances, said heads, when received by respondents, were marked with a medallion placed on the front of the vertical arm upon which the word "Japan" appears. This word was, however, so small and indistinct that it did not constitute adequate notice to the public that the heads were imported. Furthermore, said medallion could be readily removed and when the medallion was so removed, no visible mark of origin appeared on the machine.

Respondents placed no other mark on their imported sewing machine heads or complete sewing machines of which said heads were a part showing foreign origin, or otherwise informed the public that the heads were of foreign origin before they were 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.



PAR. 5. There are 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 machine heads.

PAR. 6. Respondents, by having placed in the hands of dealers their said sewing machine heads and complete sewing machines, provided said dealers a means and instrumentality whereby they may have misled and deceived the purchasing public as to the place of origin of said heads.

PAR. 7. Respondents, in the course and conduct of their business, were in substantial competition in commerce with the makers and sellers of domestic sewing machines and also with sellers of imported machines, some of whom adequately informed the public as to the source of origin of their said product.

PAR. 8. The failure of respondents to have adequately disclosed on the sewing machine heads, in a manner which could not readily be removed, hidden or obliterated, that they were manufactured in Japan had the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that their said product was of domestic origin and to have caused substantial numbers of the purchasing public to purchase sewing machines of which said heads were a part because of said erroneous and mistaken belief.

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

#### CONCLUSION

The acts and practices of the respondents, as herein found, were 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.

#### ORDER TO CEASE AND DESIST

*It is ordered*, That the respondents, Japan America Trading Agency, Inc., a corporation, and its officers, and Fred I. Wada, Eijui Sasajima, Fred T. Kobayashi, and George L. Eastman, 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 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:

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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, in such a manner that it cannot readily be hidden or obliterated.

*It is further ordered*, That the respondents, Japan America Trading Agency, Inc., a corporation, and Fred I. Wada, Eijui Sasajima, Fred T. Kobayashi, and George L. Eastman, individually and as officers of said corporation, 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.

[S] CHUMAN, McKIBBIN &  
YOKOZEKI  
CHUMAN, McKIBBIN &  
YOKOZEKI

By: DAVID McKIBBIN

[S] David McKibbin

[S] FRED I. WADA

JAPAN AMERICA TRADING  
AGENCY, INC., a corporation,  
with its office and principal  
place of business located  
at 324-26 E. Olympic  
Blvd., Los Angeles, California;  
and

FRED I. WADA

[S] Fred I. Wada

EIJUI SASAJIMA

[S] Eijui Sasajima

FRED T. KOBAYASHI

[S] Fred T. Kobayashi

GEORGE L. EASTMAN

[S] George L. Eastman,  
individually and as officers of  
said corporation.

Attorney for Respondents.

Respondents.

December 20, 1952.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 30th day of April, 1953.

## Syllabus

## IN THE MATTER OF

## ROYAL SEWING MACHINE 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 5892. Complaint, June 27, 1951—Decision, May 5, 1953*

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

There is among the members of the purchasing public a substantial number which has a decided preference for products, including sewing machines, manufactured in the United States over products manufactured in foreign countries.

Where a corporation and its three officers, engaged in the interstate sale and distribution of complete sewing machines, and of sewing machine heads imported from Japan, upon which the words "Made in Japan" or "Made in Occupied Japan" on the back of the vertical arm became covered when a motor was attached, and on the front of which arm certain bands displaying similar words were wholly inadequate as such a disclosure by reason of their small size and location—

Failed to disclose adequately on their said sewing machines that the heads were manufactured in Japan;

With capacity and tendency to lead members of the purchasing public into the erroneous belief that said heads and the machines of which they were an essential element were of domestic manufacture, and thereby induce their purchase of said machines:

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

As respects charges of the complaint that respondents, through the use of the name "Royal" on their machines, falsely represented that they were manufactured by the Royal Typewriter Company, and that they misrepresented the status of the corporate respondent as a manufacturer: the evidence did not sustain the first allegation, or disclose any basis for a finding that the public interest required corrective action concerning the second.

Before *Mr. Everett F. Haycraft*, hearing examiner.

*Mr. William T. Taggart* and *Mr. John C. Williams* for the Commission.

*Mr. William King*, of Brooklyn, N. Y., for respondents.

Complaint

49 F. T. C.

## 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 Royal Sewing Machine Corporation, a corporation, and Jacob Schneider, Jacob Epstein and Selia Epstein, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Royal Sewing Machine Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 1801 Pitkin Avenue, Brooklyn, New York. Respondents, Jacob Schneider, Jacob Epstein and Selia Epstein are President, Vice-President and Secretary-Treasurer, respectively, of corporate respondent and, acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now and have been for several years last past engaged in the sale of sewing machine heads imported from Japan and completed sewing machines of which said heads are a part to retailers who in turn sell to the purchasing public. In the course and conduct of their business respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States and maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. When the sewing machine heads are received by respondents, the words "Made in Occupied Japan" or "Japan" appear 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 words are covered by the motor so that they are 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 words "Made in Occupied Japan" or "Japan" appear. These words are, however, so small and indistinct that they do not constitute adequate notice to the public that the heads are imported.

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 machine heads.

