IN THE MATTER OF

RUGS OF THE BLIND, INC., ET AL.

DECISION AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 6022. Complaint, Aug. 5, 1952—Decision, July 26, 1953

Where a corporation and its officers, engaged in the purchase from the Pennsylvania Association for the Blind of rugs woven by the blind, on hand looms, representing from 20 percent to 25 percent of their total sales volume, and, from a rug mill, of machine-made rugs, the fringes of which were knotted or tied by blind persons in their homes or in the workships of said Association; and in selling both types of rugs through door-to-door salesmen, whom they supplied with identification cards, order blanks, and advertising booklets which disclosed that some of said products were not made entirely by the blind, and with kits of samples of both types of rugs which contained no disclosure that some were not made by the blind—

(1) Represented through statements of said solicitors that all the rugs sold by them were made by blind persons, when in fact only a minor portion of them were so made and it was very doubtful whether aforesaid advice or statements in order blanks and advertising booklets came to the attention of any substantial number of prospective purchasers; and

(2) Represented also through use of their corporate name "Rugs of the Blind, Inc." that all of their rugs were thus made in their entirety, when in fact in the case of some, as above noted, only the fringe thereof was knotted by blind persons;

With tendency and capacity to mislead and deceive a substantial portion of the public with respect to said rugs, and thereby induce its purchase thereof, whereby substantial trade was unfairly diverted to them from their competitors:

Held, That such acts and practices were all to the prejudice of the public and respondents' competitors, and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce.

Before *Mr. William L. Pack*, hearing examiner.
Mr. J. W. Brookfield, Jr., for the Commission.
Smith, Ristig & Smith, of Washington, D. C., for respondents.

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 July 26, 1953, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 5, 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 methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of the Act. After the filing by respondents of their answer to the complaint, hearings were held, at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by the hearing examiner on the complaint, answer, testimony and other evidence, proposed findings and conclusions submitted by counsel, and oral argument of counsel; and the hearing examiner, having duly considered the matter, 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 Rugs of the Blind, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located in the city of Easton, Pennsylvania. Respondent Moses J. Miller is president of the corporation. He owns all of its capital stock, and formulates all of its policies and directs and controls all of its activities and practices.

While respondents Bernard M. Goodman and Frances Testa are officers of the corporation, they have no part in the actual operation of the business, nor in the formulating of its policies. A motion has been filed by these individuals seeking dismissal of the complaint as to them. It is concluded that the complaint should be dismissed as to these respondents in their individual capacities, but not in their capacities as officers of the corporation. The term "respondents," as used hereinafter, will therefore include the respondent corporation, respondent Moses J. Miller both in his individual capacity and as an officer of the corporation, and respondents Bernard M. Goodman and Frances Testa in their capacities as officers of the corporation.

PAR. 2. Respondents are engaged in the sale and distribution of rugs, causing their rugs, when sold, to be transported from their place of business in the State of Pennsylvania to purchasers located in various other States of the United States. Respondents maintain a substantial course of trade in their rugs in commerce between and among various States of the United States.

PAR. 3. In the sale and distribution of their rugs, respondents are in substantial competition with other corporations and individuals engaged in the sale and distribution of rugs in commerce between and among various States of the United States.

PAR. 4. The rugs sold by respondents fall into two general categories: first, rugs which are made entirely by blind persons, these rugs being woven on hand looms operated by such persons. All of these rugs are made in the workshops of the Northampton County Branch of the Pennsylvania Association for the Blind; second, machine-made rugs manufactured by a rug mill in Easton, Pennsylvania. The only connection blind persons have with these rugs is that they knot or tie the fringes which are affixed to the rugs by the mill.

Some of this knotting and tying work is done in the workshops of the Northampton County Branch of the Pennsylvania Association for the Blind. Much of it, however, is done by blind persons in their own homes. The rug mill delivers the rugs to the homes of such workers, and later picks up the rugs after the fringes have been knotted. Respondents do no manufacturing, but purchase all of their rugs from the two sources named, the blind-made rugs from the Northampton County Branch of the Pennsylvania Association for the Blind, and the machine-made rugs from the rug mill.

The blind-made rugs, designated by respondents as "Colonial" rugs, represent from 20 percent to 25 percent of respondents' total sales volume. The remainder of the sales are of the machine-made rugs. Respondents' purchases of the blind-made rugs appear to have been of substantial benefit to the Northampton County Branch of the Pennsylvania Association for the Blind, and through this organization, to the blind. During the period from September 1949 to November 1952, respondents purchased 26,752 rugs from the Branch, paying therefor $55,758. These purchases represented approximately 68 percent of the rug production of the institution. As a result of respondents' purchases, the Branch has been able to supply employment to an increased number of blind persons, 37 of such persons being now employed as against 14 prior to the time respondents began their purchases. Respondents pay for the rugs the same prices as those charged other wholesale purchasers, and in reselling the rugs respondents maintain the same retail prices as those charged by the Branch.

Blind persons knotting the fringes on the machine-made rugs are compensated at the rate of 10 cents per rug. The average blind worker can knot some 4 or 5 rugs per hour.

PAR. 5. Sales of respondents' rugs are made through door-to-door solicitation by salesmen or solicitors. Respondents advertise for "District Distributors," and those persons adjudged by respondents to be suitable are given contracts covering certain specified territories. The district distributor then proceeds to organize a crew of salesmen who work the designated territory. Frequently the district distributor, before he is given a contract, is required to work as a salesman himself for a period of time in order to determine whether he is capable of producing enough business to warrant his being given a contract. When a salesman obtains an order for a rug, he collects from the customer a specified amount as a deposit, which he retains as his commission. The orders are turned over to the district distributor, who, at regular intervals, forwards them to respondents. The rugs are shipped by respondents to the customers by parcel post C. O. D. The district distributor receives a specified amount on each sale made in his territory, plus the customary salesman's commission on any orders which he may obtain personally.

Respondents, through the district distributors, supply each salesman with an identification card, order blanks, an advertising booklet, and a sample kit. The identification card, which is signed by the district distributor, states that the person whose name appears thereon "is authorized to accept orders for and collect deposits for products of Rugs of the Blind, Inc. only as specified on its official order blank." The order blank prominently displays the name of the corporate respondent, "Rugs of the Blind, Inc." It also carries in fairly heavy type the words "Rugs Woven by the Blind on Hand Looms," and in somewhat smaller type the words "Machine-made Rugs Knotted by Blind Workers." The advertising booklet, which is frequently shown to the prospective customer by the salesman, displays rather prominently the corporate name "Rugs of the Blind, Inc." On the first page are the words "Distributors of Rugs Woven by the Blind on Hand Looms, and of Chenille Rugs With Fringes Knotted by Blind Workers." The booklet also contains, in addition to pictures of the several rugs, pictures of blind workers weaving the Colonial, or blind-made, rugs, and knotting fringes on the machine-made rugs.

(A more recent edition of the booklet gives somewhat more definite information regarding the two classes of rugs. The first page of this booklet displays prominently the words "Rugs Woven by the Blind on Hand Looms—Machine-made Rugs Knotted by Blind Workers." On the third page there appears, under the caption "Colonial Rugs," the following: "These rugs are hand woven by highly skilled blind personnel on hand looms * * *," and under the caption "Palace, Mayfair, Boyd and Roxy Rugs," the following: "These rugs are machine made and the fringes have been knotted by blind persons * * *." Under the pictures of the various rugs there appears, in rather small type, a statement as to the origin of the rug. Under the picture of the Colonial rug, the statement is, "This rug is hand woven entirely by the blind and carries a label of such identification," while under the pictures of the other rugs the statement is, "This rug is machine made and the fringes have been knotted by blind workers.")

The sample kit contains samples of the various rugs, both blind-made and machine-made, and a "Guarantee and Identification Certificate" reading in part as follows: "We certify that the Colonial Rugs are Handwoven on Handlooms by blind weavers * * *" and "We Further Certify that the Boyd, Mayfair, Palace, and Roxy rugs are made by sighted workers, and the fringes tied by blind workers * * *."

PAR. 6. The first issue raised by the complaint is whether solicitors selling respondents' rugs have represented to prospective purchasers that all of such rugs are made by blind persons. Some ten members of the public, practically all of them housewives, testified on this issue. While the testimony of the witnesses varies in detail, and while the rugs purchased by some of them were of the type which had in fact been made entirely by blind persons, the testimony establishes that in a substantial number of instances representations have been made by solicitors to the effect that all of respondents' rugs are made by the blind. These representations were, of course, unwarranted and misleading, as only a minor portion of the rugs are so made.

PAR. 7. The complaint also attacks the corporate name "Rugs of the Blind, Inc.," charging that the name is itself false and misleading. It seems clear that the name does constitute a representation that respondents' rugs are made by the blind. The representation is true with respect to the Colonial rugs, which are blind-made in their entirety, and if all of respondents' rugs were of that type the use of the corporate name would be unobjectionable. The name, however, is untrue and misleading as to all of the other rugs, because the only work the blind do on these rugs is to knot the fringes. The corporate name being thus partly true and partly false, the question of the appropriate remedy is a difficult one. Trade and corporate names are valuable business assets, and should not be prohibited absolutely if less drastic measures will suffice (*Jacobs Siegel Company* v. *F. T. C.*, 327 U. S. 608).

It is very doubtful that the statements appearing on respondents' order blank and in the advertising booklet indicating that some of the rugs are not made by the blind come to the attention of any substantial number of prospective purchasers. The most important and significant part of the salesman's equipment, the sample kit, is, from a practical viewpoint, virtually barren of any such information. True, the kit does contain a certificate to the effect that certain of the rugs are made by sighted persons, but, as in the case of the sales material referred to above, it is very doubtful that the certificate comes to the attention of the public. The samples of the rugs themselves, which are the important part of the sample kit, contain no disclosures whatever. The only information shown on the samples is simply the name of the rug, as "Colonial," "Mayfair," etc., together with the color. It is from the samples that the housewife buys, and the danger of confusion and deception could, for all practical purposes, be virtually eliminated if there appeared on each sample a clear and conspicuous statement as to the origin of the rug, as, for example, "Machine-made Rug—Fringes Knotted by Blind Workers."

It is concluded that in the circumstances here existing, an absolute prohibition against the use of the corporate name is unnecessary and would not be warranted; that reasonably adequate protection of the public and of respondents' competitors can be accomplished by the less drastic means outlined above.

PAR. 8. It is urged by respondents that the solicitors selling their rugs are not their agents or employees, and that respondents are therefore not responsible for any misrepresentations made by the solicitors to the public. In support of this contention, respondents point out that under the terms of the written contract entered into by them with the district distributors, such persons are "independent contractors," and that the district distributors employ their own solicitors; that respondents exercise no supervision or control over the solicitors with respect to hours of work or other details of their employment; and that no deductions are made by respondents from the commissions of solicitors or district distributors for income tax purposes or for unemployment compensation.

This contention is rejected as untenable. Respondents cannot be permitted to supply to solicitors all of the means used by them in making sales, including the use of respondents' corporate name, and to reap the benefit of the solicitors' efforts, and at the same time, escape all responsibility for the solicitors' misrepresentations.

PAR. 9. There is a preference on the part of a substantial portion of the public for purchasing products made by blind persons as distinguished from products not so made.

PAR. 10. While the complaint referred to toilet lid covers as well as rugs, there is an almost complete absence of evidence with respect to such products. Apparently these products constitute no more than a negligible part of respondents' business. Certainly there is no substantial evidence in the record as to misrepresentations by solicitors with respect to such products, and the corporate name "Rugs of the Blind, Inc." would have no significance in connection with such products.

PAR. 11. The acts and practices of respondents, as described above, have the tendency and capacity to mislead and deceive a substantial portion of the public with respect to respondents' rugs, and the tendency and capacity to cause such portion of the public to purchase respondents' rugs as a result of the erroneous and mistaken belief so engendered. In consequence, substantial trade has been unfairly diverted to respondents from their competitors.

CONCLUSION

The acts and practices of the respondents, as hereinabove set forth, are all to the prejudice 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.

ORDER

It is ordered, That respondent Rugs of the Blind, Inc., a corporation, and its officers, and respondent Moses J. Miller, individually and as officer of said corporation, and respondents Bernard M. Goodman and Frances Testa, as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of rugs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as having been made by blind persons any rug which has not in fact been so made.

2. Using the corporate name "Rugs of the Blind, Inc.," or any other corporate or trade name containing the word "Blind," in connection with any rug not made by blind persons: *Provided*, *however*, That in the case of a rug which, although not made by blind persons, has fringes which were knotted by such persons, such corporate or trade name may be used if there appears on the sample of such rug displayed to the public a clear and conspicuous statement as to the origin of such rug, as, for example, "Machine-made Rug—Fringes Knotted by Blind Workers."

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondents Bernard M. Goodman and Frances Testa in their individual capacities.

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 July 26, 1953].

IN THE MATTER OF

SAFEWAY STORES, INC.

Docket 5990. Complaint, May 14, 1952—Dismissal order, July 27, 1953

Charge: Knowingly receiving lower prices from sellers of grocery products of like grade and quality than said sellers charged respondent's competitors, in violation of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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

Mr. Edward S. Ragsdale, *Mr. Peter J. Dias*, and *Mr. Richard E. Ely* for the Commission.

Watson, Ess, Whittaker, Marshall & Enggas, of Kansas City, Mo., and *Orrick, Dahlquist, Harrington & Sutcliffe*, of San Franciso, Calif., for respondent.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

This matter having come on to be heard by the Commission upon the hearing examiner's certification to the Commission, on May 19, 1953, of respondent's motion to dismiss, memorandum in support thereof, answer thereto by counsel supporting the complaint, and the entire record in this proceeding, for such action thereon as the Commission may deem appropriate, and supplemental answer to respondent's motion to dismiss filed by counsel supporting the complaint and suplemental memorandum filed by respondent; and

It appearing that subsequent to the hearing examiner's certification of this matter to the Commission, the Supreme Court rendered its decision in the case of *Automatic Canteen Company of America* v. *Federal Trade Commission*, C. C. H. Trade Reg., Rep., Par 67,503 (June 8, 1953) [346 U. S. 61; 49 F. T. C. 1763], in which it held in substance that proof of a violation of subsection (f) of Section 2 of the Clayton Act must include proof that the buyer had knowledge that the lower prices he received or induced were not within one of the seller's defenses, such as cost justification, and it further appearing that counsel supporting the complaint are of the opinion that the evidence presently available is insufficient to prove the degree of knowledge on the part of the respondent in this case which is required by the said Supreme Court decision; and

The Commission having duly considered all the pertinent factors and being of the opinion that, under the circumstances, no useful purpose would be served by continuing this proceeding, but that dismissal of the complaint should be without prejudice, such disposition of this proceeding making it unnecessary to rule upon respondent's pending petition for rehearing on the decision of the Commission sustaining an appeal from a ruling of the hearing examiner granting in part and denying in part respondent's motion for a bill of particulars or more definite statement:

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

Commissioner Howrey not participating.

Syllabus

IN THE MATTER OF

CONNOLLY SHOE COMPANY

DECISION AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 6084. Complaint, Feb. 19, 1953—Decision, July 28, 1953

Where a corporate manufacturer of stock shoes for men designated as "Connolly Corrective Arch Shoes," and "Connolly Shoes-Amplifit Last," by means of labels on its shoes, newspaper mats, advertisements in magazine and catalogs of general circulation, and in leaflets and folders—

(1) Represented falsely, directly and by implication, through use of the words "orthopedic," "orthopedic features," "orthopedic heel," and "corrective arch," that its shoes were constructed in such a manner that their use would prevent and cure diseases and abnormalities of the feet, keep feet healthy, and were specially designed to prevent and correct deformities, diseases, and disorders of the feet;

(2) Represented falsely that the wearing of its "Connolly Corrective Arch Shoes" would restore foot health, keep ankles straight, correct and prevent aches and pains that shoot up the back of the leg and give instant relief, and keep healthy feet in good condition; that the metatarsal pad could be changed to meet individual requirements and insured comfort and helpfulness;

(3) Represented falsely that the steel shank in the shoes gave full and proper support to the arch, complete flexibility of the muscles, and freedom of action for the bones of the feet;

(4) Represented falsely that the shoes promoted foot ease and corrected abnormal conditions of the feet; and that certain features in the shoes took away the strains and jars of walking and helped to prevent the agony of tired, aching feet; and

(5) Represented falsely that its "Connolly Shoes—Amplifit Last" were especially conducive to comfort, gave balanced support, and helped to prevent pronation;

When in fact respondent's said shoes were merely stock shoes; while they contained some features not found in some other stock shoes, the effect of such features upon the feet in the prevention or correction of foot ailments or in aiding the natural development of the feet was of no consequence; and the characteristics of the "Connolly Shoes—Amplifit Last," instead of "balanced support," would tend to cause unbalanced support in the case of many wearers:

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

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

Mr. B. G. Wilson for the Commission.

Merchant & Merchant, of Minneapolis, Minn., for respondent.

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 July 28, 1953, the initial decision in the instant matter of hearing examiner Everett F. Haycraft, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 19, 1953, issued and subsequently served its complaint in this proceeding upon the respondent, Connolly Shoe Company, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. On March 23, 1953, respondent filed its answer in which answer it admitted all the material allegations of fact set forth in said complaint and reserved the right to submit proposed findings and conclusions of fact or of law under Rule XXI, and the right to appeal under Rule XXIII. Thereafter, the proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon said complaint and answer thereto, proposed findings and conclusions submitted by counsel in support of the complaint, no proposed findings having been filed by respondent although it was given an opportunity to do so. Said hearing examiner having duly considered the record herein finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Connolly Shoe Company, is a corporation organized and existing under and by virtue of the laws of the State of Minnesota with its office and principal place of business located at Stillwater, Minnesota.

PAR. 2. Respondent is now and has been for more than two years last past engaged in the manufacture, sale, and distribution in commerce of shoes for men, designated as "Connolly Corrective Arch Shoes," and "Connolly Shoes-Amplifit Last." They are sold by retail stores to any and all persons who desire them for their use.

PAR. 3. The respondent causes and has caused its said shoes when sold to be transported from its place of business in the State of Minnesota to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent maintains and at all times mentioned herein has maintained a course of trade in its said shoes in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in the sale of its said shoes in commerce is and has been substantial.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its said shoes, respondent has made various statements and representations concerning the nature and usefulness of its said shoes by means of labels on its shoes, newspaper mats, advertisements inserted in magazines and catalogs of general circulation, and in leaflets and folders. Among and typical of said statements and representations are the following:

> Scientific orthopedic features
>
> Orthopedic heel
>
> Get back the foot health of youth with . . . Connolly's corrective arch shoes.
>
> Corrective arch . . . keep ankles straight
>
> No more sore and tired feet. No more aches and pains that shoot up the back of the leg. Here are shoes and oxfords that give you instant relief. They are the best insurance, too, for keeping healthy feet in good condition . . . Connolly corrective arch shoes.
>
> The position of this movable metatarsal pad can be changed to meet any and all individual requirements.
>
> The scientific metatarsal pad . . . insures individual comfort and helpfulness.
>
> . . . steel shank gives full support to the arch, yet permits complete flexibility of the muscles and freedom of action for the bones of the feet.
>
> Fitted to the foot—The corrective arch shoe is designed to promote foot ease and to correct abnormal conditions of the arches. Its specifications are scientifically correct. Its distinctive features take away the strains and jars of walking and help to avoid the agony of tired, aching feet.
>
> These Amplifit styles are made with special orthopedic comfort—giving features, . . . gives balanced support and helps prevent pronation.

