

Complaint

IN THE MATTER OF

PUGET SOUND SALMON CANNERS, INC., ET AL.

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

Docket 6376. Complaint, June 28, 1955—Decision, May 8, 1956

Consent order requiring 13 corporate canners of salmon caught in Puget Sound and adjacent areas—charged in the complaint, along with their trade association, an organization of owners of Purse Seine vessels engaged in fishing for salmon in that area, and a union of salmon fishermen including those on such vessels, with collectively controlling the prices at which the salmon was purchased and sold, by means of agreements between and among themselves—to cease and desist from concerted price fixing; but providing that if the proceeding still pending against the vessel owners' association and the fishermen's union is terminated in any other way than by a similar desist order, then this order shall cease to be of any effect.

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

Mr. Lewis F. Depro, Mr. Fletcher G. Cohn and Mr. John J. McNally for the Commission.

Pillsbury, Madison & Sutro, of San Francisco, Calif., for Alaska Packers Ass'n.

Peyser, Cartano, Botzer & Chapman, of Seattle, Wash., for American Packing Co.

Mr. Herald A. O'Neill, of Seattle, Wash., for Burk Canning Co., Inc., Dressel-Collins Fish Co., Fishermen's Packing Corp., Friday Harbor Canning Co., Sebastian-Stuart Fish Co. and Washington Fish & Oyster Co., Inc.

Norblad, Wyatt & MacDonald, of Astoria, Ore., for Columbia River Packers Ass'n., Inc.

Bogle, Bogle & Gates, of Seattle, Wash., for Farwest Fishermen, Inc. and New England Fish Co.

Kerr, McCord, Greenleaf & Moen, of Seattle, Wash., for Pacific American Fisheries, Inc.

Ryan, Askren & Mathewson, of Seattle, Wash., for Whiz Fish Products Co., Inc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties hereinafter referred to as respondents have violated the provisions of Sec-

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tion 5 of the said Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in these respects as follows:

PARAGRAPH 1. Respondent Puget Sound Salmon Cannery, Inc., hereinafter referred to as respondent "Cannery," is a membership corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at 304 Spring Street, Seattle 4, Washington. Respondent, its officers, directors, and members are herein named and made parties respondent to this proceeding.

The following corporations and individuals, with the possible exceptions hereinafter set forth in Paragraph 3, were members of respondent Cannery as of December 1954, and based on information and belief, each has continued such membership. Therefore, because of that present or past status, and the acts, practices and policies in which they participated, either as members of said Cannery, or in cooperation or conjunction with the other respondents, as hereinafter set forth, each such respondent member is also named herein and made a party respondent individually. Each such respondent members of respondent Cannery is described as follows:

Respondent Alaska Packers Association is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 215 Fremont Street, San Francisco, California.

Respondent American Packing Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at 711 Second Avenue Building, Seattle 4, Washington.

Respondent Burk Canning Company, Inc., is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located in Bellingham, Washington.

Respondent Jay F. Carroll is an individual doing business as Anacortes Canning Company, with his principal office and place of business located at Anacortes, Washington.

Respondent Columbia River Packers Association, Inc., is a corporation organized and existing under the laws of the State of Oregon, with its principal office and place of business located in Astoria, Oregon.

Respondent Dressel-Collins Fish Company is a corporation organized and existing under the laws of the State of Washington, with

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its principal office and place of business located at Pier 67, Seattle 1, Washington.

Respondent Farwest Fishermen, Inc., is a corporation organized and existing under the laws of the State of Oregon, with its principal office and place of business located in the Central Building, Third Avenue at Columbia Street, Seattle 4, Washington.

Respondent Fishermen's Packing Corporation is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Anacortes, Washington.

Respondent Friday Harbor Canning Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Friday Harbor, Washington.

Respondent New England Fish Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located in the Exchange Building, First Avenue and Marion Street, Seattle 4, Washington.

Respondent Pacific American Fisheries, Inc., is a corporation organized under the laws of the State of Washington, with its principal office and place of business located at 401 Harris Avenue, Bellingham, Washington.

Respondent Sebastian-Stuart Fish Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Pier 24, Seattle 4, Washington.

Respondent Washington Fish & Oyster Company, Inc., is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Pier 54, Seattle 4, Washington.

Respondent Whiz Fish Products Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at 2000 Alaskan Way, Seattle 1, Washington.

The other respondents are:

Respondent Purse Seine Vessel Owners Association is a non-profit membership corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at 5301 North Ruby Street, Tacoma, Washington.

Respondent Local No. 3, Fishermen & Allied Workers Division, International Longshoremen & Warehousemen's Union is an unincorporated association, with its principal office and place of business located at 84 Union Street, Seattle 1, Washington.

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PAR. 2. Respondent Cannery was organized in the year 1940 and is a trade association composed of packers, canners, and processors of salmon caught in Puget Sound and adjacent areas of the State of Washington. The membership of respondent Cannery changes from year-to-year. On or about December 1, 1954, there were 14 members of respondent Cannery who represent a great majority, if not all, of the companies engaged in the processing, canning and packing of salmon in the Puget Sound area.

Therefore, the respondent members of respondent Cannery, acting in conjunction with respondent Union in the manner hereinafter set forth, have the ability to, and do, control the prices at which various types and grades of raw salmon caught in the Puget Sound and adjacent areas in the State of Washington are purchased and sold.

PAR. 3. All of the corporations and individuals, hereinbefore described in Paragraph 1 as "members" of respondent Cannery, are engaged in the business of maintaining and operating canneries in the Puget Sound area of the State of Washington, where salmon caught in the waters of Puget Sound and adjacent areas are processed, canned and packed by said respondent members of respondent Cannery.

Respondent American Packing Company claims it withdrew from membership in respondent Cannery in 1951; respondent Friday Harbor Canning Company claims to have resigned in June 1954 and respondent Pacific American Fisheries, Inc., claims it has not been a member since 1950. With these three exceptions, all the other corporations and individuals hereinbefore described as members of respondent Cannery held such membership as of December 1954. Respondents American Packing Company, Friday Harbor Canning Company and Pacific American Fisheries, Inc., were members of respondent Cannery during periods when said respondent Cannery and its members participated in the understandings, agreements, conspiracies and planned common courses of action, as hereinafter set forth, and regardless of whether they were members or not in December 1954 they have nevertheless aided and abetted and participated in one or more of the wrongful acts and practices hereinafter alleged.

Each of said respondents, including respondents American Packing Company, Friday Harbor Canning Company and Pacific American Fisheries, Inc., has authorized, participated in, adopted, confirmed, or otherwise ratified, as members of respondent Cannery and/or individually, one or more of the acts, practices and policies of said respondent Cannery or of others of its members, as hereinafter set forth.

PAR. 4. Respondent Purse Seine Vessel Owners Association, hereinafter referred to as "respondent Owners," is an organization con-

sisting of the owners of about 150 Purse Seine vessels, engaged in the fishing for salmon in the waters of Puget Sound and areas adjacent thereto. The said owners own or control approximately 60% of all of the vessels engaged in such endeavors. Substantially all of the salmon caught by the said vessels is sold to respondent members of respondent Cannery for processing, canning and packing.

Some of respondent members of respondent Cannery, directly or indirectly, own or have mortgages on some of the Purse Seine vessels engaged in fishing for salmon in the Puget Sound area. But regardless of such ownership or mortgage rights, the fishermen who form the crews of such vessels are not considered, or dealt with, as employees of respondent members of respondent Cannery, who generally make no attempt to direct where or when such vessels shall fish, or to supervise their operation.

PAR. 5. Respondent Local No. 3, Fishermen & Allied Workers Division, International Longshoremen & Warehousemen's Union, herein referred to as "respondent Union," is now and at all times herein mentioned has been engaged in transacting business on behalf of its members, including fishermen engaged in fishing for salmon in the Puget Sound and adjacent areas, on the vessels belonging to or controlled by members of respondent Owners; said Union, acting in conjunction with respondent Cannery and/or respondent members of respondent Cannery and/or members of respondent Owners, does, in the manner herein set forth, control the prices at which such raw salmon is purchased and sold.

PAR. 6. Each of the respondents herein named has, directly or indirectly, participated in, approved or adopted one or more of the alleged illegal acts and practices hereinafter set forth.

PAR. 7. The fishing for, and the canning of, salmon caught in the Puget Sound area is one of the most important business enterprises in that territory. In 1952 the value of the salmon pack from this area was approximately \$5,000,000. In 1954, approximately 400,000 cases (a case contains 48 one-pound cans) of salmon caught in the Puget Sound area, were packed and canned, having an estimated total wholesale value of about \$12,000,000.

PAR. 8. In the course and conduct of their respective businesses, respondent members of respondent Cannery purchase, directly or indirectly, the raw salmon caught by the fishermen members of respondent Union in the waters of Puget Sound and areas adjacent thereto, from said fishermen members of respondent Union and/or from members of respondent Owners; after such purchase said respondent members of respondent Cannery process, can and pack said salmon and thereafter sell large quantities of same to purchasers

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thereof located throughout the United States, and cause said salmon, when thus sold, to be transported from the Puget Sound area of the State of Washington to purchasers located in States of the United States other than the State of Washington.

Said respondent members of respondent Cannery, as well as the fishermen members of the respondent Union and the members of respondent Owners maintain, and at all times mentioned herein have maintained, a regular course or current of trade in commerce in salmon between the State of Washington and the various States of the United States, and among and between the several States of the United States.

The respondents, Cannery, Union and Owners, have been and are media by which respondent members of respondent Cannery, fishermen members of respondent Union and members of respondent Owners have committed and performed, and are committing and performing, in commerce, the alleged illegal acts, practices and policies hereinafter set forth.

All of the respondents named herein have been, and are now, engaged in commerce in the sale and distribution of salmon as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. Respondent members of respondent Cannery, in the course and conduct of their respective businesses of purchasing salmon from the fishermen members of respondent Union and/or members of respondent Owners, are in substantial competition, except as such competition has been restrained, lessened or eliminated, as hereinafter alleged, with each other and with others engaged in the same type of business, in so purchasing raw salmon caught in the Puget Sound area.

In the course and conduct of their respective businesses, the members of respondent Owners likewise are in competition with each other and with others engaged in the same type of business in negotiating for the sale and in selling to respondent members of respondent Cannery salmon caught by fishermen members of respondent Union in the waters of the Puget Sound area, except insofar as such competition has been lessened or eliminated, as hereinafter alleged.