PAR. 5. Respondents have adopted and use the word "Royal" as the trade or brand name for their said machine heads, which word is embossed or printed on the front horizontal arm of the head in large conspicuous letters and use such trade name in their advertising matter. The word "Royal" is the name or part of the name of a number of corporations transacting and doing business in the United States which are and have been long established in various industries and which are and have been well and favorably known to the purchasing public. Some of these corporations use the word "Royal" as a trade name, mark or brand for products of the same general class as sewing machines, particularly "Royal" typewriters manufactured by the Royal Typewriter Company.

PAR. 6. By using said trade name "Royal," respondents represent to the purchasing public that their products are manufactured by the well known firm with which said name has been long associated, which is contrary to the fact.

PAR. 7. Respondents on their invoices make such statements as the following:

Manufacturers and distributors of  
sewing machines . . .

By and through the use of the aforesaid statement, respondents represent to dealers that they manufacture the sewing machines sold by them. In truth and in fact, respondents do not own or control a factory in which their sewing machines are manufactured. Substantial numbers of retailers prefer to deal with concerns who manufacture the products sold by them.

PAR. 8. There is a preference among dealers for products manufactured by favorably known and long established concerns whose identity is connected with the word "Royal."

PAR. 9. Respondents, by placing in the hands of dealers their said sewing machine heads and completed sewing machines, provide said dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said heads and the manufacturer thereof.

PAR. 10. Respondents, in the course and conduct of their business, are in substantial competition in commerce with the makers and sellers of domestic machines and also with sellers of imported machines, some of whom adequately inform the public as to the source of origin of their said products.

PAR. 11. The failure of respondents to adequately disclose on the sewing machine heads that they are manufactured in occupied Japan, and the use of the word "Royal" as a trade or brand name therefor, 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 firm with which the said trade name has long been associated and to induce members of the purchasing public to purchase sewing machines of which these heads are a part 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 been and is being done to competition in commerce.

PAR. 12. 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 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 June 27, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them 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 the said complaint and the filing of respondents' 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 such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for consideration by said hearing examiner on the complaint, the answer thereto and the testimony and other evidence, and said hearing examiner on September 15, 1952, filed his initial decision.

Within the time permitted by the Commission's Rules of Practice, counsel supporting the complaint filed with the Commission an appeal

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## Findings

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 appeal, no oral argument having been requested; and the Commission, having issued its order denying said appeal, but being of the opinion that the initial decision of the hearing examiner should be modified in certain respects, 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 Royal Sewing Machine Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 1801 Pitkin Avenue, Brooklyn, New York. Respondents, Jacob Schneider, Jacob Epstein and Selia Epstein are President, Vice-President and Secretary-Treasurer, respectively, of corporate respondent and, acting as such officers, formulate, direct and control the policies, acts and practices of said corporation. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the sale of sewing machine heads imported from Japan and completed sewing machines of which said heads are a part to retailers who in turn sell to the purchasing public. In the course and conduct of their business respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States and maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. The sewing machine heads imported from Japan by respondents during 1949 and a part of 1950 usually bore the phrase "Made in Japan" or "Made in Occupied Japan" stenciled or printed on the back of the vertical arm. Respondents generally sold these heads "as is" but a substantial number were sold equipped with accessories to retail dealers. Before a completed sewing machine, of which one of these heads formed a part, was offered to the purchasing public, respondents, or the dealers to whom the heads were sold, attached an electric motor, usually made in the United States and so marked, to the head on the back of the vertical arm so that the aforesaid words of origin were effectively concealed by the motor. During 1950 and

## Conclusion

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1951 some of the heads when received by and when sold by respondents had affixed to the front of the vertical arm small gilt or bronze colored metal bands upon which "Made in Japan" or "Made in Occupied Japan" or "Japan" appeared. These words indicating origin, however, were of such a size and the band on which they were placed so located as to be wholly inadequate as a disclosure of the Japanese origin of the machine.

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 to show 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 of domestic origin.

There is among the members of the purchasing public a substantial number which has a decided preference for products, including sewing machines, manufactured in the United States over products manufactured in foreign countries.

PAR. 5. Respondents, by placing in the hands of dealers their said sewing machine heads and completed sewing machines, have provided said dealers with means and instrumentalities whereby they may mislead and deceive the purchasing public as to the place or origin of said heads and the sewing machines of which said heads are essential elements.

PAR. 6. The failure of respondents to disclose adequately on the sewing machine heads, sold by them as aforesaid, that they are manufactured in Japan, has the capacity and tendency to lead members of the purchasing public into the erroneous and mistaken belief that the said heads and the sewing machines of which they are an essential element are of domestic manufacture, and to induce members of the purchasing public to purchase said sewing machines because of such erroneous and mistaken belief.

PAR. 7. The complaint alleges that respondents by the use of the name "Royal" for their machines have falsely represented that they were manufactured by the Royal Typewriter Company, and that they have misrepresented the status of the corporate respondent as a manufacturer. The evidence does not sustain the first allegation, nor does it disclose any basis for a finding that the public interest requires corrective action concerning the second.