PAR. 5. Through the use of the words "orthopedic," "orthopedic features," "orthopedic heel," and "corrective arch" to describe its shoes as set forth above, respondent has represented directly and by implication that its said shoes are constructed in such a manner that their use will prevent and cure diseases and abnormalities of the feet, will keep the feet healthy, and are specially designed to, and will prevent and correct deformities, diseases, and disorders of the feet.

PAR. 6. The said representations are untrue. In truth and in fact the respondent's said shoes are merely stock shoes and are not orthopedic shoes or corrective shoes and are not so constructed as to prevent and they will not prevent or correct deformities, diseases, or disorders of the feet, and they will not keep the feet healthy.

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PAR. 7. Through the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented directly and by implication with respect to its "Connolly corrective arch shoes" that the wearing of said shoes will restore foot health, will keep the ankles straight, will correct or prevent sore and tired feet, will prevent aches and pains that shoot up the back of the leg and give instant relief; that the wearing of said shoes will keep healthy feet in good condition; that the metatarsal pad can be changed to meet individual requirements and insures comfort and helpfulness; that the steel shank in the shoes gives full or proper support to the arch, complete flexibility of the muscles and freedom of action for the bones of the feet; that said shoes promote foot ease and correct abnormal conditions of the feet; that certain features in said shoes take away the strains and jars of walking and help to avoid the agony of tired, aching feet.

The respondent has represented with reference to its "Connolly shoes—Amplifit Last" they are especially conducive to comfort, give balanced support, and help to prevent pronation.

PAR. 8. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact respondent's shoes are merely stock shoes made by quantity production methods and, while they contain some features not found in some other stock shoes, the effect of these features upon the feet in the prevention or correction of foot ailments or in the aiding of the natural development of the feet is of no significance.

The wearing of "Connolly corrective arch shoes" will not restore foot health nor keep the feet healthy, will not keep the ankles straight, will not correct or prevent sore and tired feet, and will not prevent nor give relief, instant or otherwise, to aches and pains that shoot up the back of the leg. A stock shoe will not relieve the above named conditions. The wearing of said shoe will not insure healthy feet nor keep them in good condition. The metatarsal pad in the said shoes cannot be changed sufficiently to meet any and all individual requirements or insure comfort and helpfulness, as said pad is not designed or constructed for any particular foot. The said steel shank in respondent's shoe will not correct or prevent defects, deformities, or abnormalities of the feet or the arches, nor will it properly support the arch. It will not permit complete flexibility of the muscles and freedom of action for the bones of the feet. The wearing of said shoes does not promote foot ease or correct abnormal conditions of the feet. There are no features in said shoes which in general will take away the strains and jars of walking, nor can said shoes be depended upon to avoid the agony of tired, aching feet.

There is nothing in the construction of respondent's "Connolly shoes—Amplifit Last" which is conducive to comfort, balanced support, or which will help prevent pronation. In fact, its characteristics will tend to cause unbalanced support in the case of many wearers.

PAR. 9. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to its shoes had had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

CONCLUSION

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

ORDER

It is ordered, That the respondent, Connolly Shoe Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of respondent's shoes designated "Connolly Corrective Arch Shoes" and "Connolly Shoes—Amplifit Last," or any other shoes of similar construction or performing similar functions irrespective of the designation applied thereto, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist:

(1) From using the words "Orthopedic," "Orthopedic Features," "Orthopedic Heel," or "Corrective Arch," or any other word or words importing a like or similar meaning, alone or in combination with any other word or words to describe or designate said shoes; or using any other word or words in any manner to represent, directly or by implication, that the use of respondent's shoes will prevent or correct deformities, diseases, or disorders of the feet, or will keep the feet healthy;

(2) From representing, directly or by implication, with respect to "Connolly Corrective Arch Shoes"—

(a) that the wearing of said shoes will restore foot health or keep the feet healthy, or will keep the ankles straight, will correct or prevent sore and tired feet, or will prevent or give relief to aches and pains that shoot up the back of the leg;

(b) that the wearing of said shoes will keep healthy feet in good condition;

(c) that the metatarsal pad in said shoes can be changed to individual requirements and insure comfort and helpfulness;

(d) that the steel shank in said shoes will fully or properly support the arch, or permit complete flexibility of the muscles and freedom of action for the bones of the feet;

(e) that the wearing of said shoes will promote foot ease or correct abnormal conditions of the feet;

(f) that the wearing of said shoes will take away the strains and jars of walking or the agony of tired, aching feet;

(g) that the use of respondent's shoes designated "Connolly Shoes—Amplifit Last" is conducive to comfort or will give balanced support, or will help prevent pronation.

ORDER TO FILE REPORT OF COMPLIANCE

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

IN THE MATTER OF

AMERICAN BILTRITE RUBBER COMPANY, INC.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF THE CLAYTON ACT, AS AMENDED

Docket 6042. Complaint, Sept. 8, 1952—Decision July 29, 1953

Where a corporation engaged in the manufacture of rubber and other products, including a line of rubber and composition heels and soles and other supplies and materials used in the shoe repair industry, and in the competitive interstate sale and distribution of said shoe products nationally to shoe manufacturers and to wholesalers of shoe repair materials, or, as generally known, shoe finders, by whom said products were resold to shoe repair men, retail shoe stores, and retailers of shoe repair and mantenance material;

In selling its said shoe products pursuant to its cumulative volume discount plan whereby it granted discounts, rebates, or allowances from its net selling prices (i. e., list prices less regular trade discount of 25 percent), beginning with 1 percent for a customer whose cumulative purchases during a year ranged from $3,000 to $5,000, 2 percent for such purchases in excess of $5,000, 2½ percent for those in excess of $7,500, and thereafter ranging in five successive steps from 3 percent to 5 percent for purchases ranging from $10,000 to those exceeding $35,000; and thereby in effect directly or indirectly reduced prices charged favored customers to a subtantially lower amount than those charged other customers—

Discriminated in price between different purchasers of its said shoe products of like grade and quality by selling the same to some of its shoe finder customers at higher prices than to other of its said customers, including among those thus favored, many who were engaged, in the various trading areas, in the resale of said products in competition with other shoe finders who purchased such products from it, and who were not thus favored:

Held, That such acts and practices, under the circumstances set forth, were in violation of the provisions of subsection (a) of Sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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

Mr. James I. Rooney and *Mr. James S. Kelaher* for the Commission.

Schneider, Bronstein & Shapiro, of Boston, Mass., *Sawyer & Marion*, of Washington, D. C., and *Mr. Herbert A. Lisle*, of New York City, for respondent.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monop-

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

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on July 29, 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.

Commissioner Howrey not participating and Commissioner Mason dissenting.

olies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on the 8th day of September, 1952, issued and subsequently served its complaint on the respondent named in the caption herein, charging it with violation of subsection (a) of Section 2 of the Clayton Act, as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, 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 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 respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law or that such acts and practices, if engaged in, would 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 respondent consents may be entered in final disposition of this proceeding, are as follows:

COMMISSION'S FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent American Biltrite Rubber Company, Inc., is a Massachusetts corporation with its office and principal place of business located at 22 Willow Street, Chelsea, Massachusetts. Prior to August 21, 1951, said respondent operated under the name Panther-Panco Rubber Company, Inc.

PAR. 2. Respondent is now and has been for many years last past engaged in the manufacture, sale and distribution of rubber and other products, including a line of rubber and composition heels and soles and other supplies and materials used in the shoe repair industry, and hereinafter referred to as shoe products.

Said respondent sells said shoe products nationally to shoe manufacturers and to wholesalers of shoe repair materials, known generally as shoe finders. Said shoe finders resell respondent's shoe products to shoe repairmen, retail shoe stores, and to retailers of shoe repair and maintenance materials.

PAR. 3. Respondent causes said shoe products, when sold, to be transported from the places of manufacture at Chelsea and Stoughton, Massachusetts, to purchasers thereof located in various other States of the United States and in the District of Columbia. There is and has been at all times herein mentioned a continuous current of trade and commerce in said products across State lines between respondent's factories and the purchasers thereof. Said products are sold and distributed for use, consumption and resale within the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business as aforesaid, respondent is now and during the times herein mentioned has been in substantial competition with other corporations and firms engaged in the business of selling shoe products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. Respondent, in the course and conduct of its business, as herein set forth, has been since July 1, 1949, and now is, discriminating in price between different purchasers of its shoe products of like grade and quality by selling said products to some of its shoe finder customers at higher prices than to other of its shoe finder customers.

PAR. 6. The discriminations in price referred to in paragraph 5 hereof have been and now are effected pursuant to respondent's cumulative volume discount plan whereby discounts, rebates or allowances are granted from the net selling prices (list prices less regular trade discount of 25 percent) based upon the customer's cumulative total of purchases of shoe products during one year. Said cumulative volume discount plan has the net effect, either directly or indirectly, of reducing prices charged favored customers to a substantially lower amount than those charged other customers for products of like grade and quality.

Effective July 1, 1949, and continuing to the present time, respondent, pursuant to its cumulative volume discount plan, has granted discounts, rebates or allowances based upon the customer's cumulative total of purchases of shoe products during one year in accordance with the following schedule:

Cumulative annual purchases:	Percent
Less than $3,000	None
In excess of $3,000	1
In excess of $5,000	2
In excess of $7,500	2½
In excess of $10,000	3
In excess of $15,000	3½
In excess of $20,000	4
In excess of $25,000	4½
In excess of $35,000	5

Many of the favored customers receiving the benefits of the aforesaid discriminations in price are competitively engaged in the resale of said products with other shoe finders who purchase shoe products from respondent and who are not so favored, within the various trading areas in which said favored customers are engaged in business.

PAR. 7. The effect of such discriminations in price, as stated herein, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its customers are respectively engaged; or to injure, destroy or prevent competition with respondent or with customers thereof who receive the benefits of such discriminations.

COMMISSION'S CONCLUSION

The foregoing acts and practices of said respondent as set forth herein are in violation of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., Title 15, Sec. 13).

ORDER TO CEASE AND DESIST

It is ordered, That respondent American Biltrite Company, Inc., a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of rubber and composition heels and soles and other supplies and materials used in the shoe repair industry in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating in price, directly or indirectly, between different purchasers of said products:

(1) By selling such products of like grade and quality to any purchaser at prices lower than those granted other purchasers who in fact compete with the favored purchaser in the resale or distribution of such products;

(2) By selling, in competition with others, such products of like grade and quality to any purchaser at prices lower than to any other purchasers: Provided, however, that the foregoing shall not be con-

strued to preclude respondent from defending absolutely any alleged violation of this provision of the Order by showing that none of the products sold at lower prices were resold by the purchaser at the same level of distribution as were the products sold by respondent at higher prices.

For the purpose of comparison, the term "price" as used in this order takes into account discounts, rebates or allowances, volume or otherwise, and other terms and conditions of sale.

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

AMERICAN BILTRITE RUBBER COMPANY, INC.,
By (Sgd) ELIOT L. BERNSTEIN,
(Title) *Asst. Secy.*
(Sgd) CLARENCE K. MARION,
Counsel for Respondent.

Date: March 9, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 29th day of July 1953.

Commissioner Howrey not participating and Commissioner Mason dissenting.

IN THE MATTER OF

THE B. F. GOODRICH COMPANY

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF THE CLAYTON ACT, AS AMENDED

Docket 6043. Complaint, Sept. 9, 1952—Decision, July 29, 1953

Where a corporation engaged in the manufacture of numerous rubber products, including a line of rubber and composition heels and soles and other supplies and materials used in the shoe repair industry, and in the competitive interstate sale and distribution of said shoe products nationally to shoe manufacturers and to wholesalers of shoe repair materials, or, as generally known, shoe finders, by whom said products were resold to shoe repair men, retail shoe stores, and retailers of shoe repair and maintenance material;

In selling its said shoe products pursuant to its cumulative volume discount plan whereby it granted discounts, rebates, or allowances from its net selling prices (i. e., list prices less regular trade discount of 25 percent), beginning with 5 percent for a customer whose monthly cumulative purchases ranged from $500 to $999, 6 percent for such purchases ranging from $1,000 to $1,999 and ranging thereafter in four successive steps from 7 percent to 10 percent for monthly purchases ranging from $2,000 to those exceeding $5,000 and over; and thereby in effect directly or indirectly reduced prices charged favored customers to a substantially lower amount than those charged other customers—

Discriminated in price between different purchasers of its said shoe products of like grade and quality by selling the same to some of its shoe finder customers at higher prices than to other of its said customers, including among those thus favored many who were engaged, in their various trade areas, in the resale of said products in competition with other shoe finders who purchased such products from it, and who were not thus favored:

Held, That such acts and practices, under the circumstances set forth, were in violation of the provisions of subsection (a) of Sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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

Mr. James I. Rooney and *Mr. James S. Kelaher* for the Commission.

Kirkland, Fleming, Green, Martin & Ellis, of Washington, D. C., for respondent.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and mono-

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

The consent settlement tendered by the parties in this proceeding a copy of which is served herewith, was accepted by the Commission on July 29, 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.

Commissioner Howrey not participating and Commissioner Mason dissenting.

polies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on the 9th day of September 1952, issued and subsequently served its complaint on the respondent named in the caption herein, charging it with violation of subsection (a) of Section 2 of the Clayton Act, as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commissions's Rules of Practice, solely for the purpose of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint 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 respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law or that such acts and practices, if engaged in, would 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 respondent consents may be entered in final disposition of this proceeding, are as follows:

COMMISSION'S FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent The B. F. Goodrich Company is a New York corporation with its principal office and place of business located at 230 Park Avenue, New York, N. Y.

PAR. 2. Respondent is now and has been for many years last past engaged in the manufacture, sale and distribution of numerous rubber products, including a line of rubber and composition heels and soles and other supplies and materials used in the shoe repair industry, and hereinafter referred to as shoe products.

Said respondent sells said shoe products nationally to shoe manufacturers and to wholesalers of shoe repair materials, known generally as shoe finders. Said shoe finders resell respondent's shoe products to shoe repairmen, retail shoe stores, and to retailers of shoe repair and maintenance materials.

PAR. 3. Respondent causes said shoe products, when sold, to be transported from the place of manufacture at Clarksville, Tennessee, to purchasers thereof located in various other States of the United States and in the District of Columbia. There is and has been at all times herein mentioned a continuous current of trade and commerce in said products across State lines between respondent's factory and the purchasers thereof. Said products are sold and distributed for use, consumption, and resale within the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business as aforesaid, respondent is now and during the times herein mentioned has been in substantial competition with other corporations and firms engaged in the business of manufacturing shoe products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. Respondent, in the course and conduct of its business, as hereinbefore set forth, has been for more than three years last past, and now is, discriminating in price between different purchasers of its shoe products of like grade and quality by selling said products to some of its shoe finder customers at lower prices than to other of its shoe finder customers.

PAR. 6. The discriminations in price referred to in Paragraph 5 hereof have been and now are effected pursuant to respondent's so-called cumulative volume discount plan whereby it grants discounts, rebates or allowances from its net selling prices (list prices less regular trade discount of 25 percent) based upon the customer's cumulative total of purchases of shoe products during a specified period. Said cumulative volume discount plan has the net effect, either directly or indirectly, of reducing prices charged favored customers to a substantially lower amount than respondent charges other of its customers for products of like grade and quality.

Respondent, pursuant to its cumulative volume discount plan, as heretofore described, has granted discounts, rebates or allowances ranging from none to 10 percent. Since April 1, 1950, and continuing to the present time, respondent has granted discounts, rebates, or allowances based upon the monthly average of the customer's cumulative total of purchases of shoe products, in accordance with the following schedule:

Average monthly net purchases:	*Percent*
Less than $499	None
$500 to $999	5
$1,000 to $1,999	6
$2,000 to $2,999	7
$3,000 to $3,999	8
$4,000 to $4,999	9
$5,000 and over	10

Many of the favored customers receiving the benefits of the aforesaid discriminations in price are competitively engaged in the resale of said products with other shoe finders who purchase shoe products from respondent and who are not so favored, within the various trading areas in which said favored customers are engaged in business.

PAR. 7. The effect of such discriminations in price as set forth in Paragraph 5 and Paragraph 6 hereof may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its customers are respectively engaged; or to injure, destroy or prevent competition with respondent or with customers thereof who receive the benefits of such discriminations.

COMMISSION'S CONCLUSION

The foregoing acts and practices of said respondent as set forth herein are in violation of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., Title 15, Sec. 13).

ORDER TO CEASE AND DESIST

It is ordered, That respondent The B. F. Goodrich Company, a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of rubber and composition heels and soles and other supplies and materials used in the shoe repair industry in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating in price (directly or indirectly), between different purchasers of said products:

1. By selling such products of like grade and quality to any purchaser at prices lower than those granted other purchasers who in fact compete with the favored purchaser in the resale or distribution of such products;

2. By selling, in competition with others, such products of like grade and quality to any purchaser at prices lower than to any other purchasers; *Provided*, *however*, That the foregoing shall not be construed

to preclude respondent from defending absolutely any alleged violation of this provision of the Order by showing that none of the products sold at lower prices were resold by the purchaser at the same level of distribution as were the products sold by respondent at higher prices.

For the purpose of comparison, the term "price" as used in this order takes into account discounts, rebates or allowances, volume or otherwise, and other terms and conditions of sale.

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

THE B. F. GOODRICH COMPANY,
(Sgd) By R. G. JETER,
(Title) ——— ———,
Secretary.
(Sgd) KIRKLAND, FLEMING, GREEN, MARTIN & ELLIS,
(Sgd) By PERRY S. PATTERSON,
Counsel for Respondent.

Date: March 2, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 29th day of July 1953.

Commissioner Howrey not participating and Commissioner Mason dissenting.