The fishermen members of respondent Union would be in competition one with the other and with fishermen who are not members of respondent Union in the sale of salmon caught in the Puget Sound area, were it not for the understandings, agreements, combinations, conspiracies and planned common courses of action herein set forth.

PAR. 10. The fishermen members of respondent Union who catch the raw salmon in the Puget Sound area usually are employed by the skippers of the vessels, which, in turn, are owned by members of respondent Owners.

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The respondent Union enters into contracts or agreements with respondent Owners and/or members of respondent Owners wherein are specified the compensation, working conditions, etc., of the members of respondent Union who fish in the Puget Sound area on the boats of members of respondent Owners.

The compensation provided for in any such contracts or agreements is based upon the prices paid by respondent members of respondent Cannerys to members of respondent Owners in accordance with the contracts or agreements entered into by and between respondent Union and respondent Cannerys and/or respondent members of respondent Cannerys.

The members of respondent Owners enter into contracts, agreements, or arrangements with respondent members of respondent Cannerys, which are either written or oral, whereby said members of respondent Owners sell the fish caught by the fishermen members of respondent Union to said respondent members of respondent Cannerys.

Thus, there are involved three contracts or agreements: (1) between the respondent Union and the respondent Owners and/or members of respondent Owners, which are known in the trade as "working agreements"; (2) between respondent Union and respondent Cannerys and/or respondent members of respondent Cannerys, which are known in the trade as "salmon agreements"; (3) between members of respondent Owners and respondent Cannerys and/or respondent members of respondent Cannerys.

Respondent Union also enters into contracts with respondent Cannerys and/or respondent members of respondent Cannerys wherein there are fixed and set forth the wages and working conditions of the non-fishermen members of respondent Union who work in the cannerys of respondent members of respondent Cannerys.

This arrangement has been in existence at least since 1949.

PAR. 11. Working agreements, which have been in effect for the last several years or at least since 1950, provide in part as follows:

2. The shares for salmon purse seining for all fish caught and delivered shall be as follows:

A. Share for boat seine and gear after deduction of gross stock expenses * * *:

(1) For vessel having a crew of nine (9) men, including skipper, or less, 33 $\frac{1}{2}$ %.

(2) For vessel having a crew of ten (10) men, including skipper, 30.7%.

B. The remaining portion shall be divided equally among the crew, including the Captain.

This contract also provides:

6. No contract will be entered into by the owner with any cannery or reduction plant regarding prices or sale of fish or any other matters affecting the working conditions of the crew or their remuneration inconsistent with this

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Agreement, unless said contract is approved by the Union and to which said contract the Union or its authorized agent becomes a contracting party in interest.

The contract further provides:

16 A. In the event that any Company or companies shall terminate the price agreement by the submission of 48-hour notice to the Union, then the Union may call special emergency mass meeting of the membership at the termination of said 48-hour notice. The Captain shall bring the vessel to port and release the entire crew in sufficient time for the members to attend said meeting.

B. There shall be no work on a seine or gear by the crew until twenty (20) days prior to the date of embarkation nor until the Working Agreement has been signed except with specific permission of the Union. No boat shall be allowed to leave for the fishing grounds nor shall any crew move any vessel from the home port of the vessel until the Price Agreement has been signed. Any vessel violating this section shall be declared unfair.

The contract finally provides that the contract shall remain in effect continuously unless terminated by either party by written notice.

PAR. 12. The salmon agreements which have been in effect for the last several years, at least since 1950, fixes the minimum fish prices for the various types or species of salmon caught and sold in the Puget Sound area for the fishing season covered by the particular Salmon Agreement.

PAR. 13. For many years last past, and more particularly since 1949, respondent members of respondent Cannerys, from the date of their affiliation with respondent Cannerys, by means of and through respondent Cannerys, and also by and through their individual acts, have entered into, maintained and effectuated an understanding, agreement, combination, conspiracy to pursue, and they have pursued, a planned common course of action between and among themselves to adopt and adhere to certain acts, practices and policies to hinder and suppress competition between and among themselves and with others in the purchase, sale and distribution of salmon caught in the Puget Sound area, in commerce, between the State of Washington and the several states of the United States.

PAR. 14. Pursuant to, and in furtherance of said understanding, agreement, combination, conspiracy and planned common course of action, respondent members of respondent Cannerys have acted in concert and in cooperation with each other, individually and through and by means of respondent Cannerys, and also with respondent Union, to do, among others, the following acts and practices:

(1) To determine and fix, and they have determined and fixed, and are still determining and fixing, the minimum purchase prices which each of said respondent members of respondent Cannerys, as well as the entire Puget Sound salmon industry, is to pay and has paid to

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the members of respondent Owners, or to the captains of the vessels of such members of respondent Owners, or directly or indirectly to the fishermen members of respondent Union or to others, for the various types or species of salmon caught in the waters of Puget Sound and adjacent areas, which together are sometimes referred to herein as the "Puget Sound area";

(2) To prevent and eliminate, and they have prevented and eliminated, and are still preventing and eliminating, any and all price competition between and among said respondent members of respondent Cannery in the purchase of such salmon;

(3) To eliminate and prevent, and they have eliminated and prevented, and are still eliminating and preventing any and all competition as to the minimum prices to be paid in the purchase of salmon, between respondent members of respondent Cannery and others who also purchase raw salmon in the Puget Sound area for processing, packing, canning and shipping same in commerce between and among the various States of the United States.

PAR. 15. For many years last past, and more particularly since 1949, respondent Cannery, respondent members of respondent Cannery, acting individually and/or by or through respondent Cannery, respondent Owners and respondent Union have entered into, maintained and effectuated an understanding, agreement, combination and conspiracy to pursue, and they have pursued, a planned common course of action to adopt, fix and adhere to certain acts, practices and policies to hinder and suppress competition in the purchase, sale and distribution of salmon, caught in the Puget Sound area, in commerce between the State of Washington and the several States of the United States.

PAR. 16. Pursuant to and in furtherance of said understanding, agreement, combination, conspiracy and planned common course of action, each of said respondents has acted in concert and cooperation with one or more of the other respondents to do, among others, one or more of the following acts and practices:

(1) To determine and fix, and they have determined and fixed, and are still determining and fixing the minimum fish prices which the fishermen members of respondent Union receive for the sale to respondent members of respondent Cannery of the various species of raw salmon caught by said fishermen in the Puget Sound area;

(2) To eliminate, and they have eliminated, and are still eliminating, any and all competition between and among the fishermen members of respondent Union in the sale by them of the salmon which they catch in the Puget Sound area;

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(3) To eliminate, and they have eliminated, and are still eliminating, all competition in the sale to respondent members of respondent Cannery of fresh or raw salmon caught in the Puget Sound area;

(4) To adopt and maintain, and they have adopted and maintained, and are still adopting and maintaining, an arrangement whereby respondent Union enters into contracts or agreements, known as "salmon agreements," with respondent Cannery and/or one or more of respondent members of said respondent Cannery, whereby the minimum fish prices for each type or species of raw salmon caught in the Puget Sound area are fixed and determined for the fishing season covered by such contract or agreement;

(5) To prevent, and they have prevented, and are still preventing, fishermen from selling the salmon, which they have caught in the Puget Sound area, to respondent members of respondent Cannery at prices lower than those fixed and set by such salmon agreements, which are entered into by and between respondent Cannery and/or respondent members of respondent Cannery and respondent Union;

(6) To enter into, and they have entered into, and are still entering into, an arrangement or understanding whereby respondent Owners and/or members of respondent Owners, acting individually or through and by means of respondent Owners, and respondent Union enter into agreements or contracts known as "working agreements" whereby and wherein are fixed and determined, in the manner and by the method herein described, the "wages" of fishermen members of respondent Union for the period covered by such contracts or agreements;

(7) To enter into, and they have entered into, and are still entering into, an arrangement or understanding whereby the result and effect of such working agreements by and between respondent Owners and/or members of respondent Owners and respondent Union have been, and are, that the members of respondent Owners are restrained and prohibited from using their vessels to fish for salmon in the Puget Sound area until and unless respondent Cannery and/or respondent members of respondent Cannery have agreed with respondent Union, by means of executed salmon agreements, upon the prices which respondent members of respondent Cannery will pay to members of respondent Owners for the various types of species of salmon caught in the Puget Sound area by fishermen members of respondent Union;

(8) To prevent, and they have prevented, and are still preventing, any raw salmon from being caught or sold in the Puget Sound area until and unless a working agreement or agreements between the respondent Union and respondent Owners and/or members of re-

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spendent Owners have been duly executed for the then current season, and also until there has been executed a salmon agreement or agreements between respondent Union and respondent Cannery and/or respondent members of respondent Cannery for the then current season whereby the minimum prices for the purchase and sale of all types or species of raw salmon caught in the Puget Sound area have been fixed and established.

PAR. 17. The capacity, tendency and effect of the aforesaid understandings, agreements, combinations, conspiracies and planned common courses of action and the acts, policies, practices and things done thereunder and pursuant thereto by the respondents, as hereinbefore set forth, have been, and are now, to unlawfully restrict, restrain and hinder the catching or production of salmon in the Puget Sound area, and have been, and are now to unlawfully restrict, restrain, hinder and prevent price competition between and among the respondent members of respondent Cannery, between and among the fishermen members of the respondent Union, and between and among the members of respondent Owners, in the purchase and sale of the various types or species of salmon caught in said area, in interstate commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 18. In addition to the effects hereinbefore set forth, the understandings, agreements, combinations, conspiracies and planned common courses of action of the respondents and the acts, practices and policies of the respondents likewise have the capacity and tendency to substantially increase the cost of food by their effect on the prices which the public is required to pay for salmon caught in the Puget Sound area and sold in commerce, as aforesaid.