## CONCLUSION

The acts and practices of respondents as found in Paragraphs Three, Five and Six hereof are all to the prejudice and injury of the public



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## Order

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

## ORDER

*It is ordered,* That the respondent Royal Sewing Machine Corporation a corporation, and its officers, agents, representatives and employees, and the respondents Jacob Schneider, Jacob Epstein and Selia Epstein, as officers of said corporation, directly or through any corporate or other device, in connection with the sale 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:

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, in such a manner that it will not be hidden or obliterated, the country of origin thereof.

*It is further ordered,* That with respect to the issues raised by the complaint other than those to which this order relates, the complaint be, and the same hereby is, dismissed.

*It is further ordered,* That the respondents 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  
NATIONAL EDUCATORS, 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 5975. Complaint, Mar. 27, 1952—Decision, May 5, 1953*

Where a corporation and its controlling officer, engaged in the interstate sale and distribution of a combination offer of a 10-volume set of the New Standard Encyclopedia and Quarterly Loose-Leaf Extension Service supplements thereto, published under the name of "World Progress"; in selling said combination under a plan or scheme in accordance with which their agents, calling upon doctors, nurses, and other professional persons in hospitals and elsewhere—

- (a) Represented falsely to such prospects that they were being offered a 10-volume set of the encyclopedia free because of their professional standing, thus indicating that such offer was made only to selected individuals;
- (b) Represented falsely that such offer was made solely for advertising purposes or that those solicited would receive the encyclopedia free if within 30 days they would furnish a letter recommending it or giving their opinion on it;
- (c) Represented that the prospects would obtain a set of the encyclopedia free if they purchased the Quarterly Extension Service Supplement for 10 years at \$9.95 or some approximate amount per year; and
- (d) Represented that only the supplement was being sold and the encyclopedia was free and that the sum of \$99.50 was the total amount required to be paid;

The facts being they furnished no encyclopedia free and the aforesaid amount was the regular price charged for the combination of encyclopedia and supplements; the offer was available to anyone willing to pay said regular price; and they failed to make known to purchasers that, in addition to the amount charged and represented as the total required to be paid, an additional charge of \$1.85 per year was made, allegedly to cover mailing expenses; and

- (e) In some instances sent sets of their encyclopedia to persons who had not contracted to buy them and then endeavored to enforce payment by stating that such consignees were legally or otherwise obligated to pay therefor; With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true, and with effect of thereby inducing purchase of said encyclopedia and supplement:

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

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## Complaint

Before *Mr. John Lewis*, hearing examiner.  
*Mr. William L. Pencke* for the Commission.  
*Mr. Matthew C. Cary*, of Scranton, Pa., 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 National Educators, Inc., a corporation, and Leonard Melley and Lawrence Melley, individually and as officers of National Educators, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, National Educators, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania. Respondents, Leonard Melley and Lawrence Melley, are President and Treasurer, and Secretary, respectively, thereof. The individual respondents have dominant control of the advertising policies and business practices and activities of said corporate respondent and all of said respondents have cooperated with each other and have acted in concert in doing the acts and practices hereinafter alleged. Respondents' principal office and place of business is located at 229 North Washington Avenue, Scranton 3, Pennsylvania.

PAR. 2. Respondents are now, and have been for more than two years last past, engaged in the sale and distribution of a combination offer of a 10-volume set of the New Standard Encyclopedia and the Quarterly Loose Leaf Extension Service supplements thereto, published under the name of World Progress. Respondents cause said Encyclopedia and Supplements, when sold, to be shipped from the place where the former are printed in Columbia, Missouri, or from Chicago, Illinois, the place of business of Standard Education Society, their publisher, to the purchasers thereof at their respective residences located in States other than those in which such shipments are made.

There is now, and at all times mentioned herein has been, a constant course of trade in said books sold by respondents between and among the various States of the United States. Respondents' volume of business in said commerce is and has been substantial.

PAR. 3. In connection with the sale and distribution of the said encyclopedia and supplements thereto, and as an inducement for the purchase thereof by members of the public, the respondents, for several

years last past, have been using a plan or scheme for selling the same substantially as follows: Respondents' agents call upon doctors, nurses and other professional persons in hospitals and elsewhere stating and representing that because of their professional standing they are being offered a 10-volume set of the New Standard Encyclopedia free, thus indicating that said offer was made only to selected individuals; that said offer was made solely for advertising purposes; or that they will receive the encyclopedia free if within 30 days or within some other specified time, they will furnish a letter recommending said encyclopedia or giving their opinion thereof; or that they may obtain a set of said encyclopedia free if they purchase the Quarterly Loose Leaf Extension Service Supplement thereto for 10 years at \$9.95 or some approximate amount per year; that only the supplement is being sold and the encyclopedia is free and that the sum of \$99.50 is the total amount required to be paid.

Respondents in some instances send sets of their encyclopedia to persons who have not contracted to buy same and then endeavor to enforce payment for them by stating that they are legally obligated to pay therefor, or otherwise.