Syllabus

IN THE MATTER OF

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF THE CLAYTON ACT, AS AMENDED

Docket 6044. Complaint, Sept. 9, 1952—Decision, July 29, 1953

Where a corporation engaged in the manufacture of numerous rubber products, including a line of rubber heels and soles and heels and soles made of an elastomer resin blend called "Neolite," its trademark, and other supplies and materials used in the shoe repair industry, and in the competitive interstate sales and distribution of said shoe products nationally to shoe manufacturers and to wholesalers of shoe repair materials, or, as generally known, shoe finders, by whom said products were sold to shoe repair men, retail shoe stores, or retailers of shoe repair and maintenance material;

In selling its said shoe products pursuant to its "quantity bonus plan for shoe products distributors" whereby it allowed to each of its shoe finder customers a volume bonus, payable by merchandise credit on cumulative total of net purchases (total billing less all credits except for transportation and cash discount) of shoe products made by each during the annual period ending June 30, in accordance with a schedule calling for a bonus of 1 percent on cumulative annual purchases ranging from $5,000 to $10,000, 2 percent on those ranging from $10,000 to $15,000, 2½ percent on those ranging from $15,000 to $20,000 and thereafter for bonuses ranging in five successive steps from 3 percent to 5 percent for such purchases ranging from $20,000 to $40,000 and over, and, as later modified, for 5 percent for such purchases ranging from $40,000 to $60,000, 6 percent for those from $60,000 to less than $100,000, and 6½ percent for those of $100,000 and over; and thereby in effect directly or indirectly reduced prices charged favored customers to a substantially lower amount than those charged other customers—

Discriminated in price between different purchasers of its said shoe products of like grade and quality by selling the same to some of its shoe finder customers at higher prices than to other of its said customers, including among those thus favored were many who were engaged, in the various trade areas, in the resale of said products in competition with other shoe finders who purchased such products from it, and who were not thus favored:

Held, That aforesaid described plan, acts and practices were in violation of the provisions of subsec. (a) of Sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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

Mr. James I. Rooney and *Mr. James S. Kelaher* for the Commission.

Mr. Howard L. Hyde and *Mr. Robert Crafts*, of Akron, Ohio, *Mr. John C. Butler* and *Mr. Walter E. Tinsley*, of Chicago, Ill., and *Mr. Perry S. Patterson*, of Washington, D. C., for respondent.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on the 9th day of September 1952, issued and subsequently served its complaint on the respondent named in the caption herein, charging it with violation of subsection (a) of Section 2 of the Clayton Act, as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of this consent settlement in the form herein set forth, and in lieu of answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby (and prior to the commencement of the taking of any testimony herein):

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

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law or that such acts and practices, if engaged in, would 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 respondent consents may be entered in final disposition of this proceeding, are as follows:

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

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on July 29, 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.

Commissioner Howrey not participating and Commissioner Mason dissenting.

COMMISSION'S FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent The Goodyear Tire & Rubber Company, Inc., hereinafter referred to as "respondent Goodyear," is a Delaware corporation with its principal office and place of business located at 1144 E. Market Street, Akron, Ohio, and is a wholly owned subsidiary of The Goodyear Tire & Rubber Company.

PAR. 2. Respondent Goodyear is now and has been for many years last past engaged in the sale and distribution of numerous rubber products, including a line of rubber heels and soles, and heels and soles made of an elastomer resin blend called "Neolite" (a trademark of The Goodyear Tire & Rubber Company), and other supplies and materials used in the shoe repair industry, and hereinafter referred to as shoe products. Said shoe products are manufactured at Windsor, Vermont, by The Goodyear Tire & Rubber Company of Vermont, Inc., also a subsidiary of The Goodyear Tire & Rubber Company, and for which respondent is the sales outlet.

Respondent Goodyear sells said shoe products nationally to shoe manufacturers and to wholesalers of shoe repair materials, the latter being known generally as shoe finders. Respondent Goodyear does not sell its shoe products to shoe repairmen, retail shoe stores, or to retailers of shoe repair and maintenance materials, sales of said shoe products to such retailers being made by the shoe finders to whom respondent Goodyear sells.

PAR. 3. Respondent Goodyear causes said shoe products, when sold, to be transported from the place of manufacture at Windsor, Vermont, to purchasers thereof located in various other States of the United States and in the District of Columbia. There is and has been at all times herein mentioned a continuous current of trade and commerce in said products across State lines between the said factory and the place of business of the purchasers of said shoe products. Said shoe products are sold and distributed for use, consumption, and resale within the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business as aforesaid, respondent Goodyear is now and during the times herein mentioned has been in substantial competition with other corporations and firms engaged in the business of manufacturing shoe products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. Respondent Goodyear, in the course and conduct of its business, as hereinbefore set forth, has been since July 1, 1949, and now is, discriminating in price between different purchasers of its shoe products of like grade and quality by selling said products to some of its shoe finder customers at lower prices than to others of its shoe finder customers.

PAR. 6. The discriminations in price referred to in Paragraph 5 have been since July 1, 1949 and now are effected pursuant to respondent Goodyear's "quantity bonus plan for shoe products distributors" whereby it has allowed to each of its shoe finder customers a volume bonus on cumulative total of net purchases (total billing less all credits except for transportation and cash discount) of shoe products made by each during the annual period ending June 30, said bonus being payable by merchandise credit after the end of such annual period, in accordance with the following schedule:

Cumulative annual purchases:	*Percent*
Less than $5,000	None
$5,000 but less than $10,000	1
$10,000 but less than $15,000	2
$15,000 but less than $20,000	2½
$20,000 but less than $25,000	3
$25,000 but less than $30,000	3½
$30,000 but less than $35,000	4
$35,000 but less than $40,000	4½
$40,000 and over	5

During the year 1950, respondent Goodyear modified the foregoing schedule by changing the amounts in the 5 percent bracket from "$40,000 and over" to "$40,000 but less than $60,000," and adding thereto the following brackets:

Cumulative annual purchases:	*Percent*
$60,000 but less than $100,000	6
$100,000 and over	6½

and has continued, since that time, to sell said products pursuant to said schedule as modified.

Said cumulative volume discount plan has the net effect, either directly or indirectly, of reducing prices charged favored customers to a substantially lower amount than respondent charges other of its customers for products of like grade and quality. Many of the favored customers receiving the benefits of the aforesaid discriminations in price are competitively engaged in the resale of said products with other shoe finders who purchase shoe products from respondent and who are not so favored, within the various trading areas in which said favored customers are engaged in business.

PAR. 7. The effect of such discriminations in price as set forth in Paragraph 5 and Paragraph 6 may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its customers are respectively engaged; or to injure, destroy or prevent competition with respondent or with customers thereof who receive the benefits of such discriminations.

COMMISSION'S CONCLUSION

The foregoing described plan, acts and practices of respondent Goodyear are in violation of the provisions of subsection (a) of Section 2 of the Clayton Act (U. S. C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

ORDER TO CEASE AND DESIST

It is ordered, That respondent, The Goodyear Tire & Rubber Company, Inc., a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of rubber and composition heels and soles and other supplies and materials used in the shoe repair industry in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating in price (directly or indirectly) between different purchasers of said products.

(1) By selling such products of like grade and quality to any purchaser at prices lower than those granted other purchasers who in fact compete with the favored purchaser in the resale or distribution of such products;

(2) By selling, in competition with others, such products of like grade and quality to any purchaser at prices lower than to any other purchasers: *Provided, however*, That the foregoing shall not be construed to preclude respondent from defending absolutely any alleged violation of this provision of the Order by showing that none of the products sold at lower prices were resold by the purchaser at the same level of distribution as were the products sold by respondent at higher prices.

For the purpose of comparison, the term "price" as used in this order takes into account discounts, rebates or allowances, volume or otherwise, and other terms and conditions of sale.

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

THE GOODYEAR TIRE & RUBBER COMPANY, INC.,
a corporation,
(Sgd) By HARRY L. POST,
HARRY L. POST, General Manager, Shoe Products Division,
(Sgd) ROBERT CRAFTS,
ROBERT CRAFTS,
(Sgd) JOHN C. BUTLER,
JOHN C. BUTLER,
Of Counsel for Respondent.

Dated this 19th day of February 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 29th day of July 1953.

Commissioner Howrey not participating and Commissioner Mason dissenting.

Syllabus

IN THE MATTER OF

O'SULLIVAN RUBBER CORPORATION

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF THE CLAYTON ACT, AS AMENDED

Docket 6045. Complaint, Sept. 9, 1952—Decision, July 29, 1953

Where a corporation engaged in the manufacture, sale and distribution of a line of shoe products, namely, rubber and composition heels and soles and other supplies and materials used in the shoe repair industry, and of shoe findings, namely, machinery, equipment and supplies used in the repair and maintenance of shoes and the operation of shoe repair shops, and in the competitive interstate sale and distribution of said shoe products to shoe manufacturers and in the sale of both said shoe products and shoe findings nationally to wholesalers of shoe repair materials, or, as known generally, shoe finders, by whom said shoe products and shoe findings were resold to shoe repair men, retail shoe stores and retailers of shoe repair and maintenance materials;

In selling its said shoe products and shoe findings pursuant to its cumulative volume discount plan whereby it granted discounts, rebates or allowances from its net selling prices on shoe products (list prices less regular trade discount of 28 percent), and from its list prices on shoe findings based upon the customer's annual cumulative total purchases of both in accordance with different schedules as variously effective, modified or revised in which discounts, rebates or allowances (1) ranged from 1 percent to 5 percent in eight graduated steps beginning with such purchases which aggregated $3,000 but were less than $5,000, and concluding with those of $35,000 and over; (2) as later added to, ranged additionally, for shoe products, from 5½ percent to 9 percent in eight graduated steps, which began with such cumulative annual purchases aggregating from $35,000 to $45,000, and concluded with those of $105,000 and over, with qualifying purchasers automatically receiving a 5 percent discount on their purchases of shoe findings; and (3) as finally effective, ranged from 1 percent to 10 percent for shoe products and one-half thereof for shoe findings as determined by such cumulative annual purchases beginning with $3,000 and ending with those of $50,000 or over, remained at 5 percent for shoe findings after combined annual purchases reached $50,000, and ranged, on cumulative annual purchases of shoe products, figured separately, from 10 percent to 17½ percent in 14 graduated steps for such purchases of shoe products and shoe findings ranging from $40,000 to $400,000 and over; and thereby in effect directly or indirectly reduced prices charged favored customers to a substantially lower amount than those charged other customers—

Discriminated in price between different purchasers of its said shoe products of like grade and quality by selling the same to some of its shoe finder customers at higher prices than to other of its said customers, including, among those thus favored, many who were engaged, in their various trading areas, in the resale of said products in competition with other shoe finders who purchased such products from it, and who were not thus favored:

Held, That such acts and practices, under the circumstances set forth, were in violation of the provisions of subsec. (a) of Sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. William L. Pack*, hearing examiner.

Mr. James I. Rooney and *Mr. James S. Kelaher* for the Commission.

Pheiffer & Weaver, of Washington, D. C., for respondent.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on the 9th day of September, 1952, issued and subsequently served its complaint on the respondent named in the caption herein, charging it with violation of subsection (a) of Section 2 of the Clayton Act, as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, 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 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 respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law or that such acts and practices, if engaged in, would 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.

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

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on July 29, 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.

Commissioner Howrey not participating and Commissioner Mason dissenting.

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 respondent consents may be entered in final disposition of this proceeding, are as follows:

COMMISSION'S FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent O'Sullivan Rubber Corporation is a Virginia corporation with its principal office and place of business located at Winchester, Virginia. Said respondent also does business under the trade name and style "O'Sullivan Rubber Corporation, Laing, Harrar and Chamberlain Division," with principal place of business located at 135 Hudson Street, New York, New York.

PAR. 2. Respondent is now and has been for many years last past principally engaged in the manufacture, sale and distribution of a line of rubber and composition heels and soles and other supplies and materials used in the shoe repair industry, and hereinafter referred to as shoe products. Said respondent, through its Laing, Harrar and Chamberlain Division, is also engaged in the wholesale distribution of machinery, equipment and supplies used in the repair and maintenance of shoes and the operation of shoe repair shops, and hereinafter referred to as shoe findings.

Said respondent sells said shoe products to shoe manufacturers and sells both shoe products and shoe findings nationally to wholesalers of shoe repair materials, known generally as shoe finders. Said shoe finders resell respondent's shoe products and shoe findings to shoe repairmen, retail shoe stores, and to retailers of shoe repair and maintenance materials.

PAR. 3. Respondent causes said shoe products, when sold, to be transported from the place of manufacture at Winchester, Virginia, and causes said shoe findings, when sold, to be transported from the point of origin in New York, New York, to purchasers thereof located in various other States of the United States and in the District of Columbia. There is and has been at all times herein mentioned a continuous current of trade and commerce in said products across State lines between respondent's factory and the purchasers thereof. Said products are sold and distributed for use, consumption, and resale within the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business as aforesaid, respondent is now and during the times herein mentioned has been in substantial competition with other corporations and firms engaged in the business of manufacturing or selling shoe products and shoe findings in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. Respondent, in the course and conduct of its business, as hereinbefore set forth, has been since July 1, 1949, and now is, discriminating in price between different purchasers of its shoe products and shoe findings of like grade and quality by selling said products to some of its shoe finder customers at higher prices than to other of its shoe finder customers.

PAR. 6. The discriminations in price referred to in paragraph 5 hereof have been and now are effected pursuant to respondent's cumulative volume discount plan whereby it grants discounts, rebates or allowances from its list prices on shoe findings and from its net selling prices on shoe products (list prices less regular trade discount of 28 percent) based upon the customer's cumulative total of purchases of shoe products and shoe findings during one year. Said cumulative volume discount plan has the net effect, either directly or indirectly, of reducing prices charged favored customers to a substantially lower amount than respondent charges other of its customers for products of like grade and quality.

Effective July 1, 1949, and continuing thereafter to April 1950, respondent, pursuant to its cumulative volume discount plan, granted discounts, rebates or allowances based upon the customer's cumulative total of purchases of shoe products and shoe findings combined, in accordance with the following schedule:

Cumulative annual purchases:	*Percent*
Less than $3,000	None
$3,000 but less than $5,000	1
$5,000 but less than $7,500	2
$7,500 but less than $10,000	2½
$10,000 but less than $15,000	3
$15,000 but less than $20,000	3½
$20,000 but less than $25,000	4
$25,000 but less than $35,000	4½
$35,000 and over	5

Effective in April 1950, respondent modified the foregoing plan by adding thereto extra discounts, rebates or allowances for larger volume purchases in accordance with the following schedule:

Cumulative annual purchases of shoe products:	*Percent*
$35,000 but less than $45,000	5½
$45,000 but less than $55,000	6
$55,000 but less than $65,000	6½
$65,000 but less than $75,000	7
$75,000 but less than $85,000	7½
$85,000 but less than $95,000	8
$95,000 but less than $105,000	8½
$105,000 and over	9

Purchasers qualifying for the foregoing extra discounts, rebates or allowances on shoe products were automatically granted a discount, rebate, or allowance of 5 percent on their purchases of shoe findings.

Effective July 1, 1951, respondent again revised its cumulative volume discount plan and since said date has granted discounts, rebates, or allowances in accordance with the following schedule:

Cumulative annual purchases on shoe products and shoe findings up to $50,000. On shoe findings the discount, rebate, or allowance is half that of the shoe products rate as determined by the combined volume:

	Shoe products, percent
Less than $3,000	None
$ 3,000 but less than $ 5,000	1
$ 5,000 but less than $ 7,500	2
$ 7,500 but less than $10,000	2½
$10,000 but less than $12,500	3
$12,500 but less than $15,000	3½
$15,000 but less than $20,000	4
$20,000 but less than $25,000	5
$25,000 but less than $30,000	6
$30,000 but less than $35,000	7
$35,000 but less than $40,000	8
$40,000 but less than $45,000	9
$45,000 but less than $50,000	9½
$50,000	10

After combined cumulative annual purchases of shoe products and shoe findings reach $50,000, the discount, rebate, or allowance on shoe findings remains at 5 percent and discounts, rebates or allowances are granted on the cumulative annual purchases of shoe products figured separately, in accordance with the following schedule:

	Percent
$ 40,000 but less than $ 45,000	10
$ 45,000 but less than $ 55,000	10¼
$ 50,000 but less than $ 55,000	10½
$ 55.000 but less than $ 60,000	10¾
$ 60,000 but less than $ 65,000	11
$ 65,000 but less than $ 70,000	11¼
$ 70,000 but less than $ 75,000	11½
$ 75,000 but less than $ 80,000	11¾
$ 80,000 but less than $ 90,000	12
$ 90,000 but less than $100,000	12¼
$100,000 but less than $200,000	12½
$200,000 but less than $300,000	15
$300,000 but less than $400,000	17
$400,000 and over	17½

Many of the favored customers receiving the benefits of the aforesaid discriminations in price are competitively engaged in the resale of said products with other shoe findings who purchase shoe products and shoe findings from respondent and who are not favored, within the various trading areas in which said favored customers are engaged in business.

PAR. 7. The effect of such discriminations in price stated herein may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its customers are respectively engaged; or to injure, destroy or prevent competition with respondent or with customers thereof who receive the benefits of such discriminations.

COMMISSION'S CONCLUSION

The foregoing acts and practices of said respondent as set forth herein are in violation of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., Title 15, Sec. 13).

ORDER TO CEASE AND DESIST

It is ordered, That respondent O'Sullivan Rubber Corporation, a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of rubber and composition heels and soles and other supplies and materials used in the shoe repair industry and other products known commercially as findings, in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating in price, directly or indirectly, between different purchasers of said products:

(1) By selling such products of like grade and quality to any purchaser at prices lower than those granted other purchasers who in fact compete with the favored purchaser in the resale or distribution of such products;

(2) By selling, in competition with others, such products of like grade and quality to any purchaser at prices lower than to any other purchasers: Provided, however, that the foregoing shall not be construed to preclude respondent from defending absolutely any alleged violation of this provision of the Order by showing that none of the products sold at lower prices were resold by the purchaser at the same level of distribution as were the products sold by respondent at higher prices.

For the purpose of comparison, the term "price" as used in this order takes into account discounts, rebates or allowances, volume or otherwise, and other terms and conditions of sale.

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

O'SULLIVAN RUBBER CORPORATION,
(Sgd) By H. DOUGLAS WEAVER,
(Title) *Secretary.*
(Sgd) H. DOUGLAS WEAVER,
Counsel for Respondent.
PHEIFFER & WEAVER.

Date: March 4, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 29th day of July 1953.

Commissioner Howrey not participating and Commissioner Mason dissenting.