PAR. 19. The acts and practices of the respondents, all and singularly, as hereinbefore set forth, are to the prejudice and injury of the public and constitute unfair acts and practices and unfair methods of competition within the intent and meaning of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION AS TO CERTAIN RESPONDENTS BY WILLIAM L. PACK,
HEARING EXAMINER

The complaint in this matter charges the respondents with entering into a combination in restraint of trade in violation of the Federal Trade Commission Act. An agreement has now been entered into by counsel supporting the complaint and certain of the respondents, Alaska Packers Association, American Packing Company, Burk Canning Company, Inc., Columbia River Packers Association, Inc., Dressel-Collins Fish Company, Farwest Fishermen, Inc., Fishermen's

Packing Corporation, Friday Harbor Canning Company, New England Fish Company, Pacific American Fisheries, Inc., Sebastian-Stuart Fish Company, Washington Fish and Oyster Company, Inc., and Whiz Fish Products Company, Inc. (referred to in the complaint as Whiz Fish Products Company), which agreement provides, among other things, that said respondents admit all of the jurisdictional allegations in the complaint; that as to that part of this proceeding which is disposed of by the agreement the answer of each of said respondents to the complaint shall be considered as having been withdrawn and that the record, insofar as it pertains to said respondents, on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that as to that part of the proceeding which is disposed of by the agreement each of said respondents waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights each of said respondents may have to challenge or contest the validity of the order entered in accordance with the agreement; that the order hereinafter set forth may be entered in disposition of the proceeding as to said respondents, such order to have the same force and effect as if entered after a full hearing; that the order may be altered, modified or set aside in the manner provided for other orders of the Commission; and that the agreement is for settlement purposes only and does not constitute an admission by any of said respondents that it has violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for an appropriate disposition of the proceeding as to said respondents, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. (a) Respondent Alaska Packers Association is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 215 Fremont Street, San Francisco, California.

(b) Respondent American Packing Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at 711 Second Avenue Building, Seattle 4, Washington.

(c) Respondent Burk Canning Company, Inc., is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located in Bellingham, Washington.

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(*d*) Respondent Columbia River Packers Association, Inc., is a corporation organized and existing under the laws of the State of Oregon, with its principal office and place of business located in Astoria, Oregon.

(*e*) Respondent Dressel-Collins Fish Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Pier 67, Seattle 1, Washington.

(*f*) Respondent Farwest Fishermen, Inc., is a corporation organized and existing under the laws of the State of Washington (incorrectly stated in the complaint as the State of Oregon) with its principal office and place of business located in the Central Building, Third Avenue at Columbia Street, Seattle 4, Washington.

(*g*) Respondent Fishermen's Packing Corporation is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Anacortes, Washington.

(*h*) Respondent Friday Harbor Canning Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Friday Harbor, Washington.

(*i*) Respondent New England Fish Company is a corporation organized and existing under the laws of the State of Maine (incorrectly stated in the complaint as the State of Washington), with its principal office and place of business located in the Exchange Building, First Avenue and Marion Street, Seattle 4, Washington.

(*j*) Respondent Pacific American Fisheries, Inc., is a corporation organized under the laws of the State of Delaware (incorrectly stated in the complaint as the State of Washington), with its principal office and place of business located at 401 Harris Avenue, Bellingham, Washington.

(*k*) Respondent Sebastian-Stuart Fish Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Pier 24, Seattle 4, Washington.

(*l*) Respondent Washington Fish & Oyster Company, Inc., is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at Pier 54, Seattle 4, Washington.

(*m*) Respondent Whiz Fish Products Company, Inc. (incorrectly designated in the complaint as Whiz Fish Products Company) is a corporation organized and existing under the laws of the State of

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Washington with its principal office and place of business located at 2000 Alaskan Way, Seattle 1, Washington.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of said respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Alaska Packers Association, American Packing Company, Burk Canning Company, Inc., Columbia River Packers Association, Inc., Dressel-Collins Fish Company, Farwest Fishermen, Inc., Fishermen's Packing Corporation, Friday Harbor Canning Company, New England Fish Company, Pacific American Fisheries, Inc., Sebastian-Stuart Fish Company, Washington Fish and Oyster Company, Inc., and Whiz Fish Products Company, Inc., who shall be deemed herein to be parties respondent, their respective officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase, or offering to purchase, in commerce, as "commerce" is defined in the Federal Trade Commission Act, of raw or fresh salmon caught in the fishing area of Puget Sound, do forthwith cease and desist from entering into, continuing; cooperating in or carrying out any planned common and concerted course of action, understanding or agreement between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts:

1. Entering into or carrying out, or attempting to enter into or carry out any "salmon agreement" as defined and explained in the complaint herein, or any other contract, agreement or understanding having the same or similar provisions:

2. Fixing, establishing, adopting, maintaining or adhering to, or attempting to fix, establish, adopt, maintain or cause adherence to, by any means or method any price at which raw or fresh salmon is to be purchased or sold;

3. Jointly or collectively negotiating, bargaining or agreeing by any means or method as to the price or prices at which said raw or fresh salmon is proposed to be, or is, purchased or sold;

4. Authorizing or empowering any association, group, corporation, or union to negotiate, bargain or agree as to the prices to be paid in the purchase or sale of any such raw or fresh salmon;

Provided, however, That nothing herein contained shall be construed or interpreted as preventing or prohibiting any respondent named herein, individually, from purchasing or selling, or bargaining

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for the purchase or sale of such salmon with any boat owner, boat captain, or any other single seller or buyer.

Provided further, That nothing herein contained shall prevent any association of bona fide salmon fishermen, acting pursuant to or in accordance with the provisions of the Fisheries Cooperative Marketing Act (15 U.S.C.A. Sections 521 and 522) from performing any of the acts and practices permitted by said Act; and

Provided further, That nothing herein contained shall be deemed to prohibit one or more of the respondents herein from entering into or continuing a bona fide partnership, joint operation, or venture, or consolidation, for the purpose of operating one or more canneries and in which the prices of raw salmon are determined by said partnership, joint operation or venture, or consolidation, and where such determination is under the contract establishing such partnership, joint operation, or venture or consolidation, binding upon all members thereof. This proviso shall not be construed as either an approval or disapproval of any specific partnership, joint operation, or venture, or consolidation, nor as permitting any such partnership, joint operation, or venture or consolidation, to be continued or formed for the purpose of or with the effect, directly or indirectly, of rendering ineffective or unenforceable the inhibitions of this order and the purposes thereof.

Provided further, That if the pending proceeding against respondents Purse Seine Vessel Owners Association and Local No. 3, Fishermen & Allied Workers Division, International Longshoremen & Warehousemen's Union is finally terminated in any manner except by the issuance of an order to cease and desist, either (a) by consent, or (b) by final order of the Commission not subject to further review, or (c) by order of the Commission, which, although subject to further review, continues effective, requiring said respondents Union and boat Owners Association to cease and desist from the same or similar acts or practices provided by the order contained herein, then this order shall terminate and cease to be of any effect.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of May, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Alaska Packers Association, American Packing Company, Burk Canning Company, Inc., Columbia River Packers Association, Inc., Dressel-Collins Fish Company, Farwest Fishermen, Inc., Fishermen's Packing Corporation, Friday Harbor Canning Company, New England Fish Company, Pacific

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American Fisheries, Inc., Sebastian-Stuart Fish Company, Washington Fish and Oyster Company, Inc., and Whiz Fish Products Company, 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.

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IN THE MATTER OF
HELENA RUBINSTEIN, INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECS. 2 (d) AND 2 (e) OF THE CLAYTON ACT*Docket 6441. Complaint, Nov. 8, 1955—Decision, May 9, 1956*

Consent order requiring a manufacturer of cosmetics, beauty aids, and toilet preparations, with principal place of business in New York City, to cease violating Secs. 2 (d) and 2 (e) of the Clayton Act, as amended, by paying demonstrator allowances, cooperative advertising materials and allowances, and promotional allowances to competing customers in amounts not proportionally equal as required by the statute but determined on the basis of individual negotiations which resulted in different and arbitrary terms to different customers.

Before *Mr. Robert L. Piper*, hearing examiner.

Mr. Donald K. King for the Commission.

Sherman & Goldring, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that Helena Rubinstein, Inc., hereinafter designated as respondent, has violated and is now violating the provisions of sub-sections (d) and (e) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Helena Rubinstein, Inc., is a corporation organized 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 East Hills, Long Island, New York.

PAR. 2. The respondent is now, and for a number of years has been, engaged in the business of manufacturing and selling cosmetics, beauty aids, and toilet preparations. Said products are sold to customers with places of business located throughout the several states of the United States and in the District of Columbia for resale to consumers within the United States.

PAR. 3. In the course and conduct of said business, respondent has engaged in commerce as "commerce" is defined in the Clayton Act, as amended by the Robinson-Patman Act, having shipped its products or caused them to be transported from its said place of business to said customers with places of business located in the several states of the United States and in District of Columbia.

PAR. 4. In the course of said business in commerce, respondent has paid or contracted to pay, money, goods, or other things of value to or for the benefit of some of its customers as compensation in consideration for services and facilities furnished, or contracted to be furnished, by or through such customers in connection with the processing, handling, sale or offering for sale of respondent's products and respondent has not made or contracted to make such payments or considerations (or in the alternative, equivalent services or facilities) available on proportionally equal terms to all other of its customers competing in the sale and distribution of said products.

PAR. 5. In the course of said business in commerce, respondent has furnished, contracted to furnish, or has contributed to the furnishing of certain services and facilities to some of its customers in connection with the processing, handling, sale or offering for sale of respondent's products by them; and respondent has not made such services and facilities (or in the alternative, equivalent payments or allowances) available on proportionally equal terms to all other of its customers competing in the sale and distribution of said products.

PAR. 6. Specifically, in dealing with its customers, respondent has furnished or paid demonstrator services or allowances and/or advertising facilities or allowances and/or paid promotional allowances to certain competing customers in amounts (based on respondent's costs) not equal to the same percentage of net purchases of respondent's products by such customers (and not proportionally equal by any other test); and respondent did not offer or otherwise make available such services, facilities and allowances in amounts equal to the largest of such percentages to all such competing customers (and not proportionally equal by any other test).

Illustrative of and included among the practices referred to above were respondent's following described dealings with its 64 customers located in the Washington, D. C., trade area during the year 1954.

1. Two large department stores received from respondent promotional and demonstrator allowances in amounts equal to a higher percentage of their net purchases than was granted by respondent to other competing customers who furnished the same or greater reciprocal services or facilities.

2. Six favored customers were furnished cooperative advertising materials and allowances by respondent totaling in excess of 8% of their individual net purchases from respondent. Seventeen competing customers were not accorded cooperative advertising materials or allowances by respondent. Many other competing customers were furnished cooperative advertising materials or allowances by respondent.

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ent equal to approximately 2% of their individual net purchases from respondent.

3. Certain of respondent's customers in that sales area whose net purchases from respondent total less than \$8,000 per year received promotional allowances equal to 9% of their individual net purchases from respondent while other competing customers purchasing approximately the same quantities from respondent received promotional allowances of 5% of net purchases from respondent.