PAR. 4. The aforesaid statements and representations were and are false, deceptive and misleading. In truth and in fact, respondents do not furnish a set of the encyclopedia free to anyone for advertising purposes for a letter of recommendation thereof or an expression of opinion with respect thereto, or for any other reason. Neither is the encyclopedia furnished free when the supplement is purchased for \$99.50 or any other amount since such amount is the regular price charged for the combination of the encyclopedia and the supplement and the price for the encyclopedia is included in the price charged for said combination. The offer is not limited to any particular persons or group of persons but said combination is available for purchase by any person who is willing to pay the regular price therefor. The \$99.50, or approximate amount, charged for the combination of the encyclopedia and supplement is not the total amount required to be paid. In addition, the amount of \$1.85 per year for 10 years is charged, allegedly for mailing expense of the supplement, which fact is not made known to purchasers prior to the time the sale is consummated.

PAR. 5. The use by the respondents of the foregoing false, deceptive and misleading statements and representations disseminated as aforesaid has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations are true and induces a substantial portion of the pur-

chasing public to purchase said New Standard Encyclopedia and supplements because of such erroneous and mistaken belief.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 27, 1952, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. Respondents defaulted in filing answer to the complaint and thereafter informed the hearing examiner, theretofore designated by the Commission to act in this proceeding, that they did not desire to appear for hearing in this matter, a time and place for which had been duly designated in the "Notice" portion of said complaint. Subsequently a hearing was held at which time respondents' aforesaid default in the filing of answers was noted of record, counsel supporting the complaint moved for the entry of an order to cease and desist, and the hearing examiner thereupon closed the case for the reception of evidence. Thereafter, respondents appeared by counsel and, with counsel supporting the complaint, entered into a stipulation as to the facts which provided that the statement as to the facts contained in such stipulation should be deemed to be the facts in this proceeding and, under which stipulation, counsel for respondents waived all further proceedings and consented to issuance forthwith of an initial decision. Such stipulation was approved by the hearing examiner and received into the record and on August 26, 1952, the hearing examiner filed his initial decision.

The Commission, having reason to believe that the initial decision did not constitute an appropriate disposition of the proceeding, placed this case on the Commission's own docket for review and on March 2, 1953, it issued and thereafter served upon the respondents its order affording the respondents an opportunity to file with the Commission an appropriate memorandum or brief setting forth any objections they might have to altering the initial decision in the manner and to the extent shown in the tentative decision attached to said order. No memorandum or brief having been filed by or on behalf of respondents pursuant to such leave, this 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 inter-

est 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 National Educators, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania. Respondents Leonard Melley and Lawrence Melley are President and Treasurer, and Secretary, respectively, thereof. Respondent Leonard Melley has dominant control of the advertising policies and business practices and activities of said corporate respondent. Respondents' principal office and place of business is located at 229 North Washington Avenue, Scranton 3, Pennsylvania.

Respondent Lawrence Melley did not participate in the formulation of the policies of said business and exercised no control over the management or conduct thereof, his activities being confined to general clerical and office work. The complaint will therefore be dismissed as to him in his individual capacity, and the term "respondents," as used hereinafter, does not include him in such individual capacity.

PAR. 2. For more than two years prior to June, 1952, respondents were engaged in the sale and distribution of a combination offer of a 10-volume set of the New Standard Encyclopedia and the Quarterly Loose Leaf Extension Service supplements thereto, published under the name of "World Progress." Respondents caused said encyclopedia and supplements, when sold, to be shipped from Columbia, Missouri, the place of printing of the former, or from Chicago, Illinois, the place of business of Standard Education Society, their publisher, to the purchasers thereof at their respective residences located in States other than those from which such shipments were made. Respondents ceased operating said business sometime in June, 1952, and have not engaged in any of the practices herein set forth since that time.

There was, at all times during the period mentioned above, a constant course of trade in said books sold by respondents between and among the various States of the United States. Respondents' volume of business in said commerce has been substantial.

PAR. 3. In connection with the sale and distribution of the said encyclopedia and supplements thereto, and as an inducement for the purchase thereof by members of the public, the respondents, for several years prior to the discontinuance of business, as aforesaid, were using a plan or scheme for selling their encyclopedia and supplements substantially as follows:

Respondents' agents called upon doctors, nurses, and other professional persons in hospitals and elsewhere stating and representing that, because of their professional standing, they were being offered a 10-volume set of the New Standard Encyclopedia free, thus indicating that said offer was made only to selected individuals; that said offer was made solely for advertising purposes; or that they would receive the encyclopedia free if, within thirty (30) days or within some other specified time, they were to furnish a letter recommending said encyclopedia or giving their opinion thereof; or that they would obtain a set of said encyclopedia free if they purchased the Quarterly Loose Leaf Extension Service Supplement thereto for 10 years at \$9.95 or some approximate amount per year; that only the supplement was being sold and that the encyclopedia was free and that the sum of \$99.50 was the total amount required to be paid.

Respondents, in some instances, sent sets of their encyclopedia to persons who had not contracted to buy same and then endeavored to enforce payment for them by stating that they were legally obligated to pay therefor, or otherwise.