IN THE MATTER OF

INFRA INSULATION, INC., ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 6072. Complaint, Dec. 12, 1952—Decision, July 29, 1953

Where a corporation and its two officers, engaged in the manufacture and interstate sale of their "Infra Insulation" reflective aluminum insulation, through statements in a 56-page brochure, newspaper advertisements, pamphlets and otherwise, directly or by implication—

(1) Represented that their "Infra" insulation was 97 percent efficient; that the flow of heat through "Infra" was only 3 percent as compared with 90 percent for mass insulations, and that of all heat reaching "Infra" only 3 percent was emitted as compared with 90 percent in the case of mass; and represented thereby that the relative insulating effects of reflective, as compared with mass insulations, was indicated by the magnitude of the surface radiation coefficients of the respective materials;

When in fact the use of aforesaid numbers and expressions was fundamentally incorrect and the implication created thereby, that "Infra" insulation was many times more effective than mass insulation in retarding the flow of heat, was not correct;

(2) Represented conductance values for the several types of their own insulation as considerably lower than the actual values, and the conductivity values for mass insulation as substantially higher than the actual;

(3) Represented falsely that the thermal conductivity of mass insulations varied to a marked degree because of thickness orientation and internal convection, and temperature differences; when in fact the effect of temperature differences was more marked with reflective insulations than with mass insulations;

(4) Represented falsely that "Infra" insulation was noncondensation forming and prevented all moisture and vapor flow in a construction, and that mass insulation was always or usually subject to condensation and accordingly to large accumulations of moisture;

(5) Represented falsely that significantly less ventilation was needed in installations of "Infra" insulation than with those of mass insulation;

(6) Represented that dust streaks on plaster resulted from dampness present in mass insulation; when in fact dust streaks are seldom so caused when mass insulation is properly installed;

(7) Advocated a heat flow test involving radiant heat lamps for comparing the value of different types of house insulation, when such test was not in general an applicable or accurate method for making such comparison: and

(8) Represented falsely that mineral wool insulation created a health hazard both during its installation and in place afterward:

Held, That such acts and practices 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. Frank Hier*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

Pheiffer, Stephens & Weaver and *Kirkland, Fleming, Green, Martin & Ellis*, of Washington, D. C., and *Mr. Alexander Schwartz*, of New York City, for respondents.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 12, 1952, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. The respondents Infra Insulation, Inc., a corporation, and Alexander Schwartz and Joseph R. Schwartz, individually and as officers of said corporation, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, any review thereof and the enforcement of the order consented to and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth and in lieu of answer to said complaint filed January 27, 1953, and which, upon acceptance by the Commission of this consent settlement, is to be withdrawn from the record, 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, conclusions 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 or that such acts and practices if engaged in would 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 has reason to believe are unlawful, the conclusion based thereon, and the order to cease and desist, all of

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

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on July 29, 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.

which the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Corporate respondent Infra Insulation, 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 10 Murray Street, New York, New York. Individual respondents Alexander Schwartz and Joseph R. Schwartz are president and secretary-treasurer, respectively, of corporate respondent, with their offices and principal place of business located at the same address as corporate respondent, and as such officers, formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in the business of manufacturing and selling reflective aluminum insulation designated "Infra Insulation."

PAR. 3. In the conduct of their business, as aforesaid, respondents cause and have caused their product, when sold, to be transported from their place of business in New York to purchasers thereof located in various 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. Their volume of trade in said product in such commerce is, and has been, substantial.

PAR. 4. In the course and conduct of their said business respondents are in competition with other corporations and with partnerships, firms and individuals engaged in the sale and distribution of insulating material in commerce between and among the various states of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the sale of their insulating material, respondents have made, and are now making, certain statements and representations concerning the quality, value and nature of their product and various statements with reference to the product of their competitors who engage in the manufacture and sale of insulating material. The representations are made by means of statements in a brochure containing 56 pages designated "Simplified Physics of Vapor and Thermal Insulating," 5th Revised Edition 1951, and by means of advertisements in newspapers, pamphlets and other advertising media of general circulation in various states of the United States and in the District of Columbia, the advertisements in newspapers and other advertising media being extracts from various statements made in the brochure mentioned. Among and typical of said statements are those having to do with the following subject matter and appearing on the following pages of said brochure:

1. Emissivity, absorptivity, and reflectivity values of aluminum and other materials to indicate heat flow rates in insulations. pp. 2, 7, 9, 13, 18, 31, and 39.

2. Conductance values for Infra insulation set out on the back cover of said brochure and on pp. 2, 7, 16, 39, and 47.

3. Conductivity values for mineral wool insulation in the table on the back cover and on pp. 39, 45, and 47.

4. The effects on the thermal insulating value of fibrous insulations due to thickness orientation and internal convection, temperature differences. pp. 23 and 24.

5. Statements made concerning Infra insulation and fibrous insulations as to how they behave and are affected by condensation. pp. 3, 4, 7, 9, 18, 19, 20, 26, 29, 30, 31, 32, 33, 38, 39, 42, and 47.

6. Ventilation above ceiling insulation. pp. 32 and 33.

7. The causes of dust streaks on plaster and how they are affected by insulation. pp. 42 and 43.

8. Heat flow test used to determine the value of insulating products. pp. 23, 26, and 27.

9. The health hazard involved in the use of mineral wool insulation.

PAR. 6. Through the use of the statements appearing in the brochure specifically referred to under the various subdivisions set out in Paragraph 5 hereof, respondents represented, directly or by implication:

1. That their Infra insulation is 97 percent efficient; that the flow of heat by radiation through Infra insulation is only 3 percent while it is 90 percent for mass insulations; and that of all heat reaching Infra insulation, only 3 percent is emitted while in the case of mass insulation 90 percent is emitted. By the manner of use of these figures respondents represented that the relative insulating effects of reflective, as compared with mass insulations, are indicated by the magnitude of the surface radiation coefficients of the respective materials.

2. That the conductance values set out for the several Infra insulations in various orientations are the actual values.

3. That the conductivity values set out for mass insulation are fairly representative values and the comparison between the Infra insulation values and mass insulation values are factually correct.

4. That the thermal conductivity of mass insulations varies to a marked degree because of thickness orientation and internal convection, and temperature differences.

5. That Infra insulation is noncondensation forming and that it prevents all moisture and vapor flow in a construction and that mass insulation is always or usually subject to condensation and accordingly to large accumulations of moisture.

6. That significantly less ventilation is needed in installations of Infra insulation than with those of mass insulations.

7. That dust streaks on plaster result from dampness present in mass insulation.

8. That the heat flow test involving radiant heat lamps is a proper method of comparing the value of different types of house insulation.

9. That mineral wool insulation creates a health hazard both during the process of installation thereof and in place after installation.

PAR. 7. The aforesaid representations are false, misleading and deceptive. In truth and in fact—

1. The numbers appearing in these expressions are the radiation emissivity, absorptivity or reflectivity (as the case may be) of the material discussed. Insofar as these numbers and expressions are employed to indicate rates of heat transmission, their use is fundamentally incorrect. The quoted statements ignore the fundamental fact that the rate of transmission of heat by radiation across an air space depends not only on its effective emissivity, but also on the temperature difference of its facing surfaces, for moderate temperature differences. The quoted statements assume that the temperature difference across a space is unchanged when the space is made reflective. This is in general not the case. The relative insulating effects of reflective as compared to mass insulation are not indicated solely by the magnitude of the surface radiation coefficients of the respective materials and the implication, created by the use of these radiation coefficients, that Infra insulation is many times more effective than mass insulation in retarding the flow of heat is not correct.

2. The conductance values cited for the several types of respondents' insulation are considerably lower than the actual values.

3. The conductivity values cited for mass insulation are substantially higher than the actual values.

4. There is not a large degree of variation in the thermal conductivity of mass insulations due to thickness orientation, internal convection, temperature difference; further, the effect of temperature difference is more marked with reflective insulations than with mass insulations.

5. Condensation of water vapor on or in Infra insulation is in fact possible and in some cases probable. Infra insulation installed in accordance with respondents' instructions may not prevent the flow of vapor into or through a well. Mass insulation, if properly installed, is not ordinarily subject to condensation to the extent that any significant amount of moisture will accumulate.

6. It is not true that in all installations significantly more ventilation is required in mass insulations than installations in which respondents' product is employed.

7. Dust streaks on plaster are seldom caused by dampness that may be present in mass insulation when such insulation is properly installed.

8. The heat flow test involving radiant heat lamps advocated by respondents is not in general an applicable or accurate method for comparing Infra insulation and mass insulations installed in structures.

9. Mineral wool insulation does not create a health hazard either during the process of installation thereof or in place after installation.

Par. 8. The statements, claims and representations made by repondents, as aforesaid, with respect to mass insulation unfairly disparage the mass insulation products sold by their competitors and they and the various other statements, claims and representations have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, claims and representations are true and into the purchase of substantial quantities of their product because of such mistaken and erroneous belief. As a consequence thereof, substantial trade in commerce has been and is being diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

It was not the purpose of this proceeding to determine and the Commission has not determined the comparative merit or insulating value of respondents' product and that of their competitors.

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

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ORDER TO CEASE AND DESIST

It is ordered, That the respondent Infra Insulation, Inc., a corporation, and its officers and the respondents Alexander Schwartz and Joseph R. Schwartz, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their insulating material known as Infra Insulation, or of any other insulating material of substantially the same properties, 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 the relative insulating effects of respondents' reflective insulation as compared with mass insulation, are indicated solely by the magnitudes of the surface radiation coefficients of the respective materials.

2. Representing, directly or by implication, that the conductance values of their insulation are lower than they are in fact.

3. Representing, directly or by implication, that the conductivity values of mass insulation are higher than they are in fact.

4. Representing, directly or by implication, that the magnitude of variations of the thermal conductivity values of mass insulation due to thickness orientation, internal convection, temperature differences, or to any other reason, are greater than they are in fact.

5. Representing, directly or by implication, that condensation of water vapors on or in their insulation is not possible or that mass insulation, when properly installed, is ordinarily subject to condensation to the extent that a significant amount of moisture will accumulate.

6. Representing, directly or by implication, that significantly more ventilation is required in all installation of mass insulation than in installations in which respondents' product is employed.

7. Representing, directly or by implication, that dust streaks on plaster are ordinarily due to dampness present in mass insulation, when such insulation is properly installed.

8. Representing, directly or by implication, that the heat flow test involving radiant heat lamps is in general a proper method of comparing the relative insulating values of different types of house insulation.

9. Representing, directly or by implication, that mineral wool insulation creates a health hazard either during the installation thereof or when in place after installation.

10. Making any false or disparaging statement with respect to the insulating products of any competitior.

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.

INFRA INSULATION, INC.,
(Sgd) By ALEXANDER SCHWARTZ,
Alexander Schwartz, *President.*
(Sgd) ALEXANDER SCHWARTZ,
Alexander Schwartz, individually and as an officer of said corporation.
(Sgd) JOSEPH R. SCHWARTZ,
Joseph R. Schwartz, individually and as an officer of said corporation.

Dated: July 2, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 29th day of July 1953.

IN THE MATTER OF

H. M. PRINCE TEXTILES, INC., ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND THE WOOL PRODUCTS LABELING ACT

Docket 6081. Complaint, Feb. 10, 1953—Decision, July 29, 1953

Where two corporations and their common officer, and three officers of a bankrupt corporation, which the first two had furnished with quantities of wool and wool stocks, together with orders, specifications, content tags and labels, and instructions for manufacturing into wool products as defined in the Wool Products Labeling Act, engaged in the sale and distribution in commerce of said wool products—

(1) Misbranded certain blankets in that they were not stamped, etc., as required by said Act; and

(2) Misbranded certain blankets through such false labeling as "All Wool—Excl. of ornamentation," when in fact they contained in part reused or reprocessed wool, together with substantial quantities of miscellaneous other fibers:

Held, That such acts and practices constituted misbranding in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder; were to the prejudice and injury of the public; and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. James A. Purcell* and *Mr. Webster Ballinger* hearing examiners.

Mr. George E. Steinmetz for the Commission.

Mr. Abner R. Sisson, of Boston, Mass., for H. M. Prince Textiles, Inc., Hugo M. Prince, and Devonshire Fabrics, Inc.

Mr. George Gruzen, of Boston, Mass., for Nathan Tarmy, Morris Tarmy, and Solomon Tarmy.

Mr. Wilfred A. Hay, of Portland, Maine, for Robert D. Schwarz, receiver.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on February 10, 1953, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them

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

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on July 29, 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.

with the use of unfair and deceptive acts and practices in violation of the provision of said Acts.

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

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

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

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

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Corporate respondents H. M. Prince Textiles, Inc., and Devonshire Fabrics, Inc., each constitute a corporation organized and existing under and by virtue of the laws of the State of New York. The respondent Hugo M. Prince is the president and treasurer of each said corporate respondent. This individual formulates, directs and controls the acts, policies and practices in each such instance. The offices and the principal place of business of both said corporation respondents and of said Hugo M. Prince are located at 450 Seventh Avenue in the City of New York, New York.

PAR. 2. Corporate respondent Deena Woolen Mills, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Maine. Said corporate respondent since the filing of the complaint herein has been adjudicated a bankrupt pursuant to involuntary bankruptcy proceedings initiated in the U. S. District Court for the District of Maine in Portland, Maine, such adjudication having been had on March 3, 1953; followed by the appointment of John D.

Leddy, Esquire, Portland, Maine, as Receiver of said Deena Woolen Mills, Inc., a corporation, bankrupt, for the purpose of administering said bankrupt estate pending the election of a Trustee by the creditors thereof.

The said Receiver has in writing stated that no operations are being conducted by said bankrupt respondent corporation at this time and that no further operations are contemplated. By reason of such adjudication in bankruptcy, together with the fact that no further operations have been in effect or are now contemplated in the future, the Commission finds that the said complaint insofar as it relates to the corporate respondent Deena Woolen Mills, Inc., should be dismissed.

PAR. 3. Nathan Tarmy, Morris Tarmy, and Solomon Tarmy were, during all times referred to in the complaint, officers of the said respondent, Deena Woolen Mills, Inc. These individuals formulated, directed and controlled the acts, policies and practices of said corporate respondent Deena Woolen Mills, Inc.

PAR. 4. Respondents H. M. Prince Textiles, Inc., and Devonshire Fabrics, Inc., during all of the times hereinafter mentioned, furnished and continued to furnish respondent Deena Woolen Mills, Inc., with quantities of wool and wool stocks, together with orders, specifications, content tags and labels, with instructions for manufacturing such materials into wool products.

Thereafter, in conjunction with said Devonshire Fabrics, Inc., the said H. M. Prince Textiles, Inc., undertook to sell and distribute, and did sell and distribute, in commerce certain of said wool products manufactured by respondent Deena Woolen Mills, as aforesaid. The said wool products, namely, blankets, when finished, were thereupon introduced into commerce by Deena Woolen Mills, Inc., as well as by respondent Devonshire Fabrics, Inc., pursuant to content labeling and shipping instructions furnished by the said H. M. Prince Textiles, Inc., or its selling division, Devonshire Fabrics, Inc.

PAR. 5. Subsequent to the effective date of the said Wool Products Labeling Act and more especially since 1950, said respondents and each of them have manufactured or caused to be manufactured, for introduction into commerce, introduced or caused to be introduced into commerce, sold, offered for sale, transported, distributed and delivered for shipment in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein.

PAR. 6. 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 said Wool Products Labeling Act of 1939, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

PAR. 7. Certain of said wool products were misbranded within the intent and meaning of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled with respect to the constituent fibers included therein.

Among the misbranded wool products aforementioned were blankets, labeled by said corporate respondents as "All Wool—Excl. of ornamentation"; whereas in truth and in fact said blankets were not all wool as defined by the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, but contained in part reused or reprocessed wool, together with substantial quantities of miscellaneous fibers other than wool.

CONCLUSION

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

ORDER TO CEASE AND DESIST

It is ordered, That the corporate respondents, H. M. Prince Textiles, Inc., and Devonshire Fabrics, Inc., and their officers, and Hugo M. Prince, Nathan Tarmy, Morris Tarmy, and Solomon Tarmy, individually, 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 sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of blankets or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding said products by:

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

2. Failing to securely affix to or place on each 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 5 per centum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 per centum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentages of the total weight of such wool product of any 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, transportation, distribution, or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of Section 3 of the Wool Products Labeling Act of 1939; *And provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act, or the Rules and Regulations promulgated thereunder.

It is further ordered, That the complaint herein, insofar as it relates to the corporate respondent Deena Woolen Mills, Inc., be, and the same is, hereby dismissed.

It is further ordered, That the respondents herein, except the corporate respondent Deena Woolen Mills, Inc., 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.

H. M. PRINCE TEXTILES, INC., A CORPORATION,
(Sgd) By [S] H. M. PRINCE.
(Name) (Title) *Pres.*

DEVONSHIRE FABRICS, INC., A CORPORATION,
(Sgd) By [S] H. M. PRINCE.
(Name) (Title) *Pres.*

Hugo M. Prince, individually and an officer of H. M. Prince Textiles, Inc., and Devonshire Fabrics, Inc.
(Sgd) [S] HUGO M. PRINCE,

Nathan Tarmy, individually and as an officer of Deena Woolen Mills, Inc.

(Sgd) [S] NATHAN TARMY,
Morris Tarmy, individually and as an officer of Deena Woolen Mills, Inc.
(Sgd) [S] MORRIS TARMY,
Solomon Tarmy, individually and as an officer of Deena Woolen Mills, Inc.
(Sgd) [S] SOLOMON TARMY.

Date: June 22, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 29th day of July 1953.

IN THE MATTER OF

CELANESE CORP. OF AMERICA

Docket 4934. Complaint, Mar. 24, 1943—Decision and order, Aug. 2, 1953

Charge: Neglecting, unfairly or deceptively, to make material disclosure as to composition of product and advertising falsely or misleadingly as to composition, nature, qualities, properties or results and comparative merits of product; in connection with the manufacture and sale of acetate rayon yarn and fabrics manufactured from said yarn.

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

Mr. R. P. Bellinger for the Commission.

Davies, Richberg, Tydings, Beebe & Landa, Roberts & McInnis and *Mr. G. Kirby Munson*, of Washington, D. C., and *Mr. Matthew H. O'Brien*, of New York City, for respondent.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached decision of the hearing examiner shall, on August 2, 1953, become the decision of the Commission.

Commissioner Carretta not participating.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

This proceeding came on to be considered by the above-named Hearing Examiner heretofore duly designated by the Commission on April 16, 1945, upon the complaint, the answer of respondent, testimony and other evidence introduced in support of and in opposition to the allegations of the complaint, and proposed findings and conclusions presented by counsel, all testimony and evidence being made a matter of record and duly filed in the office of the Commission.

The complaint herein was filed on March 24, 1943, and the taking of testimony commenced on May 16, 1945, during the course of which some 4,500 pages of testimony of 105 witnesses, and 1,750 exhibits were received. Much of the testimony was highly technical in nature, having to do with the production of man-made fibers by chemical and mechanical processes and means. During the course of the proceedings unavoidable delays such as appeals and cross-appeals were encountered, on two occasions the matter was reopened on motion of the respondent for the reception of further testimony and evidence and on one occasion, November 15, 1949, the record was ordered reopened by the Commission for the purpose of complying with the Commission's decision on cross-appeals.

Thereafter, on January 19, 1951, the matter was ordered by the Commission to be placed on its "suspense calendar" pending the outcome of a Trade Practice Conference Proceeding specially called to consider proposed revision of the Trade Practice Rules for the Rayon Industry, a subject of prime importance to the major issues joined in this proceeding. The aforementioned Rayon Rules had been in force since promulgation of same by the Commission on October 26, 1937, and it was partially because of failure of respondent to designate its fibers and fabrics as "rayon" (a subject dealt with in said Rules although the Rules, as such were not squarely in issue), that the present proceedings were instituted. On December 11, 1951, the Commission promulgated its "Trade Practice Rules for the Rayon and Acetate Textile Industry," thereby superseding the Rules of 1937. On March 4, 1952, the Commission, by order, restored the matter to its active file with direction to the Examiner to:

> * * * go forward in regular course on the matters remaining in controversy.