In determining the services and allowances granted to these competing customers, respondent did not use any proportionally equal basis. On the contrary, they were determined on the basis of individual negotiations between respondent and different customers which resulted in different and arbitrary terms.

PAR. 7. The acts and practices of the respondent as above alleged violate Subsections (d) and (e) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13).

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on November 8, 1955, charging it with having violated Section 2 (d) and (e) of the Clayton Act, as amended by the Robinson-Patman Act. After being served with said complaint, respondent appeared by counsel and entered into an agreement, dated March 6, 1956, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged

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in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint and Trade Practice Rule 16 C.F.R. 221.1 (g) shall be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the same are hereby accepted and ordered filed upon becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Helena Rubinstein, Inc., is a corporation 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 655 Fifth Avenue, in the City of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent above named. The complaint states a cause of action against said respondent under the Clayton Act as amended by the Robinson-Patman Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondent Helena Rubinstein, Inc., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the sale or offering for sale, of cosmetics, beauty aids, and toilet preparations in commerce, as "commerce" is defined in the Clayton Act as amended, do forthwith cease and desist from:

1. Paying, or contracting to pay to, or for the benefit of, any customer, anything of value as compensation or in consideration for services or facilities furnished by or through such customer in connection with the handling, processing, sale or offering for sale of respondent's products unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

2. Furnishing or contributing to the furnishing of services or facilities in connection with the handling, processing, sale or offering for sale of respondent's products to any purchaser from respondent of such products bought for resale, when such services or facilities are not accorded on proportionally equal terms to all other purchasers

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from respondent who resell such products in competition with such purchasers who receive such services or facilities.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of May, 1956, become the decision of the Commission; and, accordingly;

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.

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IN THE MATTER OF
DAVID BECKER ET AL. TRADING AS
BECKER & BURNS FURRIERS

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATIONS OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 6483. Complaint, Jan. 10, 1956—Decision, May 9, 1956

Consent order requiring furriers in Philadelphia, Pa., to cease violating the Fur Products Labeling Act by advertisements in circulars, handbills, etc., which failed to disclose the names of animals producing the furs in certain products; misrepresented prices as wholesale and less and reduced from purported regular prices which were in fact fictitious, and misrepresented savings possible to purchasers.

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

Mr. Floyd O. Collins for the Commission.

Fox, Rothschild, O'Brien & Frankel, of Philadelphia, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that David Becker and Abraham Burns, individually and as copartners trading and doing business as Becker & Burns Furriers, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents David Becker and Abraham Burns are individuals and copartners trading and doing business under the firm name of Becker & Burns Furriers, with their office and principal place of business located at 1211 Chestnut Street, Philadelphia, Pennsylvania. Said individual respondents formulate, direct, and control the acts, practices and policies of the said business.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been, and are now, engaged in the introduction into commerce, and in the sale, advertising and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products, and have sold, adver-

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tised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce", "fur" and "fur products" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that the respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain advertisements concerning said fur products by means of circulars, handbills, letters, and by various other means, which advertisements were not in accordance with the provisions of Section 5 (a) of the Fur Products Labeling Act and Rules and Regulations promulgated thereunder and which advertisements were intended to and did aid, promote and assist in the sale and offering for sale of said fur products.

PAR. 4. Among and included in the advertisements as aforesaid, but not limited thereto, were handbills, circulars and letters which the respondents caused to be disseminated through the United States mails to a substantial number of the general public.

By means of the aforesaid advertisements, and through others of similar import and meaning not specifically referred to herein, the respondents falsely and deceptively:

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur products, as set forth in the Fur Products Name Guide, in violation of Section 5 (a) (1) of the Fur Products Labeling Act.

(b) Misrepresented the prices of fur products as wholesale and less than wholesale costs, in violation of Rule 44 (a) of the said Rules and Regulations.

(c) Misrepresented prices of fur products as having been reduced from regular or usual prices, when such regular or usual prices were in fact fictitious, in that they were not the prices at which said fur products were usually sold by respondents in the recent regular course of their business, in violation of Rule 44 (a) of said Rules and Regulations.

(d) Misrepresented, by means of comparative prices not based on current market values and not giving the time of such compared prices, the amount of savings to be effectuated by purchasers of said fur products, in violation of Rule 44 (b) of said Rules and Regulations.

PAR. 5. Respondents, in making the pricing claims and representations set forth in subparagraphs (b), (c) and (d) of Paragraph Four hereof, failed to maintain full and adequate records disclosing the facts upon which such claims and representations were purportedly

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based, in violation of Rule 44 (e) of the said Rules and Regulations.

PAR. 6. Certain of said products were misbranded in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured, in violation of Section 4 (1) of the Fur Products Labeling Act.

PAR. 7. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4 (2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 8. Certain of said fur products were misbranded in that respondents, on labels attached thereto, set forth the name of an animal other than the name of the animal that produced the fur contained in the fur product in violation of Section 4 (3) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

PAR. 9. Certain of said fur products were misbranded, in violation of the Fur Products Labeling Act, in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that required information was mingled with non-required information in violation of Rule 29 (a) of the said Rules and Regulations.

PAR. 10. The aforesaid acts and practices of respondents were in violation of the Fur Products Labeling Act and of the Rules and Regulations promulgated thereunder, and as such constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued January 10, 1956, charged the respondents David Becker and Abraham Burns (also known as Al Burns), individually and as copartners trading as Becker & Burns Furriers, located at 1211 Chestnut Street, Philadelphia, Pennsylvania, with the use of unfair and deceptive acts and practices in interstate commerce in violation of the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

After the issuance of said complaint and before the filing of their answer thereto, the respondents David Becker and Abraham Burns (also known as Al Burns), individually and as copartners trading as Becker & Burns Furriers, entered into an agreement for consent order with counsel in support of the complaint disposing of all the issues in this proceeding, which agreement was duly approved by the

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Director and Assistant Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the said respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations.

By said agreement the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein, that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement, and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents David Becker and Abraham Burns (also known as Al Burns), individually and as copartners trading as Becker & Burns Furriers, or under any other trade name, and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of any fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product which is

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made in whole or in part of fur which had been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such garment was manufactured.

2. Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur products as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations.

(b) That the fur product contains or is composed of used furs when such is a fact.

(c) That the fur product contains or is composed of bleached, dyed, or artificially colored fur when such is a fact.

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies or waste fur when such is a fact.

(e) The name or other identification issued and registered by the Commission of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered for sale in commerce or transported or distributed it in commerce.

(f) The name of the country of origin of any imported furs used in the fur product.

3. Setting forth on labels attached to fur products the name or names of any animal or animals other than the name or names provided for in paragraph A (2) (a) above.

4. Setting forth on labels attached to fur products non-required information mingled with required information.

B. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement, or notice which is intended to aid, promote or assist, directly or indirectly in the sale or offering for sale of fur products, and which:

1. Fails to disclose the name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed by the Rules and Regulations.

2. Represents directly or by implication:

(a) That the prices at which said fur products are being offered for sale are as low or less than wholesale cost, when such is not a fact;

(b) That the regular or usual price of any fur product is any amount which is in excess of the price at which the respondents have

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usually and customarily sold such products in the recent regular course of their business;

(c) That comparative prices are other than current market values, unless the time of such compared price is given, as provided in Rule 44 (b) of the Rules and Regulations.

3. Makes pricing claims or representations of the type referred to in paragraph B (2) above unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based as required by Rule 44 (e) of the Rules and Regulations.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of May, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondents David Becker and Abraham Burns (also known as Al Burns) individually and as copartners 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.

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IN THE MATTER OF

UNION BAG & PAPER CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND OF SECS. 7 AND 8 OF THE
CLAYTON ACT

Docket 6391. Complaint, June 30, 1955—Decision, May 10, 1956

Consent order requiring two manufacturers of corrugated boxes and sheets—one manufacturing container board in excess of its own requirements and the other mainly a converter and dependent on a limited number of manufacturers for its supply, with sales in 1954 of \$105,000,000 and \$24,000,000, respectively—to cease violating the merger and interlocking directorates sections of the Clayton Act through entering into contracts which provided that the larger, Union, buy a substantial amount of common stock in the smaller, Hankins, and that Hankins' controlling stockholders vote for election to its board of directors of a director of Union; which provided further that Union not acquire stock of any substantial competitor of Hankins having plants in the latter's territory, and that Hankins restrict its production of container board and, with certain exceptions, confine its purchases thereof to Union.

Before *Mr. John Lewis*, hearing examiner.

Mr. Fletcher G. Cohn and *Mr. Paul E. Dixon* for the Commission.

Mr. Walter C. Taylor, Jr. and *Mr. Carney W. Mimms*, of New York City, for Union Bag & Paper Corp.

Mr. Philip E. Hoffman, of New York City, for Hankins Container Co.

COMPLAINT

The Federal Trade Commission, having reason to believe that the corporations named as respondents in the caption hereof, and hereinafter more particularly designated and described, have violated, and are now violating, the provisions of Section 5 of the Federal Trade Commission Act (15 U. S. C. Sec. 45), and the provisions of Section 7 of the Clayton Act (15 U. S. C. Sec. 18) as amended and approved December 29, 1950, and Section 8 of the Clayton Act (15 U. S. C. Sec. 19) as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondent Union Bag & Paper Corporation, hereinafter referred to as "respondent Union," is a corporation organized

and existing under the laws of the State of New Jersey, having an office and a place of business located at 233 Broadway, New York 7, New York.

Respondent Hankins Container Company, hereinafter referred to as "respondent Hankins," is a corporation organized and existing under the laws of the State of Ohio, with an office and a place of business located at 14801 Emery Avenue, Cleveland, Ohio.

PAR. 2. Respondent Union is one of the oldest companies in the paper packaging field. The company was originally a patent-holding company for paper bag machinery. It reorganized in 1874 to become a manufacturer of paper bags, and subsequently acquired pulp and paper mills to supply paper to its bag manufacturing plants. In its early days, when paper bags were made from sulphite paper, respondent Union owned and operated sulphite mills. During the early twenties the introduction of kraft paper as a superior material for bags forced respondent Union to abandon its sulphite mills and change its paper machines over to the production of kraft paper, and purchase foreign pulp for such machines. By the early thirties, due to the rapid expansion of respondent Union's bag business beyond the productive capacity of its paper machines, it was necessary for respondent Union to rely on outside sources for pulp and in addition purchase paper in the open market. By the year 1935, respondent Union was the largest producer of retail store and small industrial paper bags and wrapping paper in the industry. In the year 1935 respondent Union began the erection of a pulp and paper mill in Savannah, Georgia, which would use southern pine as its raw material. The first paper machine came into production in July 1935 at this plant. (The term "unit" designates a paper machine and sufficient pulp manufacturing facilities to supply that machine, each unit being comparable to a complete mill except that all units in the plant are under one roof.) At the end of 1937 a third unit came into production, so designed that it could produce container board as well as paper. With this addition, respondent Union added container board to its sales of paper products in 1938. At that time this board was sold to independent manufacturers of boxes.