PAR. 4. Respondents' aforesaid statements have been false, deceptive and misleading. In truth and in fact, respondents did not furnish a set of the encyclopedia free to anyone for advertising purposes, for a letter of recommendation thereof or an expression of opinion with respect thereto, or for any other reason. Neither was the encyclopedia furnished free when the supplement was purchased for \$99.50 or any other amount since such amount was the regular price charged for the combination of the encyclopedia and the supplement and the price for the encyclopedia was included in the price charged for said combination. The offer was not limited to any particular persons or group of persons, but said combination was available for purchase by any person who was willing to pay the regular price therefor. The \$99.50, or approximate amount, charged for the combination of the encyclopedia and supplement was not the total amount required to be paid. In addition, the amount of \$1.85 per year for 10 years was charged allegedly for mailing expense of the supplement, which fact was not made known to purchasers prior to the time the sale was consummated.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations disseminated, as aforesaid, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations were true and has induced a substantial portion of the purchasing public to purchase said New Standard Encyclopedia and supplements because of such erroneous and mistaken belief.

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## CONCLUSION

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

## ORDER

*It is ordered,* That the respondent National Educators, Inc., a corporation, its officers, and respondent Leonard Melley, individually and 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 offering for sale, sale and distribution of encyclopedias, or any other publications, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(1) That any of said publications are free or in any sense a gratuity when in fact payment therefor is included in the total price to be paid by the purchaser.

(2) That any of said publications are given to purchasers as an advertising plan or otherwise, in return for endorsements from such purchasers, when such is not a fact.

(3) That any offer is made only to selected individuals.

(4) That a certain sum is the entire cost of said publications, when any additional amount is required to be paid.

*It is further ordered,* That the respondent National Educators, Inc., a corporation, its officers, and respondent Leonard Melley, individually and 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 offering for sale, sale and distribution of encyclopedias, or any other publications, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from attempting to enforce payment for their publications when no agreement has been made to purchase them.

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

*It is further ordered,* That respondents, National Educators, Inc., and Leonard Melley, 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 the terms of this order.



## Syllabus

IN THE MATTER OF  
PRUVO PHARMACAL COMPANY 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 5778. Complaint, May 19, 1950—Decision, May 15, 1953*

The terms "arthritis" and "rheumatism" are general terms, sometimes used interchangeably, which refer to any of a number of diseases or pathological conditions including, among others, neuritis, sciatics, neuralgia, gout, fibrositis, bursitis, rheumatoid arthritis, osteoarthritis, rheumatic fever and infectious arthritis, all of which are characterized by one or more of such symptoms or manifestations as pain, stiffness, and inflammatory and destructive changes in the joints and tissues of the body.

The various pathological conditions generally referred to as "arthritis" and "rheumatism" progress and develop differently. Likewise, they require different treatment, which will vary not only between different types of such ailments, but between different stages in the progress thereof. An adequate, effective, or reliable treatment for any kind of "arthritis" or "rheumatism" must, therefore, be predicated upon individual diagnosis, in order to determine whether the patient has arthritis or rheumatism, the particular kind of such ailment present, and whether it arose from a known or an unknown cause.

An adequate, effective, or reliable treatment for any of the various types of ailments included in the general terms "arthritis" and "rheumatism" may involve application of various therapeutic measures, including diet, rest or change of occupation, various types of physiotherapy such as orthopedic or thermal procedures, surgery, and medication; and delay of needed treatment may result in irreparable crippling, especially in those forms of arthritis and rheumatism known to be caused by specific infections.

There is no drug, or combination of drugs, regardless of how administered, which will constitute an adequate, effective, or reliable treatment for any of the various forms of arthritis or rheumatism, nor is there any drug or combination of drugs which can restore to normal the pathological changes which result from any arthritic or rheumatic ailment.

Where a corporation and the three individuals controlling it, engaged in the interstate sale and distribution of their medicinal preparation "Pruvo," the only therapeutic, operative ingredient of which was acetylsalicylic acid, commonly known as aspirin; in advertising in newspapers and otherwise—

(a) Represented falsely, directly and by implication, that said Pruvo, taken as directed by those suffering from all kinds of arthritis, rheumatism, and neuritis, would result in benefits in excess of those afforded by an analgesic and antipyretic, including reduction of swelling and freeing joints of stiffness; would quickly and completely relieve all pains of arthritis, rheumatism, and neuritis; and was a remarkable new medical discovery;

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The facts being that the calcium succinate content of the preparation has no value in the treatment of said conditions for the reason that when administered orally, succinates, as such, never reach the bloodstream; and acetylsalicylic acid or aspirin, its only therapeutic operative ingredient, an analgesic and antipyretic; would afford only temporary relief from pain;

- (b) Falsely represented that, by taking said Pruvo as directed, persons afflicted with arthritis, rheumatism, and neuritis would be able to resume their normal living and usual occupations; and
- (c) Represented that said Pruvo was safe and might be taken by practically anyone without stomach upset or other unfavorable reactions; notwithstanding the fact that under certain circumstances, or when taken over prolonged periods of time, said product, by virtue of its aspirin content, might be harmful or toxic;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby into the purchase of substantial quantities of said product; and with capacity and tendency so to mislead and deceive:

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

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

*Mr. Joseph Callaway* for the Commission.

*Mr. Charles H. Rowan*, of Milwaukee, Wis., 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 Pruvo Pharmacal Company, a corporation and Harry L. Williams, Neal Williams, individually and as officers of Pruvo Pharmacal Company and M. Seibert, individually and as a director 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 Pruvo Pharmacal Company is a corporation organized under the laws of the State of Wisconsin with its office and principal place of business located at 322 E. Michigan Street, Milwaukee, Wisconsin.