An interpretation of the last-mentioned order resulted in a further order of the Commission, dated September 18, 1952, dismissing certain charges of the complaint and thereafter, upon motion of the respondent, the Hearing Examiner on February 6, 1953, reopened the matter for reception of further testimony and evidence after completion of which an order closing the case for taking of testimony and reception of evidence was filed on February 27, 1953.

For the purposes of the present order necessitating a full consideration of the several issues involved, the charges of the complaint are, for convenience, segregated and grouped into five categories, separately denoted, and which will be dealt with seriately under the several headings.

The complaint recites:

Respondent, Celanese Corporation of America, is engaged in the manufacture, sale and distribution of acetate rayon yarn, and fabrics produced from such yarn, which it sells and distributes under the name "Celanese"; acetate rayon is a chemical fiber which may be manufactured so as to simulate natural fibers in texture and appearance to such extent that members of the purchasing public are unable to distinguish fabrics manufactured from acetate rayon, so as to simulate natural fibers, and fabrics manufactured from natural fibers.

The specific charges are:

Charge I

Respondent's acetate rayon fabrics simulate, in texture and appearance, fabrics composed of silk, the product of the cocoon of the silk worm, but respondent does not inform the purchasing public that such manufactured fabrics are not made from silk but from rayon; that failure by respondent to make such disclosure is misleading and deceptive and members of the purchasing public are thereby led to believe said fabrics are composed of silk.

Charge II

Respondent also manufactures from acetate rayon fibers, and offers same for sale, and sells, fabrics which resemble, in appearance and texture, fabrics manufactured from wool, without informing the purchasing public that such fabrics so resembling wool, are in fact acetate rayon; that failure by respondent to make such disclosure is misleading and deceptive.

Charge III

Respondent, in connection with selling its products manufactured from rayon but which resemble fabrics made from silk, designates, describes and refers to certain of its fabrics as "taffeta," "moire," "crepe," "satin" and "jersey," without adequately disclosing the true fiber content; that the quoted designations have long been associated in the public mind with fabrics composed of silk and the use of such terms, unaccompanied by adequate disclosure of the actual fiber content as rayon, not silk, is misleading and deceptive.

Charge IV

Respondent, in an endeavor to mislead and deceive the public as to the true nature of its products, has made use of the following statements and representations:

(a) "Under a current ruling of the Federal Trade Commission, Celanese yarns and fabrics are classified as rayon";

(b) "all rayons are not alike";

(c) "an easy way to differentiate Celanese from rayons of the cellulose type";

(d) "Celanese is different from any type of fabric ever made";

(e) " * * * because Celanese is a different kind of material";

(f) "Celanese is like nothing you have ever known"; and

(g) "Celanese has qualities that put it in a class by itself".

All of the foregoing are charged as designed to import and imply that respondent's products are not composed of rayon but of fibers other than rayon.

Charge V

Respondent, by its advertisements represents and implies that its fabrics:

(a) will not shrink;
(b) are not affected by perspiration, salt water or sea air;
(c) do not absorb body odors;
(d) are cooler in summer and warmer in winter;
(e) do not get soggy;
(f) will not absorb dirt or most common stains;
(g) the colors in said fabrics are especially fast;
(h) have a high degree of resiliency and are more resistant to wrinkles than are other fabrics;
(i) wear better and last longer than do other fabrics.

In considering the foregoing charges under their separate denotations as outlined, the following findings and conclusions are reached and stated:

Charge I. Respondent, on April 18, 1952, filed its motion to dismiss certain portions of the complaint, among such being the presently considered charge, pursuant to which motion the Commission, (noting that it had, on December 11, 1951, promulgated the new Trade Practice Rules for the Rayon and Textile Industry which recognize that "rayon" and "acetate" are different textile fibers, and that respondent has accepted such Rules and is presently identifying its acetate textile products as acetate, in accordance with the provisions of said rules), on September 18, 1952, passed the following order:

"*It is ordered*, That the allegations of the complaint relating to the charge that respondent's cellulose acetate textile products are rayon and that respondent's failure to identify said products as rayon is misleading and deceptive be, and they hereby are, dismissed without prejudice to the right of the Commission to institute further proceedings should the facts warrant such action."

By the aforesaid order, passed by the Commission, the foregoing charge had been dismissed without prejudice, and such order is here adverted to solely that this present order shall show consideration and disposition of all issues joined.

Charge II. Respondent is here charged with nondisclosure of the true fabric content, as acetate rayon, of its materials which resemble wool in appearance. There is no question here involved which would call into play any of the provisions of the Wool Products Labeling Act of 1939, or of the Rules and Regulations passed pursuant thereto. This charge may be considered analogous to the preceding one which alleged that respondent's products resemble silk whereas, under this allegation, the product resembles wool.

Inasmuch as the Commission has seen fit to dismiss the charge of simulating silk, it would appear that the same course should be followed in the present instance, and for the same reasons, that is, that if the respondent, being signatory to the new Rayon and Acetate Rules, properly identifies its fabrics in accordance with the rules, then there will be no misleading or deception of the public.

For the reasons above stated the charge in this behalf is dismissed without prejudice.

Charge III. Under this heading respondent is charged with use of the terms "taffeta," "moire," "crepe," "satin" and "jersey," without disclosing the true fabric content. This charge is based upon the allegation that the terms or designations quoted have "long been associated in the public mind with fabrics composed of silk," and that the use of said terms, unaccompanied by adequate disclosure of the actual fiber content, to wit, fibers other than silk, is misleading and deceptive.

During the course of the proceedings counsel in support of the complaint abandoned that portion of the complaint which refers to the term "jersey," such being the designation of a special weave or knit of wool peculiar to the wool industry and obviously not in the same category with the remaining terms in the group, all of which the complaint charged, in effect, were preempted by the silk industry and so understood by the general public.

Rule 3, entitled "Construction and Weave Terms," of the aforesaid Rules of December 11, 1951, covers the situation here presented and especially treats, *eo nomine*, of the future use of these terms by the industry. Therefore, the same reasoning which motivated the dismissal of CHARGES I and II should apply here with equal force.

For the reasons above stated the charges in this behalf are dismissed without prejudice.

Charge IV. Here respondent is charged with the use of seven separate representations, all of which, it is alleged, were designed to mislead and deceive the public into the belief that respondent's fabrics were not composed of rayon but of fibers other than rayon.

In this connection we are again met with the issue of the fiber content of respondent's fabrics and of the nomenclature covering same as under Charge I, except that here, instead of failure to disclose rayon content, respondent is charged with an attempt to affirmatively, or by innuendo, represent that its product is "different" and "in a class by itself."

Many of the foregoing expressions may properly be considered as mere puffery, and certainly a producer should be allowed some reasonable latitude to extol his wares as otherwise the practical and economic justification for advertising and publicity ceases to exist. Furthermore, there is nothing of record to substantiate the charge that any or all of the alleged usages ever in fact attained the end for which they were allegedly formulated and used.

In addition to the foregoing reasoning, it will be seen that all of the representations alleged are inextricably associated with fabric nomenclature, the charges concerning which were dismissed under CHARGE I, as above.

For the reasons above stated the charges in this behalf are dismissed without prejudice.

Charge V. All of the representations made by respondent under this charge may be classified as referring to the physical attributes, qualities or characteristics claimed by respondent in favor of its products. The vast majority of these representations were publicized through the medium of radio continuities broadcast during the year 1942, so it would appear there is no present public interest in the evanescent statements of a radio announcer of a past decade. Concerning the remaining advertisements, howsoever disseminated, all such bear date prior to July of 1946 at which time the Commission had completed its proof as to these advertisements, so that the record is devoid of any indication of current or actual usage of same for some eight years.

Apropos the immediate foregoing, reference is made to the aforedescribed Rayon and Acetate Textile Industry Rules of December 11, 1951, Group II, Rule "A," entitled: "Labeling Information as to Treatment and Care of Product," and Rule "B," entitled: "Educational Program as to Treatment and Care of Product." These rules, agreed to by the respondent, provide for the giving, by tag or label attached to products, of adequate information regarding care, handling and service of fabrics, including the proper methods of dyeing, cleaning, washing and ironing thereof, as well also the furnishing and disseminating, through advertisements, educational campaigns or other media of publicity, accurate information as to the proper care, treatment and cleaning of rayon and acetate fabrics to the end that consumers may obtain and enjoy full benefit of the desirable qualities and service of such products. In furtherance and support of the objectives of the Rules as an entirety, and of Rules Group II, "A" and "B," and since the promulgation thereof by the Commission, the respondent has appropriated approximately $2,000,000 in excess of its normal advertising budget; has made use of radio, television, advertising in the largest magazines of nation wide circulation; educational services to stores and consumers on a national scale; issued in excess of 100,000,000 tags and labels dealing with fiber identification and care; and further, at its own expense, has reprinted the Rules and distributed same to approximately 20,000 retailers, garment manufacturers, mills and to those engaged in the chain of distribution in the fabric field. The foregoing is recounted as indicating an intention on the part of the respondent to abide by the Rules and thus, by its example as a dominating factor in its field, to have a beneficial effect upon others.

For the reasons above stated the charges in this behalf are dismissed without prejudice.

For the reasons above given, and under the circumstances here presented, the public interest does not require any corrective action at this time. It is accordingly,

Ordered, That the complaint in this proceeding be, and the same hereby is, dismissed, without prejudice.

IN THE MATTER OF

FRUITVALE CANNING COMPANY

Docket 5989. Order and opinion, August 4, 1953

Before *Mr. Abner E. Lipscomb*, hearing examiner.
Mr. Edward S. Ragsdale and *Mr. Cecil G. Miles* for the Commission.
Hadsell, Murman & Bishop, of San Francisco, Calif., for respondent.

ORDER DENYING RESPONDENT'S PETITION FOR REHEARING OF APPEAL

Respondent, subsequent to the filing of its answer to the complaint in this proceeding, filed a motion with the hearing examiner for a bill of particulars. The hearing examiner issued an order granting said motion, and counsel supporting the complaint appealed to the Commission from said order. The Commission, after determining that a prompt decision on the appeal was necessary to prevent unusual delay and expense in the disposition of this proceeding, considered said appeal on its merits, and on February 9, 1953, issued an order sustaining the appeal, vacating and setting aside the hearing examiner's order, and remanding the case to the hearing examiner for trial in regular course. Respondent, on June 29, 1953, filed a petition with the Commission for a rehearing on the said appeal. Counsel supporting the complaint, on July 3, 1953, filed an answer opposing the petition.

The only point raised by respondent in said petition for rehearing which was not before the Commission at the time of its decision on the appeal is that the Commission, on May 19, 1953, denied appeals of counsel supporting the complaints in the matters of Distillers Corporation-Seagrams Ltd., Docket No. 6047, and Schenley Industries, Inc., Docket No. 6048, from orders of the hearing examiner by which motions of the respondents for bills of particulars were granted in part and denied in part. Respondent contends that the Commission's action on those appeals "indicates a change of view more favorable to respondents who seek, through bills of particulars, more informative details than are given in the forms of complaints in use in these proceedings."

The Commission, in its orders denying the appeals of counsel supporting the complaints in the two cases cited by respondent, stated that it was not shown that prompt decisions on the appeals were necessary to prevent unusual delay and expense in the disposition of the proceedings, and also that the hearing examiner, by his rulings on respondents' motions for bills of particulars, had not abused the discretion vested in him. The Commission's actions in those cases cannot be construed as representing a change in view with respect to requests

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for bills of particulars. The complaints in those two cases charged violations of Section 5 of the Federal Trade Commission Act. The complaint in this case charges violation of subsection (a) of Section 2 of the Clayton Act. It is obvious that complaints involving violations of the broad terms of the Federal Trade Commission Act might require more particularization than complaints involving violations of the Clayton Act, where the statutory offenses are defined in greater detail.

The Commission, in its order of February 9, 1953, sustaining the appeal of counsel supporting the complaint in this case, expressed the opinion that the complaint herein is not only legally sufficient but also that the absence of further particulars therein cannot operate to deprive the respondent of a full and fair hearing. Respondent's petition for a rehearing on the appeal presents no reason for changing that opinion.

The Commission having duly considered respondent's said petition and answer thereto, and being of the opinion that the rehearing requested is not warranted:

It is ordered, That respondent's said petition for rehearing be, and it hereby is, denied.

It is further ordered, That this case be, and it hereby is, remanded to the hearing examiner for trial in regular course.

OPINION

Commissioners Mason and Carretta concur in this order and repeat that, in their opinion, the complaint issued in this matter sufficiently informs respondent of the statutory violations with which it is charged. Commissioners Mason and Carretta also repeat that they are of the opinion that if counsel in support of the complaint seeks to prove at the hearing violations other than those alleged in Paragraph 7 of the complaint, counsel for the respondent may then renew his motion for a bill of particulars.

IN THE MATTER OF

DICTOGRAPH PRODUCTS, INC.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 6095. Complaint, Apr. 24, 1953—Decision, Aug. 5, 1953

Where a corporation engaged in the manufacture and in the competitive interstate sale and distribution of its "Acousticon" hearing aids; in advertising the same through radio and television commercials, and in newspapers and periodicals, circulars, pamphlets, bulletins, and other advertising media, including newspaper mats, reprints of advertisements used by it, radio and television scripts, circulars, pamphlets, and bulletins furnished by it to its distributors, who used the same to advertise said product, it paying a portion of said distributors' advertising expenses; directly or by implication—

(a) Falsely represented that the Government, through the U. S. Public Health Service, had made an investigation of hearing aids;

(b) Falsely represented that a booklet entitled "U. S. Government Exposé of Hearing Aids" was published by the Government and contained a report by it on such products;

(c) Falsely represented that as a result of such investigation the Government said all one-performance hearing aids were failures; when in fact the Government had neither held that such type or any other class of hearing aids were failures; and

(d) Falsely represented that with the exception of its own product no hearing aids had been improved in recent years and that only its product gave satisfactory hearing help; and

(e) Falsely represented that its said aids were recommended by the Government:

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

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

Mr. Edward F. Downs for the Commission.

Mr. Theodore F. Tonkonogy, of New York City, for respondent.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 24, 1953, issued and subsequently served its complaint on the respondent named in the caption hereof,

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

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on August 5, 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.

charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in violation of the provisions of said Act.

The respondent desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, and 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 hereby:

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

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

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 respondent consents may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Dictograph Products, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business and its factory at Jamaica, Long Island, New York.

PAR. 2. Respondent is now and for several years last past has been, engaged in the manufacture, distribution and sale of hearing aids. Such hearing aids are advertised and sold by respondent under the trade name "Acousticon."

Respondent causes and has caused said hearing aids when sold to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia and at all times mentioned herein has maintained a course of trade in said hearing aids in commerce among and between the various States of the United States and in the District of Columbia. Respondent's volume of business in said hearing aids in such commerce is and has been substantial.

PAR. 3. In the course and conduct of its business, respondent has been and is now engaged in substantial competition with other corporations and with firms, partnerships and individuals likewise engaged in the manufacture, distribution and sale of hearing aids in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 4. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its hearing aids, in commerce as "commerce" is defined in the Federal Trade Commission Act, respondent has made certain statements and representations by radio and television commercial announcements, by advertisements in newspapers and magazines, and by circulars, pamphlets, bulletins and other advertising media. Said statements and representations were also contained in newspaper mats, reprints of advertisements used by respondent, radio and television scripts, circulars, pamphlets and bulletins furnished by respondent to its distributors who used them to advertise respondent's hearing aids with respondent paying a portion of such distributors' advertising expenses. Among and typical, but not all inclusive, of such statements and representations were the following:

The whole story of the U. S. Government's investigation and exposé of hearing and hearing aids is yours—absolutely free—in a new 20-page booklet published by Acousticon Research Laboratories.

DON'T BUY A
HEARING AID
UNTIL YOU
READ THIS FREE BOOK!

Picture of booklet entitled "U. S. Government Exposé of Hearing Aids"

Save money—up to $200! Save trouble, disappointment! Protect your hearing! Get the facts—know the truth about hearing aids. Read what the UNITED STATES GOVERNMENT says about them.

You can now read this astounding story of the Government's investigation and exposé of hearing aids.

Read how the U. S. Government branded one-performance hearing aids as appalling failures. Read what the Government declared *must be done* to give truly scientific help to the hard of hearing. Read the 8-point program recommended by the Government . . .

Only ACOUSTICON did the job recommended by the U. S. GOVERNMENT to give you Scientific Hearing Help!

The United States Public Health Service—gave the hearing aid industry a clear-cut, eight-point program that had to be followed . . .

The vital program laid down by the U. S. Public Health Service was followed by *only one* hearing aid manufacturer—ACOUSTICON.

The conditions revealed by the U. S. Public Health Service are still true today—with the single exception of Acousticon, who alone fulfilled the Government's recommendations.

For only $69.50 you can now have the kind of scientific hearing help recommended by the U. S. Government.

Your Government Recommended This Hearing Aid Be Built.

Acousticon—and *only* Acousticon—is equipped to give you the help you need as recommended by The U. S. Public Health Service.

PAR. 5. By means of the aforesaid statements and representations, and others of similar import not herein specifically set out, respondent has represented directly or by implication that the United States Government, through the United States Public Health Service made an investigation of hearing aids; that a booklet entitled "U. S. Government Exposé of Hearing Aids" was published by the United States Government, and contained a report by the Government on hearing aids; that as a result of the aforesaid investigation the United States Government said all one-performance hearing aids were appalling failures; that with the exception of respondent's hearing aids no hearing aids have been improved in recent years; that only respondent's hearing aids give you satisfactory hearing help; and that respondent's hearing aids are recommended by the United States Government.

PAR. 6. The foregoing statements and representations are false, deceptive and misleading, and constitute disparagement of competitive products. In truth and in fact, the United States Government has not made an investigation of hearing aids through the United States Public Health Service or otherwise. The United States Government did not publish the booklet entitled "U. S. Government Exposé of Hearing Aids" nor does said booklet contain a report on hearing aids by the United States Government or any of its branches. The United States Government has never held that all one-performance hearing aids or any other class of hearing aids were failures. Many hearing aids, other than respondent's have been improved in recent years, and many of them give as much satisfaction to the hard of hearing as do respondent's hearing aids. Respondent's hearing aids have not been recommended by the United States Government or any branch thereof.

PAR. 7. The use by respondent of the aforesaid false, deceptive and misleading statements and representations, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of respondent's hearing aids in preference to the hearing aids sold by competitors of respondent. As a result thereof, trade has been unfairly diverted to respondent from its competitors. In consequence thereof, substantial injury has been done to respondent's competitors in commerce.

CONCLUSION

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

ORDER TO CEASE AND DESIST

It is ordered, That respondent, Dictograph Products, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hearing aids in commerce, do forthwith cease and desist from representing directly or by implication:

(a) That the United States Government, through the United States Public Health Service or any other branch of the Government made an investigation of hearing aids.

(b) That booklets published by respondent are published by the United States Government or any branch thereof.