In June 1946 respondent Union made the decision to build its own box factory, adjacent to its mill at Savannah, Georgia. This box factory commenced operation in September 1947. This factory was designed to convert only about one-half of the total board production of respondent Union. In order to assure a market for the production of its container board, in the latter half of 1947 respondent Union negotiated the purchase of two box factories, at Trenton, New Jersey, and Chicago, Illinois, and the purchase of a 48½ percent interest in

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a box factory at Jamestown, North Carolina. Since the purchase of the plants at Trenton, New Jersey, and Chicago, Illinois, respondent Union has subsequently made additions to these factories, including a new corrugator at the Trenton plant.

In 1945 respondent Union sold all of the container board which it manufactured. In 1947 respondent Union, in addition to selling container board as such, began to convert substantial amounts of same into corrugated boxes and sheets in its own facilities and offer such corrugated boxes and sheets for sale. In the calendar year 1952, respondent Union sold 111,801 tons of container board and in the same year sold 89,522 tons of such container board in the form of corrugated boxes and sheets which said respondent had converted at its own plant from the container board which it had produced. In the calendar year 1953 it sold 160,682 tons of container board which it had produced, and 108,846 tons in the form of converted corrugated boxes and sheets. In the calendar year 1954, it sold 160,304 tons of container board which it had produced, and 106,929 tons in the form of converted corrugated boxes and sheets.

For the calendar year 1954 respondent Union had net sales of \$105,502,849, which included its sales of container board as such, as well as its converted corrugated boxes and sheets. At the end of the calendar year 1954, respondent owned and operated both a paper and a pulp mill at Savannah, Georgia. It owned and operated bag factories at Hudson Falls, New York, Savannah, Georgia, and St. Louis, Missouri. It owned and operated corrugated container plants at Savannah, Georgia, Trenton, New Jersey, and Chicago, Illinois.

Respondent Union is now, and has been for many years last past, engaged in the sale of container board and corrugated boxes and sheets throughout the United States. However, its sales of these products have been largely confined to that area of the United States east of the Rocky Mountains, and principally in that section of the United States lying adjacent to and east of the Mississippi River.

PAR. 3. Respondent Hankins is one of the oldest converters of container board into corrugated boxes and sheets in the United States. In the year 1954, respondent Hankins owned and operated plants at Union, New Jersey, Elmira, New York, Chicago, Illinois, Miamisburg, Ohio, and Little Rock, Arkansas, at which it converted container board into corrugated boxes and sheets. In addition to these plants, respondent Hankins operated as a subsidiary corporation, under the name of Munroe Falls Paper Company, an Ohio corporation, a pulp mill wherein it manufactured liner board. However, the capacity of this subsidiary pulp mill has never been sufficient to satisfy respondent Hankins' requirements of liner board. Prior to June 1954, when the

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contracts and agreements hereinafter described were entered into between respondent Hankins and respondent Union, it was necessary for respondent Hankins to attempt to buy and purchase from the limited number of manufacturers of container board the additional amounts of that product needed for its manufacturing processes.

Respondent Hankins' operations in manufacturing corrugated boxes and sheets require approximately 100,000 tons of container board annually. The greater proportion of this had to be purchased by respondent Hankins from the manufacturers of such board.

Respondent Hankins' annual total dollar volume of sales approximates \$24,000,000.

Respondent Hankins is now, and has been for many years last past, engaged in the sale of corrugated boxes and sheets throughout the United States. However, its sales of these products have been largely confined to the area of the United States east of the Rocky Mountains, and principally in that section of the United States lying adjacent to and east of the Mississippi River.

PAR. 4. In addition to respondent Union, there are but a limited number of manufacturers of container board in the United States.

Within the past several years there has been a tendency on the part of the manufacturers of container board to offer but a limited amount of container board for sale to the independent converters in the United States. This trend has partially been caused by the fact that several of the producers or manufacturers of container board have acquired or built their own conversion facilities wherein they manufacture corrugated boxes and sheets, and in this process utilize most of the board that they individually manufacture. However, as hereinbefore set forth, in the year 1954 respondent Union produced, offered for sale, and sold more container board than it used in manufacturing corrugated boxes and sheets.

PAR. 5. As used herein, container board collectively refers to liner board and corrugating medium. It applies to a type of paper used primarily for the manufacture of sheets which, in turn, are manufactured into boxes.

A sheet is a paperboard from which a box is made. It is produced by putting the corrugating medium through a machine, where it is fluted and formed into a corrugated material. The corrugated material is then inserted between two sheets of liner board and run through a combining machine, where they are combined into a sheet or board by the application of an adhesive. As the sheet passes through the combining machine, it is cut into the desired widths and lengths ready for conversion into boxes.

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PAR. 6. In June and July 1954, respondents Union and Hankins entered into a series of contracts and agreements which, among other things, provided:

1. Respondent Hankins was to increase its common shares of stock from 248,725 to 300,000 and respondent Union was to buy 25,000 shares of the authorized but unissued stock, in return for an estimated purchase price of \$1,872,250;

2. The contract or agreement for the stock purchase was supplemented by a stockholders' agreement whereby ten of the stockholders of respondent Hankins, who represented a majority of such stockholders both in number and amount, agreed, in order to induce respondent Union to enter into the stock purchase agreement with Hankins that, so long as the container board contract, hereinafter described, remained in effect, they would vote their stock for the election of a director of the Board of Directors of respondent Union to the Board of Directors of respondent Hankins;

3. The 25,000 shares of stock in respondent Hankins, which were to be purchased under the stock purchase agreement by respondent Union, plus the 176,540 shares in respondent Hankins which were owned by the stockholders who entered into the supplemental stockholders' agreement, constituted $66\frac{2}{3}$ percent of the authorized and outstanding stock of respondent Hankins;

4. Respondent Hankins agreed not to sell or transfer any of its stock to a competitor of respondent Union and respondent Union agreed likewise not to sell or transfer any of respondent Hankins' stock to a competitor of either respondent during the life of the container board contract;

5. The stock purchase contract gave respondent Hankins an option to purchase any stock of respondent Hankins which respondent Union might wish to sell or transfer during the life of the container board contract and for five years thereafter;

6. Respondent Union agreed that it would not, without prior consultation with respondent Hankins, purchase or acquire any stock of a box manufacturer "which has plants located in the area also served by plants of respondent Hankins * * * [if] the competition between the plant of Hankins and a plant of the other manufacturer * * * be of a substantial nature";

7. Contemporaneous with the stock purchase agreement and to be considered as supplementing such agreement, the respondents entered into a container board contract, hereinbefore referred to, for the sale by respondent Union of minimum and maximum quantities of liner board and corrugating medium. This agreement or contract was to run for a period of fifteen years commencing July 1, 1954, renewable

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on a year-to-year basis after June 30, 1969, unless and until cancelled by either party's giving not less than 5 years' prior written notice to the other of such cancellation effective as of June 30, 1969, or as of any June 30 thereafter; however, no such notice of cancellation could be effective prior to June 30, 1969. The maximum amount involved was 16,000 tons for each calendar quarter-annual period, beginning with the second half of 1954 and extending through 1969; the minimum amounts range from 1,000 tons for each calendar quarter-annual period, beginning with the second half of 1954 to 16,000 tons, beginning with 1959 and extending through 1969;

8. Under said container board contract agreement, it is provided that as part of the container board to be purchased by respondent Hankins from respondent Union, respondent Hankins agreed to buy from respondent Union any corrugating medium it may purchase during the term of the container board contract in excess of (a) 5,400 tons in any calendar quarter-annual period; and (b) any amounts of corrugating medium purchased by respondent Hankins from West Virginia Pulp & Paper Company and Green Bay Pulp & Paper Company under existing contracts which provide for maximum aggregate purchases of 900 tons monthly;

9. The stock purchase agreement further provided that if the purchase of container board and corrugating medium by respondent Hankins from respondent Union under the container board contract should amount in the aggregate to 65,000 tons in a calendar year, then the two respondents would meet and consider the purchase of additional stock of respondent Hankins to a maximum amount that would bring respondent Union's stock interest in respondent Hankins to 25 percent in interest, on terms and conditions to be then mutually agreed upon;

10. Respondent Hankins was allowed, under the terms of the container board contract, to reduce its purchases for any calendar quarter-annual period below the maximum quantity specified in such agreement for such period, for an amount not exceeding 15 percent of the aggregate quantity so provided to be purchased by respondent Hankins for that period;

11. Under the terms of the container board agreement, if respondent Hankins should require more container board than the quantity which it is obligated at any time to purchase from respondent Union, then excluding (a) any commitments of respondent Hankins under its then existing contracts with West Virginia Pulp & Paper Company, International Paper Company, and Green Bay Pulp & Paper Company; (b) liner board (not including chip) to a maximum amount of 2,500 tons in any calendar quarter-annual period from respondent

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Hankins' Munroe Falls plant; and (c) corrugating medium to a maximum of 5,400 tons in any calendar quarter-annual period, respondent Hankins agreed that it would advise respondent Union of such additional tonnage and would give said respondent the opportunity for a period of 30 days to negotiate with it for the sale of such additional tonnage;

12. Respondent Hankins agreed that it would not consume more than 2,500 tons of the liner board (not including chip) produced by it at its Munroe Falls plant in any calendar quarter-annual period;

13. The prices which respondent Hankins was to pay for the container board purchased from Union were not to "be higher on sellers for principal grades. * * * than the market price then in effect of the largest suppliers in the domestic national market."

PAR. 7. Respondents have, since 1954, performed, and are still performing, their respective obligations and undertakings set forth in Paragraph Six; furthermore, any and all parties who assumed any obligations or undertakings under said contracts or agreements have likewise performed and are still performing same.

There has been elected to the Board of Directors of respondent Hankins, Alexander Calder, Jr., Executive Vice President and General Manager and a member of the Board of Directors of respondent Union. Also, R. Carl Chandler, a Vice-President of respondent Union, has been elected as a member of the Board of Directors of the respondent Hankins.