Respondents, Harry L. Williams, Neal Williams and M. Seibert are respectively the President, Vice-President and Director of Pruvo Pharmacal Company and have offices and place of business at 322 E. Michigan Street, Milwaukee, Wisconsin. The said individual re-

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## Complaint

spondents are now, and at all times mentioned herein have been in control of the management, policy and operation of Pruvo Pharmacal Company, particularly in respect to the acts, practices, and methods herein alleged.

PAR. 2. Respondents are now, and have been for more than six months last past, engaged in the business of selling and distributing a certain drug product as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for the said product and the formula and directions for use thereof are as follows:

Designation: Pruvo.

Formula: Each tablet contains 3 grains calcium succinate and 4 grains of acetylsalicylic acid, plus excipients.

Directions: Dose: 2 to 4 tablets 4 times a day before meals and bed time with a glass of water until acute pains are relieved, then 8 tablets a day (2 before meals and 2 at bed time) with water, for 2 or 3 months, or until pains disappear; then the dose can be reduced to one tablet 4 times a day as above for 2 or 3 months more. In severe cases of arthritis or rheumatism better relief may result if 6 tablets are taken 4 times a day.

PAR. 3. Respondents cause their said product, when sold, to be transported from their place of business in the State of Wisconsin to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in the said product in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial.

PAR. 4. In the course and conduct of their business the respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning their product by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce directly or indirectly, its purchase, including but not limited to:

Advertisements inserted in the following newspapers:

Milwaukee Sentinel, Milwaukee, Wisconsin—Issues of August 1, September 7, 1949, and January 9, 1950.

Grand Rapids Herald, Grand Rapids, Michigan—Issue of October 24, 1949.

Free Press, Detroit, Michigan—Issue of November 8, 1949.

The Fargo Forum, Fargo, North Dakota, Issue of November 1, 1949.

Rocky Mountain News, Denver, Colorado, Issue, November 8, 1949.

Respondents have also disseminated and caused the dissemination of the advertisements referred to above for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of Pruvo in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Through the use of the said advertisements respondents have made, directly and by implication, the representations shown in the following subparagraphs identified as (a) to (e), inclusive. The said advertisements, by reason of said representations, are misleading in material respects and constitute false "advertisements" as that term is defined in the Federal Trade Commission Act by reason of the true facts which are set forth in subparagraphs (1) to (6), inclusive.

(a) That Pruvo, taken as directed, by those suffering from all kinds of arthritis, rheumatism and neuritis will result in benefits in excess of those afforded by an analgesic and antipyretic, among these being reduction of swelling and freeing joints of stiffness.

(1) Pruvo, however, taken, will not result in benefits to those suffering from arthritis, rheumatism and neuritis in excess of those afforded by an analgesic and antipyretic. Its use will not reduce swelling or free joints of stiffness.

(b) That Pruvo, taken as directed, will quickly and completely relieve all pains of arthritis, rheumatism and neuritis.

(2) Pruvo, however taken, will not quickly or completely relieve all pains of arthritis, rheumatism or neuritis. The aches, pains and discomforts incident to these ailments may be of such a nature that they will be in no way alleviated by the use of Pruvo, however taken, and in other cases the relief afforded will be limited to such a degree of temporary and partial analgesic and antipyretic effects as its aspirin content may afford in the individual case.

(3) The effect of Pruvo, when used in any of the ailments mentioned aforesaid, is limited to temporary and partial relief of minor aches and pains and fever.

(c) That Pruvo is a remarkable new medical discovery.

(4) Neither the composition or effects of Pruvo can be properly characterized as remarkable.

(d) That by taking Pruvo, as directed, persons afflicted with arthritis, rheumatism and neuritis will be able to resume their normal living and usual occupations.

(5) Persons afflicted with these ailments so severely as to interfere with either their normal habits of life or their ability to carry on their regular occupations will not be enabled to resume such habits or occupations by using said preparation.

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(e) That Pruvo is safe and may be taken by practically anyone without stomach upset or other unfavorable reactions.

(6) Pruvo contains aspirin and cannot be taken with safety and impunity by persons who are adversely affected by said drug. Its use may cause stomach upset and other unfavorable reactions.

PAR. 6. The use by respondents of the aforesaid false advertisements had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations and statements contained therein were true and into the purchase of substantial quantities of Pruvo by reason of said erroneous and mistaken belief.

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

## 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 May 19, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive practices in commerce in violation of the provisions of said Act. After the issuance of said complaint, counsel supporting the complaint and counsel for respondents, on July 28, 1950, entered into a stipulation, thereafter amended by a further stipulation on August 21, 1951, and subsequently supplemented by another stipulation on January 2, 1952, wherein it was agreed that the evidence in support of and in opposition to the complaint in the matter of Rhodes Pharmacal Company, Inc., et al., Docket No. 5691, and the testimony of Dr. Herman H. Tillis in the matter of Dolcin Corporation et al., Docket No. 5692, together with the statement of facts recorded in said stipulations, should constitute the record in the instant proceeding. It was further stipulated and agreed that when the Commission should have completed its adjudication in the two proceedings cited, the hearing examiner might, without any intervening procedure, issue his initial decision. Thereafter the hearing examiner, in accordance with the said stipulations, on December 18, 1952, filed his initial decision herein.