(c) That booklets published by respondent contain a report on hearing aids by the U. S. Government or any branch thereof.

(d) That the United States Government or any branch thereof has branded any class of hearing aids as failures.

(e) That said hearing aids are the only ones on the market that are satisfactory.

(f) That said hearing aids are recommended by the United States Government or any branch thereof.

(g) That competitors' hearing aids have not been improved in recent years.

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

DICTOGRAPH PRODUCTS, INC.,
(Sgd) By STANLEY OSSERMAN,
Stanley Osserman, Chairman of Board of Directors and General Manager.

Date 7/22/53.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 5th day of August 1953.

IN THE MATTER OF

BENJAMIN D. RITHOLZ ET AL. T. A. DR. RITHOLZ & SONS COMPANY, ETC.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 5759. Complaint, Mar. 28, 1950—Decision, Aug. 6, 1953

Where eight partners engaged in the interstate sale and distribution of sunglasses or goggles and field glasses, in advertising their said products in various magazines and periodicals—

(*a*) Falsely represented the alloy gold content of the frames, mountings, and other metal parts of their sunglasses, marked "gold filled," as 1/10/12 karat, and that the frames would not tarnish;

When in fact such content was less than 1/20th of the entire product and was below the Bureau of Standards commercial standard which provides that no article having an alloy gold content of less than 1/20th of the entire product shall be marked "gold filled," and the deposit of gold on the frames, mountings, and other metal parts of their sunglasses, thus marked was not of any definite quality or substantial thickness, and consisted only of sufficient gold to impart thereto a gold color; and said frames would tarnish;

(*b*) Falsely represented that the lenses of their sunglasses were "ground and polished" and that they "would not break";

(*c*) Falsely represented that their sunglasses regularly sold at retail at prices as high as $5 or more and were of a $15 or $8.50 value and that, when offered for sale at a price of $3.89, constituted the biggest sunglass bargain in America;

When in fact they were of a type and quality that regularly retailed at from $1.50 to $3;

(*d*) Falsely represented that the frames and mountings of their sunglasses were manufactured by Bausch & Lomb, American Optical Company, or Shuron Optical Company;

The facts being that a significant number of their said products were not manufactured by said concerns;

(*e*) Falsely described certain products offered by them as "Binoculars";

When in fact they were not binoculars but field glasses which, unlike the others, are not equipped with prisms;

(*f*) Falsely represented that their said product eliminated light loss due to surface reflection by 50 percent and that the field of vision thereof was 150 yards at a distance of 1,000 yards;

When in fact the light loss due to surface reflection in their said glasses was reduced not more than 15 percent and the field of vision was 125 yards at said distance;

(*g*) Falsely represented that their said field glasses were war surplus and a $10 value:

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.

Decision

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

Mr. J. R. Phillips, Jr., *Mr. George M. Martin* and *Mr. Frederick J. McManus* for the Commission.

Mr. Benjamin D. Ritholz, of Chicago, Ill., for respondents.

Mr. Frank E. Gettleman, of Chicago, Ill., also representing Clark Optical Co., Dr. Ritholz & Sons Co. and Dr. Ritholz Optical Co.

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 August 6, 1953, the initial decision in the instant matter of hearing examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 28, 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 acts and practices in commerce in violation of the provisions of said Act. Thereafter a hearing was held in Chicago, Illinois, on June 13, 1950, at which a stipulation as to the facts was agreed upon between counsel supporting the complaint and respondent Benjamin D. Ritholz, acting as counsel for all respondents, which was then incorporated into the record. Thereafter, upon motion of counsel supporting the complaint, said stipulation was, by order of the hearing examiner dated July 23, 1952, stricken from the record, which order was, upon appeal by the respondents, confirmed by the Commission on October 8, 1952. Subsequently Frank E. Gettleman entered his appearance as counsel for the respondents, and agreed with counsel supporting the complaint upon another stipulation as to the facts, which was submitted to the hearing examiner and by his order incorporated into the record as of May 14, 1953. Under the terms of this stipulation, it was agreed between counsel that the facts therein stated might be taken as the facts in this proceeding in lieu of evidence in support of the allegations of the complaint or in opposition thereto, and that the hearing examiner might, without the filing of proposed findings as to the facts and conclusions or the presentation of oral argument thereon, proceed to issue his initial decision disposing of this proceeding. After the submission of said stipulation, counsel for the respondents filed a motion requesting that the complaint be dismissed as to Clark Optical Company and respondents Dr. Ritholz & Sons

Company and Dr. Ritholz Optical Company, to which counsel supporting the complaint filed an answer. Now the hearing examiner, having duly considered the record herein, including the stipulation as to the facts, motion to dismiss and answer thereto, 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. Respondents Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, Sylvia Ritholz, Fannie Ritholz, Sophie Ritholz, Jacob Bedno (erroneously designated in the complaint as Jacob Ritholz), and Anna Ritholz Bedno are individuals, trading as copartners, under the names Dr. Ritholz & Sons Company and Dr. Ritholz Optical Company, by which names the said individuals and copartners are known and under which their business is principally conducted at their headquarters and principal place of business at 1148–1160 West Chicago Avenue, Chicago, Illinois. Said respondents have also traded individually and as copartners under the additional trade names of Midwest Scientific Company, Clark Optical Company, Chicago Goggle Sales Company, Regent Optical Company, Parker Optical Company, Veterans' Emporium, and Goertz Company.

The use of the trade name Parker Optical Company by respondents was discontinued in 1949. The use of the trade name Veterans' Emporium by respondents was discontinued in July 1948. The use of the trade name Goertz Company by respondents was discontinued in August 1949. The use of the trade name Chicago Goggle Sales Company by respondents was discontinued in July 1952. The use of the trade name Regent Optical Company by respondents was discontinued in April 1952.

Donald A. Ritholz and Vera R. Ritholz were never members of the partnership referred to above.

PAR. 2. The respondents, except Donald A. Ritholz and Vera R. Ritholz, are now, and have been for more than 3 years last past, engaged in the sale and distribution of sunglasses or goggles, and field glasses. Said respondents cause their products, when sold, to be transported from their said place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia. The volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the sale of their said sunglasses, goggles and field glasses, said respondents have made numerous statements and representations with respect thereto in advertisements inserted in various magazines and periodicals, among and typical of which are the following:

SURPLUS SALE!

JUST RECEIVED ANOTHER SHIPMENT OF 8,000 BRAND NEW AIR CORPS TYPE
SUN GLASSES

Picture of a man wearing glasses

$3.89

* * *

Every pair manufactured to exacting optical standards! 14 Karat Gold Plated frames with Perloid Sweat Bar and adjustable rocking nose pads. Lenses are sage green meniscus curved with ground and polished surfaces. Large Aviation type, priced for a quick sell-out. Only 8,000 left. Buy now, while they last! Don't pass up biggest Sun-Glass bargain in America!

DR. RITHOLZ OPTICAL CO.
Main Office and Factory
1148–1160 W. Chicago Ave.

Said advertisement was also disseminated by respondents through the use of their trade name:

VETERANS EMPORIUM Dept. D2
1148–1160 W. Chicago Ave.,
Chicago 22, Ill.

* * * * * * *

WAR SURPLUS

13,000 BRAND NEW AIR CORPS TYPE
SUN GLASSES

With Genuine
War Surplus
Comfort Cable Temples

BAUSCH & LOMB

Picture of a pair of glasses

Picture of a man wearing glasses

$3.89 Picture of a case for glasses

* * *

* * *

EASILY WORTH $9.95

Every pair manufactured to exacting optical standards! 24 Karat Gold Plated frames with Pyralin Sweat Bar and adjustable rocking nose pads. Lenses are sage green meniscus curved with ground and polished surfaces. Large Aviation type, priced for a quick sell-out. Only 13,000 left. Buy now, while they last! Don't pass up biggest Sun-Glass bargain in America!

VETERAN'S EMPORIUM Dept. D1
1148–1160 W. Chicago Ave.,
Chicago 22, Ill.

* * * * * * *

Best
Buy Under
The Sun

U. S. Army Air Force Type
SUN GLASSES

Picture of a pair of glasses and a case for the glasses

Men's and
Women's sizes

Genuine Leatherette
Case Included

FORMERLY $8.50 VALUE
Super-Sensationally Priced at only ________ $1.88
Postpaid

*Cool Green meniscus curved, polished lenses.
*Gold Plated adjustable frames
* * *
*Lenses meet specification of U. S. Gov't. Bureau of Standards.

CHICAGO GOGGLE SALES CO., Dept 100

* * * * * * *

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MAKE UP TO $10 ON EVERY SALE!

AIR
Corps SUN
TYPE
GLASSES

Picture of a man wearing glasses

Picture of a pair of glasses

$5.00 SELLS
EVERYWHERE
UP TO $15 and MORE!

Just released for civilian use! Here are genuine 12 Karat gold filled, Air Corps Type SUN GOGGLES complete with "Mother of Pearl" sweat bar, brow rest and rocking pads, scientific ray-absorbent "No Glare" ground and polished sage green lenses, dropped before curving, and self-adjusting comfort cable ear pieces. * * * Send for your sample pair of these fine Sun Goggles—only $5.00, postage prepaid. Or send no money. Just deposit $5.00 with your own postman, plus postage—your money back if not delighted.

MIDWEST SCIENTIFIC CO. Dept. 61–A, 1148–1160 W. Chicago Ave., Chicago 22, Ill.

* * * * * * *

1/10/12 KARAT GOLD FILLED AIR CORPS TYPE
SUN GLASSES

Genuine 1/10–12K Pink Gold Filled * * *
$3.95 . . . ground and polished lenses.

* * * * * * *

HARD-AS-ROCK
Sun Glasses
hard as the Rock of Gibraltar

* * * Guaranteed to withstand shock and strain Without Breaking.

* * * * * * *

14 Gold Plated
24 Gold Plated
12K Gold Filled.

* * * * * * *

Please do not compare these fine genuine 12K Gold Filled Sun Glasses with Cheap inferior nickel or gold plated goggles * * * all our sun glasses are fully warranted to be genuine 12K PINK gold filled, guaranteed against tarnishing and to stand acid.

* * * * * * *

Scoop! WAR SURPLUS SUN GLASSES

* * * * * * *

BRAND NEW
WAR SURPLUS
SUN GLASSES

24 Karat
Gold
Plated

136,115 Pairs

GI frames purchased from War Assets Administration, U. S. Sales Depot (Sales Doc. #6698178). Manufactured for U. S. Army Medical Department by leading manufacturers; Bausch & Lomb Optical Co., American Optical Co., and Shuron Optical Co. to meet U. S. Army Specifications. Lenses are sage green meniscus curved, conform to specifications of National Bureau of Standards (CS–79–40). These Sun Glasses are 24 Karat Gold-plated * * *.

* * * * * * *

SURPLUS SALE!

Only $3.49 * * *

Easily worth $9.95 * * * 24K Gold Plated Frame. Lenses are sage green meniscus curved with ground and polished surfaces * * * Biggest Sun Glass Value in America.

* * * * * * *

Picture of Binoculars

WITH COATED
LENSES
AND INTERPUPILLARY
ADJUSTMENT

$10.00 Value
only
$4.98

Picture of Binoculars

Plus
20%
Fed. Tax.

Sensation of the year! Many features of high priced Binoculars. Heavy duty, all-purpose; precision. Carrying case, shoulder straps. SEND NO MONEY, pay Postman plus charges. Send remittance with order and we send postpaid. Ideal gift. Money back if not satisfied.

GOERTZ CO., Dept. Gi, 1148 W. Chicago Ave., Chicago 22, Ill.

LIKO BINOCULARS

Coated Lenses, reduces glare, eliminates light loss due to surface reflection by 50% or more.

* * * * * * *

WAR SURPLUS SUN GLASSES
24 K Gold Plated
With Hard as Rock Non-breakable Lenses.

MAKE UP TO $10.00 ON EVERY SALE

Picture of a Man

Air
Corps SUN
Type GLASSES

Picture of Glasses

$5.00 SELL EVERYWHERE up to $15.00 and MORE!

*   *   *   *   *   *   *

MIDWEST SCIENTIFIC CO. Dept. 61–A, 1148–1160 W.
Chicago Ave., Chicago 22, Ill.

*   *   *   *   *   *   *

* * * Sun Glasses $1.88 Postpaid * * * Cool Green meniscus polished lenses * * * Lenses meet specifications of U. S. Government Bureau of Standards.

*   *   *   *   *   *   *

Binoculars $4.98 * * * $10.00 Value.

*   *   *   *   *   *   *

LIKO BINOCULARS
FIELD OF VISION

The lenses of Liko Binoculars are scientifically ground and polished in order to afford the greatest magnification and field of vision. The unusually large 45 mm. objective lenses give a wider field depth of vision, for objects close by or at a greater distance. The field of vision in the Liko Binoculars is 150 yards, which means that at a distance of 1,000 yards, an area of 150 yards in width is plainly visible.

PAR. 4. Samuel J. Ritholz is an active partner in the above-described partnership, and is licensed to practice the profession of optometry under and by virtue of the laws of the State of Illinois, and is consequently entitled to use the title Doctor.

PAR. 5. The alloy gold content of the frames, mountings, and other metal parts of respondents' sunglasses marked "gold filled" is less than 1/20th of the entire product and is below the Bureau of Standards' commercial standard, which provides that no article having alloy gold content of less than 1/20th of the entire product shall be marked "gold filled."

PAR. 6. The deposit of gold on the frames, mountings, and other metal parts of respondents' sunglasses marked "gold plated" is not of any definite quality or substantial thickness and consists only of sufficient gold to impart to the frames, mountings and other metal parts a gold color. The frames of said sunglasses will tarnish.

PAR. 7. The lenses of the sunglasses sold by respondents, which are represented to be "ground and polished," are not in fact ground and polished. The lenses of said sunglasses will break.

PAR. 8. The sunglasses sold by respondents are of a type and quality that regularly retail at a price ranging from $1.50 to $3. The said sunglasses do not regularly sell at retail at prices as high as $5 or more, nor are said sunglasses of $15 or $8.50 values. The said sunglasses, when offered for sale at a price of $3.89, do not constitute the biggest sunglass bargain in America.

PAR. 9. The frames and mountings of a significant number of sunglasses sold by respondents were not manufactured by Bausch & Lomb, American Optical Company, or Shuron Optical Company.

PAR. 10. The product "Liko Binoculars," advertised and offered for sale by respondents, is not binoculars, but field glasses. Field glasses differ from binoculars in the manner in which they are constructed. Binoculars are equipped with prisms, and field glasses do not contain prisms. The product sold by respondents as "Liko Binoculars" contains no prisms. The light loss due to surface reflection in respondents' glasses is reduced not more than 15 percent. The field of vision of respondents' field glasses is 125 yards at a distance of 1,000 yards. The field glasses sold by respondents are not war surplus and are not a $10 value.

PAR. 11. Benjamin D. Ritholz and Morris I. Ritholz are veterans of World War I.

PAR. 12. The respondent Benjamin D. Ritholz, doing business as Clark Optical Company, was, as is alleged in Paragraphs 8, 9, and 10 of the complaint, engaged in the sale and advertising for sale of spectacles, and in connection therewith furnished customers with certain devices known as "Self-Test Optometer" and "Cardboard Eye Tester." On May 21, 1951, Benjamin D. Ritholz, as owner of Clark Optical Company in answer to a complaint issued by the Post Office, executed an "Affidavit of Discontinuance."

PAR. 13. The use by respondents, other than Donald A. Ritholz and Vera R. Ritholz, of the foregoing false, misleading, and deceptive statements and representations has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said advertisements and representations were true, resulting in the purchase of respondents' products because of such erroneous and mistaken belief.

CONCLUSIONS

In view of the fact, as herein found, that respondents Donald A. Ritholz and Vera R. Ritholz were never members of the copartnership hereinabove referred to, it is concluded that respondents' motion to dismiss the complaint as to Donald A. Ritholz and Vera R. Ritholz should be granted.

In view of the fact, as herein found, that respondent Samuel J. Ritholz is licensed to practice the profession of optometry under and by virtue of the laws of the State of Illinois, and to use the title "Doctor" in connection therewith, it is concluded that the allegation of the complaint relating to respondents' misuse of the title "Doctor" or the abbreviation "Dr." has not been proven, and therefore that respondents' motion to dismiss the complaint insofar as it relates thereto should be granted.

In view of the fact, as herein found, that respondent Benjamin D. Ritholz, doing business as Clark Optical Company, did, on May 21, 1951, execute an "Affidavit of Discontinuance" in response to a complaint issued by the Post Office Department, concerning the sale and advertising for sale of spectacles, in connection with which said respondent furnished customers with certain devices known as "Self-Test Optometer" and "Cardboard Eye Tester," it is concluded that there is no further public interest in the continuance of the instant proceeding insofar as it relates thereto; and, accordingly, it is concluded that respondents' motion to dismiss the complaint as to respondent Benjamin D. Ritholz, doing business as Clark Optical Company, should be granted.

In view of the fact, as herein found, that respondents Benjamin D. Ritholz and Morris I. Ritholz are veterans of World War I, it is concluded that the allegation of the complaint that no one of the respondents trading under the name of Veterans Emporium is a veteran of World War I or II should be dismissed.

It is further concluded that the acts and practices of respondents, with the exceptions hereinabove set forth, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, Sylvia Ritholz, Fannie Ritholz, Sophie Ritholz, Jacob Bedno (erroneously designated in the complaint as Jacob Ritholz), and Anna Ritholz Bedno, individually and as copartners trading as Dr. Ritholz & Sons Company, Dr. Ritholz Optical Company, and under other names, their representatives,

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agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of sunglasses, goggles and field glasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

a. That the alloy gold content of the frames, mountings and other metal parts of their sunglasses is 1/10/12 Karat or 1/10/12 K, or any other percentage of gold content, unless and until said products actually contain the percentage of gold so represented;

b. That their sunglasses are gold plated, when the deposit of gold on the frames, mountings, and other metal parts thereof is not of any definite quality and substantial thickness;

c. That the frames of their sunglasses will not tarnish, when the metal parts thereof are of such composition that they will in fact tarnish;

d. That the lenses of their sunglasses are ground and polished, unless and until such is in fact true;

e. That the lenses of their sunglasses are nonbreakable, unless and until such is in fact true;

f. That their products are of a type and quality regularly retailing at prices as high as $5 or more, or that such products are of a value of $8.50, $10, or $15, or any other specific amount, unless and until such is in fact true;

g. That the frames and mountings of their sunglasses are manufactured by Bausch & Lomb, American Optical Company, Shuron Optical Company, or any other manufacturer, unless and until such frames and mountings are in fact so manufactured;

h. That their product designated "Liko Binoculars," or that product or any substantially similar product designated by any name, is binoculars, unless and until such product is so constructed as to contain prisms;

i. That their product designated "Liko Binoculars," or that product or any similar product designated by any name, eliminates light loss due to surface reflection by 50 per cent, or any other percentage, unless and until such is in fact true;

j. That the field of vision of their product designated "Liko Binoculars," or of that or any similar product designated by any name, is 50 yards, or an area of 150 yards at a distance of 1,000 yards, or any ther specific area or distance, unless and until such is in fact true;

k. That their products are war surplus, or purchased or received from the Air Corps, Air Force, War Assets Administration, or other Government agency, unless and until such is in fact true;

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 products, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

It is further ordered, That the complaint herein, insofar as it relates to respondents Donald A. Ritholz and Vera R. Ritholz, be, and the same hereby is, dismissed.