PAR. 8. In the course and conduct of its business, respondent Union has engaged in commerce as "commerce" is defined in the Federal Trade Commission Act, having shipped its container board and corrugated boxes and sheets, or having caused them to be transported, from their places of manufacture to purchasers thereof located in the same and in other States of the United States and in other areas subject to the jurisdiction of the United States.

Respondent Hankins, in the course and conduct of its business, has engaged in commerce as "commerce" is defined in the Federal Trade Commission Act, having shipped its corrugated boxes and sheets, or having caused them to be transported, from their places of manufacture to purchasers thereof located in the same and in other States of the United States and in other areas subject to the jurisdiction of the United States.

Each of the respondents maintains a constant course and current of trade in their respective products in commerce between and among the various States of the United States.

PAR. 9. Except to the extent that competition has been hindered, frustrated, and lessened as set forth in this complaint, respondent

Union has been, and is, in competition with other corporations, firms, partnerships, and individuals engaged in the sale and distribution of container board, in commerce, as the term is defined in the Federal Trade Commission Act.

Except to the extent that competition has been hindered, frustrated, and lessened, as set forth in this complaint, respondents Union and Hankins have been, and are, in competition with each other and with other corporations, firms, partnerships, and individuals engaged in the sale and distribution of corrugated boxes and sheets, in commerce, as the term is defined in the Federal Trade Commission Act.

PAR. 10. The aforescribed contracts and agreements, as set forth in Paragraph 6, and the obligations and undertakings imposed thereby, as well as the fulfillment of such obligations and undertakings, and the acts and practices likewise performed pursuant thereto, are a part of, and were entered into and fulfilled, maintained, and effectuated in furtherance of, as part of, and pursuant to, an understanding, agreement, combination, conspiracy, and planned common course of action entered into in the year 1954 by and between respondent Union and respondent Hankins to adopt, fix, and adhere to the practice and policy of restricting and restraining competition in the offering for sale, sale, and distribution of container board, corrugated boxes, and corrugated sheets, in commerce between and among the several States of the United States.

PAR. 11. The capacity, tendency, and effect of the aforesaid understanding, agreement, combination, conspiracy, and planned common course of action and the policies, acts, practices, and the fulfillment of the obligations assumed and undertaken by the contracts or agreements between the respondents in the year 1954 have been, and are now, among others:

1. To monopolize, or may tend to monopolize, in respondent Union the production, sales, and distribution in commerce of container board and corrugated boxes and sheets.

2. To limit, restrict, and prevent actual and potential competition between respondent Union and other producers and manufacturers of container board in offering for sale, selling, and distributing in commerce container board.

3. To limit, restrict, and prevent the production by respondent Hankins of liner board.

4. To limit, restrict, and prevent actual and potential competition pricewise by and between respondent Union and respondent Hankins in the offering for sale, sale, and distribution in commerce of corrugated boxes and sheets.

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5. To restrict and restrain all other forms of actual and potential competition by and between respondent Union and respondent Hankins in the offering for sale, sale, and distribution by them of the corrugated boxes and sheets manufactured or produced in their respective plants.

6. To eliminate respondent Hankins as a substantial competitive factor in the manufacture, sale, and distribution in commerce of corrugated boxes and boards.

7. To further concentrate the manufacture, sale, and distribution in commerce of container board.

8. To eliminate the manufacture, sale, and distribution in commerce of corrugated boxes and sheets by independent manufacturers who are not integrated with or a part of the manufacture of corrugated paper.

PAR. 12. The policies, acts, and practices of the respondents, all and singularly, as hereinbefore set forth, are to the prejudice of the public, have a dangerous tendency to unduly hinder competition, to enhance the prices which the consuming public must pay for container board and the products manufactured therefrom, including corrugated boxes and sheets, and to create a monopoly in respondent Union in the manufacture, sale, and distribution in commerce of container board and corrugated boxes and sheets, and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

PARAGRAPH 1. The allegations of this Paragraph are the same as the allegations made in Paragraphs 1, 2, 3, 4, 5, 6 and 7 of Count I.

PAR. 2. Respondent Union has capital, surplus, and undivided profits aggregating more than \$1,000,000, and is not a bank, banking association, trust company, or common carrier subject to the Act to regulate commerce, approved February 4, 1887.

Respondent Hankins has capital, surplus, and undivided profits aggregating more than \$1,000,000, and is not a bank, banking association, trust company, or common carrier subject to the Act to regulate commerce, approved February 4, 1887.

PAR. 3. Respondent Union is engaged in the manufacture, shipment, and sale in interstate commerce of corrugated boxes and sheets.

Respondent Hankins is engaged in the manufacture, shipment, and sale in interstate commerce of corrugated boxes and sheets.

Respondents Union and Hankins, in the regular course of their respective businesses, in the offering for sale, sale, and distribution of corrugated boxes and sheets, cause the same to be shipped and

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transported from the various points of production in certain respective States through and into other States of the United States. They are in competition between themselves in the offering for sale, sale, and distribution of such products in commerce, as "commerce" is defined in the Clayton Act.

For many years, respondents Union and Hankins, by virtue of their business and location of operation, have been, and now are, competitors, so that the elimination of competition by agreement between them would constitute a violation of a provision of the antitrust laws.

PAR. 4. Since the latter part of 1954, one Alexander Calder, Jr., has been a director, at the same time, of respondents Union and Hankins, and is now a director of respondents Union and Hankins.

Since the latter part of 1954, respondent Union has permitted Alexander Calder, Jr., to be elected and to serve as one of its directors at the same time that Alexander Calder, Jr., was a director of respondent Hankins; and at the present time respondent Union continues to permit Alexander Calder, Jr., to serve as one of its directors at the same time that Alexander Calder, Jr., is a director of respondent Hankins.

Since the latter part of 1954, respondent Hankins has permitted Alexander Calder, Jr., to be elected and to serve as one of its directors at the same time that Alexander Calder, Jr., was a director of respondent Union; and at the present time, respondent Hankins continues to permit Alexander Calder, Jr., to serve as one of its directors at the same time that Alexander Calder, Jr., is a director of respondent Union.

PAR. 5. The acts and practices, as hereinabove alleged, are continuing and are in violation of Section 8 of the Clayton Act.

COUNT III

PARAGRAPH 1. The allegations of this Paragraph are the same as the allegations in Paragraphs 1, 2, 3, 4, 5, 6 and 7 of Count I.

PAR. 2. Respondents Union and Hankins, in the regular course of their respective businesses, in the offering for sale, sale, and distribution of corrugated boxes and sheets, cause the same to be shipped and transported from the various points of production in certain respective States through and into other States of the United States, and both respondents are engaged in commerce, as "commerce" is defined in the Clayton Act.

In the course and conduct of its business, respondent Union has been, and is now, engaged in commerce, as "commerce" is defined in the Clayton Act, in offering for sale, selling, and distributing container board and causing the same to be shipped and transported from

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its point of production in the State of Georgia through and into other States of the United States.

Prior to June 1954, respondents Union and Hankins were in direct competition in the offering for sale, sale, and distribution of corrugated boxes and sheets in that area of the United States east of the Rocky Mountains and principally in that section lying adjacent to and east of the Mississippi River.

Prior to June 1954, respondent Union was in substantial competition with other manufacturers of container board in the offering for sale and sale of container board to respondent Hankins.

PAR. 3. In June 1954, and subsequent thereto in the same year, respondents Union and Hankins entered into the agreements outlined in Paragraph Six of Count I of this complaint and made a part of Count III in Paragraph One hereof. The effect of the acquisition of Hankins' stock by Union, together with the other collateral agreements and understandings may be substantially to lessen competition or tend to create a monopoly, in violation of Section 7 of the Clayton Act, in the following ways, among others:

1. Actual and potential competition between respondents Union and Hankins in the offering for sale and sale or distribution of corrugated boxes and sheets throughout that area of the United States adjacent to and east of the Mississippi River has been eliminated.
2. Actual and potential competition generally in the offering for sale, sale, and distribution of corrugated boxes and sheets may be substantially lessened.
3. Respondent Union's competitive advantage over other converters, including those engaged in the manufacture, sale, and distribution of corrugated boxes and sheets, may be enhanced to the detriment of actual and potential competition.
4. Respondent Hankins has been permanently eliminated as a substantial competitive factor in the offering for sale, sale, and distribution of corrugated boxes and sheets.
5. Actual and potential competition between respondent Union and other manufacturers of container board in the solicitation and sale of container board to respondent Hankins has been eliminated.
6. Actual and potential competition generally in the manufacture and distribution of container board may be substantially lessened.
7. Respondent Union's competitive advantage over other manufacturers of container board, including those manufacturers engaged in the offering for sale and sale of container board in that part of the United States adjacent to and east of the Mississippi River may be enhanced to the detriment of actual and potential competition.

8. Respondent Hankins has been substantially eliminated as a buyer or purchaser of container board in the container board industry.

PAR. 4. The foregoing acquisition, acts, and practices of respondent Union, as hereinbefore alleged and set forth, constitute a violation of Section 7 of the Clayton Act (15 U.S.C. Sec. 18), as amended and approved December 29, 1950.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on June 30, 1955, charging them with use of unfair acts and practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act and with engagement in acts and practices in violation of Sections 7 and 8 of the Clayton Act. After being duly served with said complaint, the respondents appeared by counsel and subsequently entered into an agreement containing consent order to cease and desist dated March 8, 1956. Said agreement, which has been signed by counsel supporting the complaint, counsel for respondents, and all respondents, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Commission's Rules of Practice and Procedure.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and have agreed that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with said agreement. It has been agreed that the order to cease and desist provided for in said agreement may be entered without further notice, that when so entered it shall have the same force and effect as if entered after a full hearing, and that the complaint herein may be used in construing the terms of said order. Said agreement purports to dispose of all of this proceeding as to all parties and has been entered into by respondents for settlement purposes only and without admitting that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all

the allegations of the complaint and provides for an appropriate disposition of the proceeding as to all parties, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision pursuant to Section 3.21 and 3.25 of the Rules of Practice and Procedure, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Union is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 233 Broadway, in the City of New York, State of New York. Respondent Hankins is a corporation existing and doing business under and by virtue of the laws of the State of Ohio with its office and principal place of business located at 14801 Emergy Avenue, in the City of Cleveland, State of Ohio.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and the Clayton Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondent Union Bag & Paper Corporation (hereinafter referred to as respondent "Union"), and respondent Hankins Container Company (hereinafter referred to as respondent "Hankins"), either directly or through their respective officers, directors, agents, representatives and employees, together with the successors or assigns of same, directly or through any corporate or other device, in connection with the purchase, offering for purchase, sale, offering for sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and Clayton Act, as amended, of container board, liner board, corrugating medium, corrugated boxes, or corrugated sheets (hereinafter referred to collectively as "said products"), do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out, any planned common course of action, understanding, or agreement between said respondents or between either of said respondents and others not parties hereto, to do or perform any of the following acts:

1. Permitting, or attempting to permit, directly or indirectly, by any means or method, the acquisition by respondent Union, either directly or through any of its officers, directors, employees, agents, representatives, assigns or successors of any of the stock, assets or control of, or in, respondent Hankins other than 9% stock interest

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in respondent Hankins, which may be acquired and held according to the proviso hereinafter set forth;

2. Causing, or attempting to cause, any stock, regardless of its type or designation, in respondent Hankins, to be voted or used, directly or indirectly, by any means or method, for the purpose or with the effect of having or causing any officer, director, employee, agent or representative of respondent Union, or of any subsidiary of respondent Union, to be elected, appointed, selected or designated as an officer or director of respondent Hankins, or of any subsidiary of respondent Hankins;

3. Permitting, or attempting to permit, directly or indirectly, by any means or method, the respondent Union, directly or through any officer, director, employee, agent or representative of said respondent, or of any subsidiary of said respondent, to control, conduct, or attempt to control or conduct, by any means or method, directly or indirectly, the management or operation of respondent Hankins or of any subsidiary of respondent Hankins;

4. Restricting, preventing, limiting or attempting to restrict, prevent or limit the right, power, or privilege of respondent Hankins to sell or transfer any of its stock;

5. Restricting, limiting, or attempting to restrict or limit the right, power or privilege of respondent Union to purchase or acquire any stock of any box manufacturer;

6. Restricting, preventing, limiting, or attempting to restrict, prevent or limit, the quantity or amount of said products, described in the preamble hereto, which respondent Hankins can or may purchase from sellers thereof other than respondent Union;

7. Fixing, or attempting to fix, the maximum amount or quantity which respondent Hankins shall, or may consume, use, produce, sell or distribute of any of said products produced or manufactured by respondent Hankins;

8. Restricting, limiting, preventing, or attempting to restrict, limit or prevent, actual or potential competition between respondent Union and other producers or manufacturers of said products, in offering for sale, selling or distributing any of same to respondent Hankins;

It is further ordered, That respondent Union cease and desist from permitting or allowing anyone to be elected or to serve as a director of respondent Union or of any of its subsidiaries who is a director of respondent Hankins.

It is further ordered, That respondent Hankins cease and desist from permitting or allowing anyone to be elected, or to serve as a director of respondent Hankins or any of its subsidiaries who is a director of respondent Union.

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It is further ordered, That respondent Union, within 90 days from the date of service upon it of a copy of this order, shall divest itself absolutely, in good faith, retaining no interest whatsoever therein, of all stock which it now holds or owns, directly or indirectly, in, or of, respondent Hankins.

It is understood, however, That nothing in this order shall be construed or interpreted as preventing respondent Union from acquiring, owning, or holding stock in respondent Hankins when the total amount of such stock, by whatever means acquired, owned or held, does not exceed 9% of the total outstanding capital stock in respondent Hankins (this is the same percentage of stock interest in respondent Hankins which was represented by the 12,500 shares of respondent Hankins acquired by respondent Union on June 24, 1954, plus the 6,250 shares acquired on June 24, 1955, plus the 6,250 shares which were to be acquired on June 22, 1956, all under the provisions of the agreements or contracts entered into by and between respondent Hankins and respondent Union on June 7, 1954), *provided* said stock is held solely for investment and *provided* further that respondent Union, if it votes such stock, shall not vote it for the purpose, or with the effect, of evading or violating any of the provisions in this order, or of substantially lessening competition or tending to create a monopoly in any line of commerce in which said respondents are engaged, and *provided* still further that should the Commission bring any action based upon an alleged violation of these provisions, the burden of refuting same shall be assumed by respondent Union.

It is further understood, That nothing in injunctive provision 4 of this order shall be construed as preventing respondent Hankins, acting in good faith and without intent to violate any of the provisions of this order, from contracting to sell, selling or transferring stock to purchasers not owned, controlled or acting under the direction of respondent Union or any of its subsidiaries.

It is further understood, That nothing in injunctive provisions 6, 7 and 8 of this order shall be construed as preventing respondent Union from selling to respondent Hankins or respondent Hankins from buying, or committing itself to buy, from respondent Union or from others not parties hereto, any of the products described in the preamble hereof, pursuant to contract or contracts:

Provided, however, That the Commission hereby is not approving or disapproving the legality of any such contract or contracts, between the said respondents for the purchase or sale of such products, with regard to grounds of attack not arising from these specific provisions of the order.

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It is further understood, That nothing in this order shall be construed or interpreted as preventing either respondent Hankins or respondent Union from petitioning the Commission to reopen these proceedings and modify this order to cease and desist because of a change in conditions of fact, law or the public interest, so as to permit, respondent Union to purchase, or respondent Hankins to sell to respondent Union, additional stock in respondent Hankins; and if such petition alleges, as a change in conditions of fact, that there has been a full and complete compliance with all the injunctive provisions of this order, and that the acquisition of such additional stock does not substantially lessen competition or tend to create a monopoly in any line of commerce in which said respondents are engaged, the Commission shall reopen the proceedings and permit the introduction of evidence; and if at such reopening, the petitioning respondent can sustain these allegations, the Commission shall grant such petition to modify this order.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 10th day of May, 1956, become the decision of the Commission; and, accordingly:

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.

IN THE MATTER OF
WESTERN STAR MILL CO. ET AL.

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

Docket 6500. Complaint, Feb. 3, 1956—Decision, May 10, 1956

Consent order requiring a flour mill at Salina, Kans., and a wholesale grocery dealer of Tupelo, Miss., to cease furnishing to retail dealers and other purchasers of their flour, devices and merchandising plans involving the operation of a lottery scheme, in that purchasers of a bag of flour who selected either of two lucky numbers on a push card received an additional 25-pound bag of flour.

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

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

Mr. Jason K. Yordy, of Salina, Kans., for Western Star Mill Co.,
John J. Vanier and Robert H. Adams.

Mitchell & McNutt, of Tupelo, Miss., for L. P. McCarty.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Western Star Mill Co., a corporation, and John J. Vanier and Robert H. Adams, individually and as officers of said corporation, and L. P. McCarty, an individual, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Western Star Mill Co. is a corporation, organized and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 215 East Iron Street, in the City of Salina, Kansas; respondent John J. Vanier is president of said corporate respondent, and respondent Robert H. Adams is sales manager of said corporate respondent, and these two respondents direct the sales and advertising practices of the corporate respondent.

Respondent Western Star Mill Co. is engaged in the milling, sale and distribution of flour to dealers and jobbers, and causes said flour, when sold, to be shipped from its place of business in the State of

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Kansas to purchasers at their points of location in the various other States of the United States.

Respondent L. P. McCarty is an individual, and co-partner in the wholesale grocery firm of L. P. McCarty & Son, with his office and principal place of business located in the City of Tupelo, Mississippi. Respondent McCarty purchases flour from respondent Western Star Mill Co. and sells and distributes the same in the State of Mississippi and also ships and causes to be shipped said flour, when sold, from his place of business in the State of Mississippi to purchasers thereof located in other States of the United States. All of said respondents act together and cooperate in the performance of the acts and practices hereinafter alleged.

There is now and has been for more than two years last past a substantial course of trade in such flour by said respondents in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their said business and in connection with and in furtherance of the sale of the said flour, respondents have furnished to retail dealers, and other purchasers of their flour, devices and plans of merchandising involving the operation of games of chance, lottery schemes and gift enterprises.

Respondents' plans of merchandising include the distribution to retailers of pull cards or punch cards having the following legend:

WIN 25 LBS	
OF FLOUR	
Pick your Lucky Number	
TWO BIG WINNERS	
(Gold Seal)	(Gold Seal)
Winner No. 1	Winner No. 2
25 Lbs Flour	25 Lbs Flour

Here's All You Do, put your name on two blank spaces below with each purchase of a 50 lb sack of flour. Put your name on ONE blank space with the purchase of 25 lbs. Lucky numbers are printed under the Gold Seals. The seals will be removed when all blanks are filled.

Under the legend are printed the numbers from "1" to "40" and a lined blank space for writing in the name of the purchaser of a sack of flour. Respondents also furnish each dealer with two 25 lb. bags of flour to be awarded to the selectors of the winning numbers. Retail dealers who purchase and resell respondents' flours display the "lucky number" cards in their places of business and award the winners the bags of flour in accordance with the legend.

Each purchaser of a bag of respondents' flour makes a choice of a number and writes his or her name in the blank line opposite the chosen number. Under each of the two gold seals is concealed a number. When the card is completely filled in with the names of

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purchasers, the gold seals are broken, revealing a number from 1 to 40, and the persons whose names are registered opposite the numbers corresponding with the numbers under the gold seals are awarded a 25 lb. bag of respondents' flour without additional charge. The numbers under the gold seals are effectively concealed from purchasers and prospective purchasers until all of the numbers on the cards have been chosen. The two bags of respondents' flour are thus awarded to the purchasers of respondents other flour wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondents' flour, directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting a lottery, game of chance, or gift enterprise in the sale of their products in accordance with the sales plan hereinbefore set forth. Use by respondents of said plan or method in the sale of their flour, and the sale of said flour by and through the use thereof, and by the aid of said sales plan or method is contrary to the public interest and contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of said flour to the purchasing public in the manner above alleged involves a game of chance or the award of a chance to procure a sack of flour without additional cost. Many persons are attracted by respondents' sales plan or method and the element of chance involved therein and are thereby induced to buy and sell respondents' flour.

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

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued February 3, 1956, charged the respondents Western Star Mill Co., a corporation, and John J. Vanier and Robert H. Adams, individually and as officers of Western Star Mill Co., located at 215 East Iron Street, Salina, Kansas, and L. P. McCarty, an individual located at Tupelo, Mississippi, with the use of unfair and deceptive acts and practices in interstate commerce in violation of the provisions of the Federal Trade Commission Act.