The Commission, having reason to believe that the initial decision did not constitute an adequate disposition of the matter, on January 29, 1953, issued and thereafter served upon the parties its order placing this case upon the Commission's own docket for review. Thereafter

the Commission, having considered the entire record and having prepared a tentative decision, caused copies of said decision to be served upon respondents, together with its order, issued on March 24, 1953, granting leave to respondents to file within twenty days after service thereof, objections to the changes in the hearing examiner's initial decision as shown by the said tentative decision. Thereafter the proceeding came on for final consideration by the Commission upon the record herein on review, including a memorandum of objections to the tentative decision filed on April 17, 1953, by counsel for respondents, and the Commission, having duly considered the matter, including the said memorandum of objections, 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 FACTS

PARAGRAPH 1. Respondent Pruvo Pharmacal Company is a corporation organized under the laws of the State of Wisconsin, with its office and principal place of business located at 322 E. Michigan Street, Milwaukee, Wisconsin.

Respondents Harry L. Williams, Neal Williams, and M. Seibert, are, respectively, the President, Vice-President, and Director of Pruvo Pharmacal Company and have offices and place of business at 322 E. Michigan Street, Milwaukee, Wisconsin. The said individual respondents are now, and at all times mentioned herein have been, in control of the management, policy, and operation of Pruvo Pharmacal Company, particularly in respect to the acts, practices, and methods herein found.

PAR. 2. Respondents are now, and have been for more than six months last past, engaged in the business of selling and distributing a certain drug product, as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for the said product and the formula and directions for use thereof are as follows:

*Designation:* "Pruvo."

*Formula:* Each tablet contains 3 grains calcium succinate and 4 grains of acetylsalicylic acid, plus excipients.

*Directions:* Dose: 2 to 4 tablets four times a day before meals and bed time with a glass of water until acute pains are relieved, then 8 tablets a day (2 before meals and 2 at bed time) with water, for 2 or 3 months, or until pains disappear; then the dose can be reduced to one

tablet 4 times a day as above for 2 or 3 months more. In severe cases of arthritis or rheumatism better relief may result if 6 tablets are taken 4 times a day.

PAR. 3. Respondents cause their said product, when sold, to be transported from their place of business in the State of Wisconsin to purchasers located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in such commerce is substantial.

PAR. 4. In the course and conduct of their business, the respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning their product by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, its purchase, including, but not limited to, advertisements inserted in the following newspapers:

Milwaukee Sentinel, Milwaukee, Wisconsin, Issues of August 1, September 7, 1949, and January 9, 1950.

Grand Rapids Herald, Grand Rapids, Michigan, Issue of October 24, 1949.

Free Press, Detroit, Michigan, Issue of November 8, 1949.

The Fargo Forum, Fargo, North Dakota, Issue of November 1, 1949.

Rocky Mountain News, Denver, Colorado, Issue of November 8, 1949.

Respondents have also disseminated and caused the dissemination of the advertisements referred to above for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of Pruvo in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Through the use of the said advertisements, respondents have made, directly and by implication, the representations shown in the following subparagraphs identified as (a) to (e) inclusive:

(a) That Pruvo, taken as directed by those suffering from all kinds of arthritis, rheumatism and neuritis, will result in benefits in excess of those afforded by an analgesic and antipyretic, among these being reduction of swelling and freeing joints of stiffness;

(b) That Pruvo, taken as directed, will quickly and completely relieve all pains of arthritis, rheumatism, and neuritis;

(c) That Pruvo is a remarkable new medical discovery;

(*d*) That by taking Pruvo, as directed, persons afflicted with arthritis, rheumatism, and neuritis will be able to resume their normal living and usual occupations;

(*e*) That Pruvo is safe and may be taken by practically anyone without stomach upset or other unfavorable reactions.

PAR. 6. The terms "arthritis" and "rheumatism" are general terms, sometimes used interchangeably, which refer to any of a number of diseases or pathological conditions including, among others, neuritis, sciatica, neuralgia, gout, fibrositis, bursitis, rheumatoid arthritis, osteoarthritis, rheumatic fever and infectious arthritis, all of which are characterized by one or more of such symptoms or manifestations as pain, stiffness, and inflammatory and destructive changes in the joints and tissues of the body.

The term "neuritis" means inflammation of a nerve, which may be attended by pain, paralysis and degeneration of the nerve substance. This condition is produced by many causes, such as localized infection, creating toxic substances in the system; toxic acidity from the use of various drugs; deprivation of certain chemical substances or vitamins; metabolic disturbances connected with diabetes; and infection of a nerve by various germs, such as that which causes syphilis.