It is further ordered, That the complaint herein, insofar as it relates to respondents' use in their trade name or advertising of the title "Doctor" or the abbreviation "Dr.," be, and the same hereby is, dismissed.

It is further ordered, That the complaint herein, insofar as it relates to respondent Benjamin D. Ritholz trading as Clark Optical Company, be, and the same hereby is, dismissed.

It is further ordered, That the complaint herein, insofar as it relates to respondents' use of the word "Veterans" in the trade name "Veterans Emporium," or in any other manner relating to respondents' service in the Armed Forces, be, and the same hereby is, dismissed.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, Sylvia Ritholz, Fannie Ritholz, Sophie Ritholz, Jacob Bedno (erroneously designated in the complaint as Jacob Ritholz), and Ann Ritholz Bedno, individualy and as copartners trading as Dr. Ritholz & Sons Company, Dr. Ritholz Optical Company, and under other names, 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 August 6, 1953].

IN THE MATTER OF

ROBERT HALL CLOTHES, INC., ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 5985. Complaint, May 8, 1952—Decision, Aug. 19, 1953

Where a corporation engaged in the operation of two clothing factories and one warehouse, and of numerous subsidiary corporations, engaged in the operation of many retail clothing stores located in many of the States, and in the shipment of clothing made by it and purchased from others to said retail stores; and three individuals, officers thereof; competitively engaged as aforesaid; in newspaper advertisements of their said clothing, in which they inserted the name of the particular retail store concerned, they paying the cost of publication—

(*a*) Falsely represented that the regular prices for the clothing thus offered were greater than those prices at which it was being offered in said advertisements;

(*b*) Falsely represented that because said corporation had reduced the prices of the clothing so advertised, purchasers of such clothing would save money; when in fact the prices had not been reduced; and

(*c*) Falsely represented that said corporation's clothing thus advertised was of a specific value which was in excess of the price charged therefor by it:

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

Before *Mr. John Lewis*, hearing examiner.
Mr. Edward F. Downs for the Commission.
Stroock & Stroock & Lavan, of New York City, for respondents.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 8, 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 Commis-

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

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on August 19, 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.

sion'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 complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, 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 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 other to cease and desist, all of which respondents consent may be entered herein in final disposition of this proceedings are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Robert Hall Clothes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at 1241 Broadway, New York City, New York.

Respondents Harold Rosner, Frank B. Sawdon, and Achilles Suyker are now, and were during all the times hereinafter stated officers and directors of said respondent corporation, and as such direct and have directed the activities of respondent corporation, and formulate and control and have formulated and controlled its policies, practices and affairs including the advertising representations made in connection therewith.

PAR. 2. Respondent Robert Hall Clothes, Inc., is now, and for more than 1 year last past has been the owner of all the issued and outstanding capital stock of numerous subsidiary corporations engaged in the operation of many retail clothing stores located in many of the States, and is engaged in the operation of two clothing factories and one warehouse. The activities of the aforesaid subsidiary corporations are controlled and directed by respondent Robert Hall Clothes, Inc.

The aforesaid retail stores sell men's, women's, and children's clothing to the purchasing public, some of which clothing is manufactured by corporate respondent's subsidiary manufacturing corporations and some of which is purchased by said respondent from other manufacturers.

Corporate respondent ships and has shipped the clothing manufactured by it and purchased from other manufacturers from its factories and warehouses and from the factories of other manufacturers from which it buys and has bought clothing, to the aforesaid retail stores which are located throughout various States of the United States. In many instances the retail stores are located in States other than the State in which such shipments have or had their origin.

The aforesaid retail stores are engaged in the sale of clothing and the shipment of certain thereof in commerce as "commerce" is defined in the Federal Trade Commission Act, to purchasers located in States other than that in which such shipments have or had their origin.

The corporate respondent maintains and at all times mentioned herein has maintained a course of trade in said clothing in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of the business as aforesaid, and for the purpose of inducing the purchase of the aforesaid clothing, respondents, other than A. Harry Feldman, caused advertisements to be published in newspapers circulated among prospective purchasers in various of the several States of the United States. Among and typical, but not all inclusive of the representations made in such advertisements so published and circulated, are the following:

> 39.95 Gabardines and All-Wool Coverts with 100% Wool Liners 29.95
>
> 49.95 All-Wool Gabardines with 100% All-Wool Liners 34.95
>
> Rush to Robert Hall
> 31,000 BRAND NEW All-Wool Winter Coats Regularly from $23.95 to $43.95
> 13.95 18.95 23.95
>
> Saves 33% at ROBERT HALL
> Boys 5.95 Gabardine Slacks 3.99
>
> Luxurious All-Wool 2-Ply Worsted Suits
> Regular 39.95 Value 29.95
>
> Pure Wool lavishly fur-trimmed coats
> Regular 50.00 value 37.95
>
> This week Robert Hall slashes prices on thousands of fine winter coats!
> Now pay only 13.95, 18.95 or 23.95 for regular 23.95 to 43.95 coats.

When respondents caused such advertisements to be published and circulated as aforesaid the name of the respective retail store was inserted therein and respondent corporation paid the cost of said publication.

PAR. 4. Through the use of the aforesaid statements, and others similar thereto not specifically set forth herein, corporate respondent represented directly or by implication:

(a) That its regular prices for the clothing offered for sale in such advertisements were greater than those prices at which such clothing was being offered for sale in said advertisements.

(b) That because it had reduced the prices of the clothing so advertised, purchasers of such clothing would save money.

(c) That its clothing as so advertised was of a specific value which was in excess of the prices charged for such clothing by corporate respondent.

PAR. 5. The statements and representations made by respondents, other than A. Harry Feldman, in the aforesaid advertisements are false, misleading, and deceptive. In truth and in fact:

(a) Corporate respondent's regular prices for the clothing offered for sale in said advertisements were not greater than the prices at which it offered such clothing for sale in said advertisements.

(b) Corporate respondent had not reduced the prices of the clothing offered for sale in said advertisements so that the purchasers thereof could not save money from its regular prices for such clothing.

(c) Corporate respondent's clothing offered for sale in said advertisements was not of the value ascribed thereto by them in said advertisements.

PAR. 6. In the course and conduct of their business, corporate respondent and the aforesaid retail stores have been at all times mentioned herein, in substantial competition with other corporations, firms and individuals engaged in the business of selling clothing, in commerce among and between the various States of the United States.

PAR. 7. The use by respondents, other than A. Harry Feldman, of the foregoing statements and representations, and others similar thereto, has had and now has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the clothing sold by corporate respondent through its retail stores. As a result of said respondents' practices as aforesaid, injury has been done to competition in commerce among and between the various States of the United States.

CONCLUSION

The acts and practices of respondents, other than A. Harry Feldman, as herein found are all to the prejudice and injury of the public and of the competitors of corporate respondent, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, that respondent, Robert Hall Clothes, Inc., a corporation, and its officers, representatives, agents, and employees and respondents Harold Rosner, Frank B. Sawdon, and Achilles Suyker, as officers and directors of said corporate respondent, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of clothing 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 the regular price of corporate respondent's clothing is any amount in excess of the price at which such clothing is being offered for sale or has been sold by corporate respondent in recent regular course of business.

2. Representing, directly or by implication, that any price which does not constitute a reduction from corporate respondent's former prices for its clothing affords any savings to purchasers from corporate respondent's regular prices, or misrepresenting in any manner the amount of savings afforded to purchasers of corporate respondent's clothing.

3. Representing, directly or by implication, that the value of corporate respondent's clothing is any amount in excess of its actual value. *Provided, however*, That nothing contained in this order shall prevent respondents from advertising or otherwise representing that corporate respondent's merchandise is worth or of a value in excess of the stated price, provided such worth or value is based upon the price of comparable merchandise sold by other retailers in the same trade territory.

4. Cooperating or participating with corporate respondent's subsidiary retail stores in disseminating any advertisement containing any representation prohibited by this order.

It is further ordered, That the complaint herein be and it hereby is dismissed without prejudice as to respondent A. Harry Feldman.

It is further ordered, That respondents Robert Hall Clothes, Inc., Harold Rosner, Frank B. Sawdon, and Achilles Suyker 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.

ROBERT HALL CLOTHES, INC.,
By (Sgd) HAROLD ROSNER,
President.

(Sgd) Harold Rosner,
HAROLD ROSNER,
(Sgd) Frank B. Sawdon,
FRANK B. SAWDON,
(Sgd) A. Harry Feldman,
A. HARRY FELDMAN,
(Sgd) Achilles Suyker,
ACHILLES SUYKER.

Date: ——————————.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 19th day of August 1953.

IN THE MATTER OF

AMERICAN TACK COMPANY, INC., ET AL.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 5758. Complaint, Mar. 23, 1950—Decision, Aug. 21, 1953

Where a corporate manufacturer, and a second corporate concern, engaged as purchasing, selling, and distributing agent for the former, and four individuals who formulated, directed, and controlled the policies and practices of both, engaged in the sale and distribution of thumbtacks made by said manufacturer; and in the sale and distribution also of finished thumbtacks imported from Germany, which they imported in bulk, removed from the original shipping cases, and packaged in small boxes labeled "Solid Head Nickel Plated Thumbtacks"—

Sold said thumbtacks last referred to to jobbers and dealers for resale to the general public, without any imprinting, labeling, or marking on the boxes or packages in which they were packed to indicate to purchasers that they were of foreign or German origin; with tendency and capacity to mislead and deceive members of the purchasing public into the false belief that said products were of domestic manufacture and origin, and into the purchase thereof in reliance on such erroneous belief:

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. Frank Heir*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

Rosenbaum & Gellar, of New York City, for respondents.

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 23, 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 acts and practices in commerce in violation of the provisions of said Act. After the filing by respondents of their joint answer to the complaint, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission, theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. On July 14, 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 January 16, 1953, it issued and thereafter served on 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 subsequently filed memorandum interposing their objections to the alterations aforesaid and counsel supporting the complaint filed memorandum in reply thereto. The Commission having considered and ruled on such objections, this proceeding regularly came on for final consideration by the Commission upon the record here on review; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes 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. American Tack Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its post office address and principal place of business at 3–7 Cross Street, Suffern, New York. Michael Markman, Edward H. Weinberg, Molly Markman, and James L. Weinberg are President, Vice President, Secretary, and Treasurer, respectively, of said corporation. The business address of said individuals is the same as that of the corporation.

Markwin Industries, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its address and principal place of business at 3–7 Cross Street, Suffern, New York. It is a purchasing, selling and distributing agent for American Tack Company, Inc. Harold M. Weinberg, Michael Markman, Anna Weinberg, and Molly Markman are the Chairman of the Board, President, Secretary, and Treasurer, respectively, of said corporation. The business address of said individuals is the same as that of the corporation.

These respondent individuals formulate, direct, and control the policies and practices of the corporations with which they are connected and have cooperated in putting into effect the practices hereinafter enumerated.

PAR. 2. The respondents are now, and have been for several years last past, engaged in the manufacture, sale and distribution of thumbtacks manufactured by respondent American Tack Company, Inc., and also in the sale and distribution of finished thumbtacks imported from Germany. Respondents cause their said products, when sold, to be shipped from their place of business in the State of New York to jobbers and dealers located in various other States of the United States. Said jobbers sell to dealers which dealers, in turn, sell said thumbtacks to the general public. Respondents maintain, and at all times mentioned herein have maintained a course of trade in said products in commerce between and among the various States of the United States. Their volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business, respondents, through Markwin Industries, Inc., purchase and import thumbtacks from Germany in bulk quantities. The respondents remove the tacks from the original shipping cases, package them in small boxes labeled "Solid Head Nickel Plated Thumbtacks." At no place on the container or otherwise is the fact disclosed that said tacks are of foreign origin.

PAR. 4. There has been, and now is, among members of a substantial segment of the buying and consuming public throughout the United States, including purchasers of thumbtacks, a substantial, sincere and subsistent preference for thumbtacks which are of wholly domestic manufacture or origin as distinguished from products of foreign manufacture or origin, although the preponderance of evidence in the record in this proceeding indicates that such preference does not exist on the part of the entire purchasing public or even the greater portion thereof.

PAR. 5. There is substantial evidence that purchasers of respondents' product described hereinabove in Paragraph 3 have actually purchased and may purchase under the impression, upon visual inspection, that the contents of such packages were in fact made in the United States. Furthermore, since the dominant word in the corporate name "American Tack Company" is "American" and since it is known in the trade to be the largest domestic producer of thumbtacks, the fact that it sells the product described in Paragraph 3 manifestly would tend to further the impression on the part of members of the trade buying from it directly that such products are of domestic manufacture even though this respondent's name has not appeared on individual packages thereof.

PAR. 6. There is no reliable, probative, or substantial evidence that it has been the custom of respondents to commingle tacks manufactured by them with imported tacks and to designate such mixture as "made in U. S. A." as charged in the complaint.

PAR. 7. There is no reliable, probative, or substantial evidence that the respondents' thumbtacks, designated as "Saf-T-Hed Thumbtacks," and represented on the containers thereof to have extra metal caps, do not in fact have such extra metal caps as represented.

PAR. 8. The complaint alleged that respondents Anna Weinberg, James L. Weinberg, Edward H. Weinberg, and Molly Markman, trading as co-partners under the name of Tackanail Company, have distributed and sold their merchandise as agent for respondent American Tack Company, Inc. The record discloses, however, that Tackanail Company is a jobber and has resold to retailers products acquired by it from American Tack Company, Inc., and it further appears that this concern has not distributed any of the solid head nickel plated thumbtacks referred to in Paragraph 3 above. Although it has been concluded that respondents Ann Weinberg, James L. Weinberg, Edward H. Weinberg, and Molly Markham have cooperated, as hereabove described, in putting into effect and performing the acts and practice there referred to, it does not appear that they ever engaged in such acts or practice in connection with the offering for sale of merchandise which was distributed by Tackanail Company.

PAR. 9. The practice of respondents, as hereinabove described in Paragraphs 3, 4, and 5, in offering for sale, selling and distributing thumbtacks of foreign origin without any imprinting, labeling, or marking on the boxes or packages in which they are packed to indicate to purchasers that said thumbtacks are of German origin, has had and has the tendency and capacity to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said thumbtacks are of domestic manufacture and origin and into the purchase thereof in reliance thereon of such false and erroneous belief.

CONCLUSION

The aforesaid acts and practices of the 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 Commission is of the opinion that those allegations of the complaint as they relate to the acts and practices engaged in by the respondents, Anna Weinberg, James L. Weinberg, Edward H. Weinberg, and Molly Markham, in connection with the offering for sale of merchandise distributed through Tackanail Company are not supported by the record.

ORDER

It is ordered, That respondent American Tack Company, Inc., a corporation, and its officers; respondents Michael Markham, Edward H. Weinberg, Molly Markman, and James L. Weinberg, individually and as officers and directors of respondent American Tack Company, Inc.; respondent Markwin Industries, Inc., a corporation, and its officers; and respondents Harold M. Weinberg, Michael Markham, Anna Weinberg, and Molly Markham, individually and as officers and directors of said Markwin Industries, Inc., and the aforesaid respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of thumbtacks, or other similar products, do forthwith cease and desist from offering for sale or selling any such products of foreign origin without clearly and conspicuously disclosing on the packages or other containers in which they are sold to the purchasing public, the country of origin of such products.

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 Mason dissenting and stating that he is in accord with the ruling of the hearing examiner as approved by the United States Court of Appeals for the Seventh Circuit in Docket 4795—R. J. Reynolds Tobacco Company.

IN THE MATTER OF

SIDNEY LENET DOING BUSINESS AS M & M SPRING COMPANY

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 6029. Complaint, Aug. 14, 1952—Decision, Sept. 1, 1953

Where an individual engaged in the interstate sale and distribution to dealers, for resale, of automobile springs which were composed of some new and some old and previously used parts, and which had the appearance of having been made entirely from new and previously unused parts through the addition of new metal covers, in competition with concerns engaged in manufacturing and selling entirely new springs—

(*a*) Offered and sold its said springs to dealers with no label, marking, or designation stamped thereon or attached thereto to indicate to the purchasing public or to dealers that said springs, which were resold to said public with no such disclosure, were made or assembled as aforesaid; and

(*b*) In some instances sold to dealers as and for new springs, assembled and made entirely from new and previously unused parts, his said product:

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

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

Mr. Edward F. Downs for the Commission.

Halfpenny, Hahn & Cassedy, of Washington, D. C., for respondent.

ORDERS AND DECISION OF THE COMMISSION

Order denying respondent's appeal from initial decision of hearing examiner and decision of the Commission and order to file report of compliance, Docket 6029, September 1, 1953, follows:

This matter came on to be heard by the Commission upon respondent's appeal from the initial decision of the hearing examiner and upon briefs in support of and in opposition to said appeal, oral argument not having been requested.

In support of his appeal respondent contends that (1) the admissions contained in his answer to the complaint were made on the condition that no order would be issued herein by the Commission until final decision in another matter, Docket No. 5964, in which matter, at the time of the filing of the appeal herein, the Commission's decision was on appeal and was not final, (2) the Commission does not have the power to require respondent to affirmatively disclose that his automobile springs contain used parts, and (3) the order is unreasonable in that it goes further than is necessary to correct the complained of unfair practice.

The entire record herein consists of the complaint and an answer by respondent admitting all of the allegations of the complaint except that respondent states that he went out of business for himself approximately 2 months prior to the issuance of the complaint and since that date has been engaged in the sale of automobile springs as a salesman for the Lenco Spring Company. This admission answer was filed on the condition that the Commission and the hearing examiner would not issue an order herein until final decision has been reached in the matter of Maurice J. Lenett and Leonard Stolzberg, individuals doing business as Lenco Spring Company, Docket No. 5964. This condition was expressly waived as to the filing of the hearing examiner's initial decision. At the time the appeal brief was filed herein, the Lenco Spring Company matter was before the United States Court for the District of Columbia Circuit for review of the Commission's decision. Said appeal was dismissed by the court on June 2, 1953, upon a stipulation of counsel. The Commission's decision therein is now final. Therefore, the condition contained in said answer has been met and the basis for respondent's said objection to the entry of a decision herein has been removed.

By his admission answer respondent admits that his automobile springs, which are made in part of previously used materials, are assembled in such a manner as to have an appearance of being made entirely of new parts, that they are sold in commerce to dealers and are resold by them to the consuming public without any marking or label to indicate they are made in part of previously used parts, that they are accepted by the purchasing public as made of new parts, and that by their sale without markings disclosing they are made of used parts respondent has placed in the hands of dealers instrumentalities which have the tendency and capacity to deceive a substantial portion of the purchasing public into the belief that respondent's automobile springs were made of new parts and to induce them to buy his springs rather than competitors as a direct result of this erroneous belief.

Upon this record it is clear that the provisions of the hearing examiner's order requiring respondent to clearly and conspicuously disclose the fact said automobile springs are made of previously used parts, not only on the containers in which they are sold but also by a permanent stamp on each spring, are required to remove the illegal deception created by respondent's practice of assembling its springs in such a manner as to resemble springs made entirely of new parts, and not disclosing their true construction. Such a requirement for affirmative disclosure by permanent markings when necessary to prevent deception of the purchasing public is clearly within the power of the Commission.

The Commission, therefore, being of the opinion that respondent's grounds for appeal are of no merit and that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

It is ordered, That respondent's appeal from the initial decision of the hearing examiner be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner shall, on the 1st day of September 1953, become the decision of the Commission.

It is further ordered, That respondent Sidney Lenet, an individual, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist contained in said initial decision * * *.

Said initial decision, thus adopted by the Commission as its decision, follows:

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 14, 1952, issued and subsequently served its complaint in this proceeding upon the respondent Sidney Lenet, an individual doing business as M & M Spring Company, charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint, and on the 16th day of September 1952, respondent filed an admission answer by the terms of which he waived hearing on the allegations of fact set forth in the complaint, does not contest the facts as charged and specifically admits all of the material allegations of fact as set forth in the complaint to be true as charged except that respondent is not now engaged in the business activities described in the complaint, he having abandoned such on the 15th day of June 1952.

Thereafter the proceeding regularly came on for final consideration by said Hearing Examiner on the complaint and answer, proposed findings as to the facts and conclusion not having been requested nor filed; and said Hearing Examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Sidney Lenet is an individual doing business as the M & M Spring Company with his office at 3842 Cambridge Street and shop at 884 North Budd Street, Philadelphia, Pennsylvania.

PAR. 2. Respondent for more than 1 year prior to June 15, 1952, engaged in the business of selling automobile springs, composed of some new and some old and previously used parts, to dealers located in various parts of the United States who purchase for resale; that prior to June 15, 1952, respondent was engaged on his own account in the aforesaid business since which time he has abandoned same and is presently an employee of another who is engaged in the same line of endeavor.

PAR. 3. In the course and conduct of his business as aforesaid, respondent caused his said automobile springs, when sold by him, to be transported from his place of business in the State of Pennsylvania to purchasers located in States other than the State of Pennsylvania and in the District of Columbia.

Respondent at all times mentioned herein maintained a course of trade in said automobile springs in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business of respondent in said commerce is and has been substantial.

PAR. 4. In the course and conduct of his business the respondent bought automobile springs composed of some new and some old and previously used parts to which he added new metal covers in a manner which gave to such springs the appearance of having been assembled or manufactured entirely from new and previously unused parts.

PAR. 5. Respondent sold his automobile springs, as above described, to dealers who purchased for resale to the purchasing public, without any label, marking, or designation stamped thereon or otherwise attached thereto, to indicate to the purchasing public or to the dealers that said automobile springs were assembled in part from old and previously used parts, and such automobile springs were resold to the consuming public without any disclosure that they were assembled in part from old parts that have been previously used.

In some instances respondent sold such automobile springs to dealers as and for new automobile springs assembled or manufactured entirely from new and previously unused parts.

PAR. 6. When articles which are assembled or manufactured in whole or in part from previously used materials in such a manner that they have the appearance of being assembled or manufactured from new and previously unused materials, are offered to the purchasing public, and such articles are not clearly and conspicuously marked or labeled as having been assembled or manufactured from previously used materials, they are readily accepted by members of the purchasing public as having been assembled or manufactured entirely from new and previously unused materials.

PAR. 7. In the course and conduct of his business the respondent was at all times mentioned herein in substantial competition with individuals, corporations and firms engaged in the business of manufacturing and selling automobile springs manufactured entirely from new and previously unused parts in commerce among and between the various States of the United States.

PAR. 8. By the aforesaid acts and practices, the respondent placed in the hands of dealers the means and instrumentalities whereby said dealers may deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they were purchasing automobile springs manufactured entirely from new and previously unused parts, when in fact said springs were composed in part of old and previously used parts.

PAR. 9. The failure of the respondent to mark his said springs showing that they contained old and previously used parts had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the automobile springs sold by him were new springs assembled or manufactured entirely from new and previously unused parts, and to induce a substantial portion of the purchasing public to purchase substantial quantities of respondent's automobile springs because of such erroneous and mistaken belief. As a direct result of the respondent's practices, as aforesaid, substantial trade in commerce has been diverted to the respondent from his said competitors and injury has been done to competition in commerce between and among the various States of the United States and the District of Columbia.

CONCLUSION

The acts and practices of the respondent, as herein found, were all to the prejudice and injury of the public and of the competitors of the respondent, and constituted unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent Sidney Lenet, individually and doing business as the M & M Spring Company or doing business under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of automobile springs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or delivering to others for sale to the public any automobile spring which is composed in whole or in part of previously used parts unless a disclosure that said automobile spring is composed, in whole or in part as the case may be of previously used parts, is permanently stamped or fixed on each said automobile spring in a clear and conspicuous manner and in such location as to be clearly legible to the purchaser thereof, and unless there is plainly printed or marked on the box, carton, wrapper, or other container in which such automobile spring is sold or offered for sale, a notice that said automobile spring is composed, in whole or in part as the case may be, of previously used parts.

2. Representing, by failure to reveal or otherwise, that an automobile spring composed in whole or in part of previously used parts is composed entirely of new and previously unused parts.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That respondent Sidney Lenet, an individual, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist * * * [as required by aforesaid order and decision of the Commission].

In the Matter of

THE KROGER CO.

Docket 5991. Complaint, May 14, 1952. Decision, Sept. 8, 1953

Charge: Knowingly receiving lower prices from sellers of grocery products of like grade and quality than said sellers charged respondent's competitors, in violation of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Edward S. Ragsdale, *Mr. Rice E. Schrimsher* and *Mr. Brockman Horne* for the Commission.

Arnold, Fortas & Porter, of Washington, D. C., for respondent.

DECISION OF THE COMMISSION

This matter coming on to be heard by the Commission upon its review of the hearing examiner's initial decision herein; and

The Commission having duly considered the entire record and being of the opinion that, although the hearing examiner in his initial decision did not accurately construe the admissions made by counsel supporting the complaint in their answer to respondent's motion to dismiss, the conclusion reached by him is correct, and that said initial decision is adequate and appropriate to dispose of this proceeding:

It is ordered, That the attached initial decision of the hearing examiner shall, on the 8th day of September, 1953, become the decision of the Commission.

Commissioner Howrey not participating.

Order Dismissing Complaint Without Prejudice

INITIAL DECISION BY WEBSTER BALLINGER, HEARING EXAMINER

The Federal Trade Commission on the 14th day of May 1952 issued its complaint in this proceeding charging respondent, The Kroger Co., with having violated the provisions of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U. S. C., Title 15, Sec. 13). Service being made, respondent answered and the case was, by order of the Commission, assigned to the undersigned duly appointed Hearing Examiner.

Respondent is engaged in the retail grocery business and maintains a large number of retail stores located in 19 States through which it sells to the public, in competition with other retail stores, a variety of grocery products, including food, food products and household supplies.

Prior to the receipt of evidence respondent, by motion in writing, moved to dismiss the complaint for failure to state a violation of law to which counsel for the complaint filed their written answer, oral argument being waived.

The complaint charges respondent with having knowingly received lower prices from sellers of grocery products of like grade and quality than said sellers charged respondent's competitors, in violation of subsection (f) of Section 2 of the Clayton Act, as amended. The answer to the motion to dismiss admits that in the light of the recent decision of the Supreme Court of the United States (June 8, 1953) in *Automatic Canteen Company* v. *F. T. C.* [346 U. S. 61; 49 F. T. C. 1763] this allegation is insufficient to constitute a violation of the statute.

To constitute a violation of subsection (f) of Section 2 of said Act it must be affirmatively alleged not only that respondent knowingly received such price differentials, but also knew that they were not within the defenses afforded the sellers by other provisions of Section 2 of said Act, particularly subsection (a), Automatic Canteen Company, *supra.*

No violation of subsection (f) of Section 2 of said Act being alleged in the complaint, it is by the Examiner this 23rd day of June 1953 ordered,

That respondent's motion to dismiss the complaint be, and it is hereby, granted, and the complaint dismissed without prejudice to the institution of further proceedings, should circumstances warrant.

IN THE MATTER OF

FRANK M. BUCKLEY TRADING AS FRANK M. BUCKLEY COMPANY AND AS T. M. BUCKLEY COMPANY

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND THE WOOL PRODUCTS LABELING ACT

Docket 6098. Complaint, May 20, 1953—Decision, Sept. 8, 1953

Where an individual engaged in the manufacture and interstate sale and distribution of wool products as defined in the Wool Products Labeling Act—

(1) Misbranded certain batts or batting in that they were not stamped, tagged, etc., as required by said Act and the Rules and Regulations promulgated thereunder; and

(2) Misbranded such products in that they were falsely described and identified in sales invoices, packing slips, and shipping memoranda as "New Wool, 100%" and as "Reused Wool, 100%", when in fact they contained reprocessed and reused wool together with substantial quantities of other fibers:

Held, That such acts and practices 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. Webster Ballinger*, hearing examiner.
Mr. George E. Steinmetz for the Commission.
Mr. Fred L. Hoffstein, of Boston, Mass., for respondent.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on May 20, 1953 issued and subsequently served its complaint on the respondent named in the caption hereof, charging him with the use of unfair and deceptive acts and practices in violation of the provisions of said Acts.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and con-

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

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on September 8, 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.

ditioned 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 respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that he has engaged in any of the acts 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 respondent consents may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Frank M. Buckley is an individual, trading and doing business as Frank M. Buckley Company and as T. M. Buckley Company, with his principal place of business in both instances at 8 "B" Street, Hyde Park 36, Massachusetts.

PAR. 2. Subsequent to the effective date of the said Wool Products Labeling Act and more especially since 1950, said respondent has 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 by 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 described as batts or battings were misbranded within the intent and meaning of section 4 (a) (1) of said Wool Products Labeling Act and of Rule 30 of the Rules and Regulations promulgated thereunder in that they were falsely and deceptively described and identified in sales invoices, packing slips and shipping memoranda applicable thereto as "New Wool, 100%" and as "Reused Wool, 100%"; whereas, in truth and in fact, said wool products were not 100% New Wool and 100% Reused Wool, as such terms are defined in said Act, but contained reprocessed and reused wool together with substantial quantities of fibers other than wool.

PAR. 5. 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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

It is ordered, That the respondent, Frank M. Buckley, trading under the names of Frank M. Buckley Company and T. M. Buckley Company, or trading under any other name, and said respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and 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 the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products by:

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

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

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

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

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

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.

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

/s/ Frank M. Buckley
FRANK M. BUCKLEY,
trading and doing business as Frank M. Buckley Company and as T. M. Buckley Company.

Date: July 6th, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 8th day of September, 1953.

IN THE MATTER OF

GAYMONT LABORATORIES, INC., ET AL.[1]

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 6100. Complaint, May 21, 1953—Decision, Sept. 8, 1953

Where a corporation and its president, engaged in the interstate sale and distribution of their "Dr. Gaymont's Yogurt Culture" and "Dr. Gaymont's Instant Whey Powder", in advertisements in newspapers and magazines of general circulation, and in circulars and leaflets, and otherwise, directly and by implication—

(a) Represented falsely that their "Dr. Gaymont's Yogurt Culture" was effective in the treatment of stomach ulcers, stomach acidity, colitis, and intestinal disorders, and as an alkalizer and was pain comforting;

(b) Represented falsely that it was non-fattening and predigested, aided digestion, and provided one with a glowing complexion and a trim figure, and kept one healthy;

(c) Represented falsely that the yogurt produced thereby became nature's nearly perfect food by reason of having been treated with said "Culture", and that the product was effective in improving the appetite; and

(d) Represented falsely that their "Dr. Gaymont's Instant Whey Powder" was effective in the treatment of colitis and digestive ailments; insured sound teeth, strong bones, and robust health; and that it was non-fattening, and gave the user a glowing complexion and a trimmer figure:

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.

Before *Mr. J. Earl Cox*, hearing examiner.
Mr. J. W. Brookfield, Jr. for the Commission.
Mr. Alfred M. Walter, of Chicago, Ill., for respondents.

CONSENT SETTLEMENT[2]

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 21, 1953, issued and subsequently served its complaint on the respondents named in the caption hereof charging them with 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 V of the Commission's Rules of Practice, solely for the purpose of this proceeding,

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[1] By decision effective September 9, 1953, as set forth at p. 224. Complaint was dismissed as to respondent Gaymont in his individual capacity.

[2] 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 September 8, 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.

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 and 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 the law.
3. Agree that the 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

Respondent Gaymont Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 315 North Clark Street, in the city of Chicago, State of Illinois.

Respondent Stephen Gaymont is an individual and president of corporate respondent, Gaymont Laboratories, Inc., and has his office and principal place of business at the same place as corporate respondent.

Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of food products, as "food" is defined in the Federal Trade Commission Act. The products sold by respondents are known as "Dr. Gaymont's Yogurt Culture," and "Dr. Gaymont's Instant Whey Powder."

Respondents cause their said food products, when sold, to be transported from their place of business in Chicago, Illinois, to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said food products in commerce between and among the various States of the United States. Respondents' volume of business in commerce in said food products is and has been substantial.

In the course and conduct of their aforesaid business, respondents, subsequent to March 31, 1938, have disseminated and are now disseminating, and have caused and are now causing the dissemination of advertisements concerning their said food products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers and magazines of general circulation and in circulars and leaflets, for the purpose of inducing and which are and were likely to induce, directly or indirectly, the purchase of said food products; and respondents have also disseminated and are now causing the dissemination of advertisements concerning their said food products by the aforesaid means for the purpose of inducing and which are and were likely to induce, directly or indirectly, the purchase of their said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

Through the use of said advertisements, respondents represented and represent, directly and by implication, that respondent's food product designated "Dr. Gaymont's Yogurt Culture" is effective in the treatment of stomach ulcers, stomach acidity, colitis and intestinal disorders; that it is effective as an alkalizer, is non-fattening, predigested, aids digestion, and provides one with a glowing complexion and trim figure, and keeps one healthy; and that the yogurt produced by respondents' product becomes nature's nearly perfect food by reason of having been treated with respondents' culture and that respondents' product is effective in improving the appetite and is pain comforting.

Through the use of said advertisements, respondents also represented and represent, directly and by implication, that respondent's food product designated "Dr. Gaymont's Instant Whey Powder" is effective in the treatment of colitis, and digestive ailments; insures sound teeth, strong bones and robust health, is non-fattening, and gives the user a glowing complexion and a trimmer figure.

The aforesaid statements and representations are misleading in material respects and constitute false advertisements, as that term is defined in the Federal Trade Commission Act. In truth and in fact, respondents' Yogurt Culture or the yogurt made therefrom is not effective in the treatment of stomach ulcers, stomach acidity, colitis, or intestinal disorders. Its use will not result in the alkalization of the system. The said product contains the calories inherent in milk and is therefore not non-fattening. Respondents' said product is not predigested nor does it aid digestion, although it has been recommended as a dietary supplement for individuals suffering from digestive disturbances. It does not provide one with a glowing complexion or keep the figure trim. The use of respondents' said product alone will not keep one healthy and the yogurt produced from respondents' culture is not nature's nearly perfect food. Respondents' said product will not improve the appetite, nor is it an analgesic.

In truth and in fact, respondents' Instant Whey Powder is not effective in the treatment of colitis or digestive ailments; its use will not insure or assure sound teeth, strong bones nor robust health; nor will its use give the user a glowing complexion or otherwise improve the complexion. It has caloric food value and is therefore not non-fattening and its use will not result in a "trimmer" or slenderer figure unless there is a reduction in the total caloric intake of the user.

The use by respondents of the foregoing false and misleading statements and representations contained in said advertisements has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of said food products because of such erroneous and mistaken belief.

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 intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered that Gaymont Laboratories, Inc., a corporation, its officers, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Dr. Gaymont's Yogurt Culture and Dr. Gaymont's Instant Whey Powder, 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 defined in the Federal Trade Commission Act, any advertisement which represents, directly or by inference:

(a) That Dr. Gaymont's Yogurt Culture or yogurt made therefrom:

(1) Is effective in the treatment of stomach ulcers, stomach acidity, colitis or intestinal disorders;

(2) Is effective as an alkalizer;

(3) Is non-fattening, or provides one with a trim figure;

(4) Is predigested, or aids digestion; provided, however, that this shall not be construed as prohibiting the representation that Yogurt has been recommended as a dietary supplement for individuals suffering from digestive disturbances.

(5) Provides one with a glowing complexion;

(6) Keeps one healthy;

(7) Is Nature's nearly perfect food;

(8) Is effective in improving the appetite;

(9) Is an analgesic or relieves pain;

(b) That Dr. Gaymont's Instant Whey Powder:

(1) Is effective in the treatment of colitis or digestive ailments;

(2) Will insure or assure sound teeth, strong bones, or robust health;

(3) Will give the user a glowing complexion or otherwise improve the complexion;

(4) Is non-fattening, or that its use will result in a trimmer or more slender figure.

2. Disseminating or causing to be disseminated, 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 products, any advertisement which contains any of the representations prohibited in Paragraph 1 of this order.

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

/s/ *Gaymont Laboratories, Inc.*
Gaymont Laboratories, Inc.
/s/ *Stephen Gaymont, Pres.*
STEPHEN GAYMONT, *President.*
Gaymont Laboratories.

Date:

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and entered of record on this 8th day of September 1953.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached initial decision of the hearing examiner shall, on September 9, 1953, become the decision of the Commission.

Order Dismissing Complaint as to Respondent Stephen Gaymont, Individually

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

This proceeding came on to be considered by the above-named hearing examiner, theretofore duly designated by the Commission, upon the complaint of the Commission; a motion filed June 30, 1953, by respondent Stephen Gaymont, that said complaint be dismissed as to him; an affidavit dated June 26, 1953, in support of said motion, showing that Stephen Gaymont never, until recently, took an active interest in the sales, promotional and advertising aspects of the corporate respondent's activities; that he was not consulted about, and had no knowledge of the copy used in the advertisements complained of by the Commission, and that as soon as his attention was directed to said advertisements he ordered their discontinuance; and answer to said motion filed by counsel in support of the complaint, stating that he did not oppose the granting thereof. The hearing examiner, having considered said motion to dismiss in the light of the entire record, finds that there is no available evidence of facts contradictory to the statements set forth in respondent's affidavit; that the record is clear that said respondent was in no way individually responsible for any of the acts or practices charged in the complaint, and that, accordingly, said motion should be granted. Therefore,

It is ordered, That the complaint in the above-entitled proceeding be, and the same hereby is, dismissed as to respondent Stephen Gaymont, individually.