PAR. 7. The various pathological conditions generally referred to as "arthritis" and "rheumatism" progress and develop differently. Likewise, they require different treatment, which will vary not only between different types of such ailments, but between different individuals suffering from the same ailment, and between different stages in the progress thereof. An adequate, effective, or reliable treatment for any kind of "arthritis" or "rheumatism" must, therefore, be predicated upon individual diagnosis, in order to determine whether the patient has arthritis or rheumatism, the particular kind of such ailment present, and whether it arose from a known or an unknown cause. Such a diagnosis may require any or all of the following determinations:

1. History of the patient, including information as to age, sex, marital status, occupation, chronology of the present ailment; family history, such as age and cause of death of parents and relatives; any illnesses from which the patient may have suffered previously, particularly rheumatic fever, scarlet fever and streptococcus infections;

2. Detailed physical examination of every part of the patient's anatomy; and

3. Laboratory examination, such as blood count, serological test for syphilis, urinalysis, and certain other tests as they may seem useful in the individual case, such as X-ray and analysis of fluids in individual joints.



PAR. 8. An adequate, effective, or reliable treatment for any of the various types of ailments included in the general terms "arthritis" and "rheumatism" may involve application of various therapeutic measures, including diet; rest or change of occupation; various types of physiotherapy, such as orthopedic or thermal procedures; surgery; and medication. Delay of needed treatment may result in irreparable crippling, especially in those forms of arthritis and rheumatism known to be caused by specific infections. There is no drug, or combination of drugs, regardless of how administered, which will constitute an adequate, effective, or reliable treatment for any of the various forms of arthritis or rheumatism, nor is there any drug or combination of drugs which can restore to normal the pathological changes which result from any arthritic or rheumatic ailment.

PAR. 9. The calcium succinate content of the drug preparation "Pruvo" has no significant therapeutic value in the treatment of arthritic or rheumatic conditions, for the reason that, when administered orally, as specified in the directions for taking Pruvo, succinates are converted to sugar by the liver, and, as succinates, never reach the bloodstream. The only ingredient contained in Pruvo which possesses active analgesic properties is acetylsalicylic acid, the use and effect of which, as an analgesic and antipyretic, has been known for many years. Acetylsalicylic acid has for many years been sold throughout the United States as an analgesic under the name "aspirin." Accordingly, the drug preparation "Pruvo" does not constitute a new medical discovery. The analgesic effect of this salicylate, in the amount contained in the drug preparation "Pruvo," upon the aches, pains and discomforts of arthritic or rheumatic conditions is temporary. Accordingly, such drug preparation is neither a remarkable nor a new discovery.

PAR. 10. Since the only therapeutically operative ingredient in the drug preparation "Pruvo" is acetylsalicylic acid, commonly known as aspirin, and since, under certain circumstances, or when taken over prolonged periods of time, aspirin may produce harmful effects upon the body, the drug preparation "Pruvo" may be toxic to the same extent, and cannot be taken over prolonged periods of time without the danger of such harmful effects, nor can such preparation be taken safely by persons adversely affected by aspirin.

PAR. 11. The drug preparation "Pruvo," however taken, will not constitute an adequate, effective, or reliable treatment for any arthritic or rheumatic condition, including neuritis, nor will said preparation arrest the progress, correct the underlying causes, or effect a cure of any of such conditions. The drug preparation "Pruvo," however taken, will not ameliorate the aches, pains and discomforts of any

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arthritic or rheumatic condition to any extent beyond the temporary relief thereof afforded by its salicylate content as an analgesic and antipyretic. The drug preparation "Pruvo," however taken, will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition, and will afford temporary relief of only minor aches, pains and discomforts. With the exception of such temporary relief, the drug preparation "Pruvo" cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition, including neuritis. Persons forced by such ailments to discontinue their normal habits of living or their usual occupations will not be enabled, by taking the drug preparation "Pruvo," to resume such habits or occupations.

PAR. 12. Respondents' representations concerning the drug preparation "Pruvo," as hereinbefore found, are false and misleading in material respects, have had the capacity and tendency to mislead and deceive, and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and into the purchase of substantial quantities of said drug preparation as a result thereof; and constitute false advertisements within the intent and meaning of the Federal Trade Commission Act.

## CONCLUSION

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

## ORDER

*It is ordered,* That the respondent Pruvo Pharmacal Company, a corporation, and its officers, and respondents Harry L. Williams and Neal Williams, individually and as officers, and respondent M. Seibert, individually and as a Director, of said corporation, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the drug preparation "Pruvo," or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is

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defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

(a) That the taking of said preparation by those suffering from arthritis, rheumatism, neuritis, or any other kind of arthritic or rheumatic condition, will reduce swelling or free joints of stiffness, or will result in any therapeutic benefits in excess of those afforded by an analgesic or antipyretic;

(b) That the taking of said preparation will quickly or completely relieve all pains of arthritis, rheumatism, neuritis, or any other kind of arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations thereof, in excess of affording temporary relief of minor aches, pains, or fever;

(c) That said preparation is a remarkable or new medical discovery;

(d) That persons afflicted with arthritis, rheumatism or neuritis so severely that such afflictions interfere with their normal habits of living or their ability to carry on their usual occupations will be enabled, by taking the drug preparation "Pruvo," to resume such normal living habits or usual occupations;

(e) That the drug preparation "Pruvo" may safely be taken by persons adversely affected by aspirin.

2. Disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said drug preparations, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

*It is further ordered,* That the respondents 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.

Commissioner HOWREY not participating.