After the issuance of said complaint and before the filing of answers thereto, the respondents Western Star Mill Co., a corporation, and John J. Vanier and Robert H. Adams, individually and as officers of Western Star Mill Co., and respondent L. P. McCarty, an individual, entered into separate agreements for consent order with counsel in support of the complaint disposing of all the issues in this proceeding,

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which agreements were duly approved by the Director and Assistant Director of the Bureau of Litigation. It was expressly provided in these agreements that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of these agreements, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations.

By said agreements, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreements.

Respondents further agreed that the order to cease and desist, issued in accordance with said agreements, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreements, together with the complaint, shall constitute the entire record herein, that the complaint herein may be used in construing the terms of the order issued pursuant to said agreements and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreements and the identical orders therein contained, and, it appearing that said agreements and orders provide for an appropriate disposition of this proceeding, the same are hereby accepted and are ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said agreements the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents Western Star Mill Co., a corporation, and John J. Vanier and Robert H. Adams, individually and as officers of Western Star Mill Co., and respondent L. P. McCarty, an individual, their representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of flour or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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1. Using any sales promotion plan or scheme whereby purchasers of their said products are entitled to participate in the award of flour or other prizes, the winners of which are determined by the use of push cards, pull cards, or any other lottery devices.
2. Selling or otherwise disposing of any merchandise through the use of, or by means of, a game of chance, gift enterprise or lottery scheme.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 10th day of May, 1956, become the decision of the Commission; and, accordingly:

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.

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IN THE MATTER OF
WILLIAM OVERTON TRADING AS VANCOUVER
FUR FACTORY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 6509. Complaint, Feb. 17, 1956—Decision, May 10, 1956

Consent order requiring a fur dealer to cease false advertising, misbranding, and false invoicing of his fur products in violation of the Fur Products Labeling Act, through failing to disclose the names of animals producing the fur or that certain products contained artificially colored fur, setting forth names of animals other than the real source of certain furs, failing to maintain adequate records supporting purported claims of savings, failing to attach labels, and failing to set forth information as required on attached labels and invoices.

Before *Mr. William L. Pack*, hearing examiner.
Mr. John J. McNally for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that William Overton, an individual trading as Vancouver Fur Factory, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent William Overton is an individual trading as Vancouver Fur Factory, with his office and principal place of business located at 114 Sixth Avenue, Vancouver, Washington.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has introduced, sold, advertised, offered for sale, transported and distributed fur products in commerce, and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act. Certain of said fur products have been misbranded, falsely advertised and

falsely invoiced in violation of the Fur Products Labeling Act and of the Rules and Regulations promulgated thereunder.

PAR. 3. Certain of said fur products were falsely and deceptively advertised, in violation of the Fur Products Labeling Act, in that respondent caused the dissemination in commerce, as "commerce" is defined in the Fur Products Labeling Act, of certain advertisements concerning said products by means of newspapers and by various other means, which advertisements were not in accordance with the provisions of Section 5(a) of the Fur Products Labeling Act and of the Rules and Regulations promulgated under said Act, and which advertisements were intended to and did aid, promote and assist, directly and indirectly, in the sale and offering for sale of said fur products.

PAR. 4. Among and including the advertisements as aforesaid, but not limited thereto, were advertisements which appeared in various issues of "The Columbian," a publication having wide circulation in the State of Washington and in the adjacent areas of other States of the United States.

Certain of said fur products were falsely and deceptively advertised in that certain of the advertisements disseminated in commerce as aforesaid by respondent failed to set forth the information required by Section 5 (a) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder, in the following respects:

a. Certain of said advertisements failed to disclose:

1. The name or names of the animal or animals producing the fur or furs contained in the fur products, as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;
2. That fur products contained or were composed of bleached, dyed or otherwise artificially colored fur, when such was the fact.

b. Certain of said advertisements set forth the name of an animal other than the name of the animal that produced the fur.

c. Certain of said advertisements contained pricing claims and representations as follows:

"Values up to \$299.00..... Now \$169.00.....
Reductions up to 50%"

Respondent, in making the pricing claims and representations referred to above failed to maintain full and adequate records disclosing the facts upon which such claims and representations were purportedly based, in violation of Rule 44 (e) of the said Rules and Regulations.

PAR. 5. Certain of said fur products were misbranded in that they did not have affixed thereto labels showing the information required

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under the provisions of Section 4 (2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 6. Certain others of said fur products were misbranded in that respondent, on labels attached thereto, set forth the name of an animal other than the name of the animal that produced the fur, in violation of Section 4 (3) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

PAR. 7. Certain others of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Required information was set forth on labels in abbreviated form in violation of Rule 4 of the said Rules and Regulations;

(b) Required information was mingled with nonrequired information on labels, in violation of Rule 29 (a) of the said Rules and Regulations;

(c) Required information was not completely set forth on one side of the labels, as required by Rule 29 (a) of the aforesaid Rules and Regulations;

(d) Required information was set forth in handwriting on labels, in violation of Rule 29 (b) of the aforesaid Rules and Regulations.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced, in that they were not invoiced as required under the provisions of Section 5 (b) (1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 9. Certain others of said fur products were falsely and deceptively invoiced, in violation of the Fur Products Labeling Act, in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Required information was set forth in abbreviated form in violation of Rule 4 of the aforesaid Rules and Regulations;

(b) Respondent failed to set forth an item number or mark assigned to fur products in violation of Rule 40 (a) of the aforesaid Rules and Regulations.

PAR. 10. The aforesaid acts and practices of respondent are in violation of the Fur Products Labeling Act and of the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this case charges the respondent with misbranding certain fur products in violation of the Fur Products Labeling Act and the Federal Trade Commission Act. No answer to the complaint has been filed by respondent. An agreement has now been entered into by respondent and counsel supporting the complaint, which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified or set aside in the manner provided for other orders of the Commission; and that the agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for an appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent William Overton is an individual doing business as Vancouver Fur Factory, with his principal place of business located at 114 Sixth Avenue, Vancouver, Washington.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent, William Overton, individually or trading as Vancouver Fur Factory or under any other trade name, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or the sale, advertising or offering for sale, or the transportation or distribution of any fur product in commerce, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as

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"commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

(b) That the fur product contains or is composed of used fur when such is a fact;

(c) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur when such is a fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies or waste fur when such is a fact;

(e) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(f) The name of the country of origin of any imported furs used in the fur product.

2. Setting forth, on labels attached to fur products, the name or names of any animal or animals other than the name or names provided for in Paragraph A (1) (a) above.

3. Setting forth on labels attached to fur products:

(a) Required information in abbreviated form;

(b) Non-required information mingled with required information;

(c) Required information in handwriting;

4. Failing to show, on labels attached to fur products, all of the required information on one side of such labels.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of used fur when such is a fact;

(c) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur when such is a fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur when such is a fact;

(e) The name and address of the person issuing such invoices;

(f) The name of the country of origin of any imported furs contained in the fur product.

2. Setting forth required information in abbreviated form.

3. Failing to show the item number or mark of fur products on the invoices pertaining to such products, as required by Rule 40 of the rules and regulations.

C. Falsely or deceptively advertising fur products, through the use of any advertisement, representation, public announcement, or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products, and which:

1. Fails to disclose:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur products contain or are composed of bleached, dyed, or otherwise artificially colored fur when such is a fact;

2. Contains the name or names of any animal other than the name or names of the animals provided for in Paragraph C (1) (a) above.

3. Makes claims or representations as to value or savings, unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims or representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 10th day of May, 1956, become the decision of the Commission; and, accordingly:

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

Order Denying, etc.

IN THE MATTER OF
RIGID STEEL CONDUIT ASSOCIATION ET AL.

Docket 4452. Order and dissenting opinion, May 11, 1956

Order denying motion to modify desist order since it does not prohibit the independent practice of freight absorption or individual use of delivered prices.

Mr. Paul R. Dixon and Mr. R. D. Young, Jr. for the Commission.

ORDER DENYING MOTION TO REOPEN AND MODIFY ORDER TO
CEASE AND DESIST

This matter having been considered by the Commission upon a motion, filed by Triangle Conduit & Cable Co., Inc., requesting that the proceeding be reopened and the order to cease and desist entered on June 6, 1944,¹ modified in certain respects; and

It appearing that the alleged purpose of the requested modification is to make clear that the order does not prohibit any of the respondents, when acting independently, from quoting or selling rigid conduit at delivered prices or from absorbing freight, and particularly from quoting prices which "differ in terms of mill nets according to the location of purchasers"; and

The Commission having stated in its order of July 7, 1949, denying a similar motion that the questioned portion of the order to cease and desist does not prohibit the independent practice of freight absorption or selling at delivered prices by individual sellers, but only the continuance of the basing-point, delivered price system, found to have been the subject of conspiracy, or any variation thereof which might be accomplished through the practices specified in subparagraphs (a), (b), (c) or (d) when done, as stated in the order, "for the purpose or with the effect of systematically matching delivered price quotations"; and

The Commission being of the opinion that said portion of the order does not under any other circumstances prohibit the practice of quoting prices which differ in terms of mill nets received on sales to different purchasers; and

The allegations of the motion being insufficient to support a conclusion that conditions of fact or of law may have so changed since the issuance of the order as to require its modification or that the public interest may now require it:

¹ 38 F. T. C. 534.

Dissenting Opinion

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It is ordered, That the motion for reopening and modification be, and it hereby is, denied.

Commissioner Mason dissenting.

DISSENTING OPINION OF COMMISSIONER MASON

Quasi-judicial agencies would improve their appearance if, when caught in an irreconcilable position, they frankly (and in good season) admit the error of their ways and Get Right with Justice.

In the instant case the Commission made pretensions at powers not congressionally included within its statutory authority. The Federal Trade Commission was unable to find Clifton Conduit Co. and Spang Chalfant, Inc., guilty of conspiracy. Lacking the authority to command persons innocent of unlawful acts to submit to sanctions, the Commission nevertheless under Count II, which merely charged them with knowingly doing the same thing others were doing, ordered Clifton Conduit Co. and Spang Chalfant, Inc., to "cease and desist from * * * selling rigid steel conduit at delivered prices which systematically reflect the inclusion of a transportation factor greater *or less* than the actual cost of transportation from point of shipment to destination." A reviewing court, like the praising courtiers in the fable of the king who dressed in nothing, approved. Thus for twelve years we have been caught in the web of our over-enthusiasm. We have paraded too long in the naked inconsistency of Rigid Conduit. The Commission needs an innocent child to tell it that it hasn't any clothes on.

Now that the Supreme Court and the Seventh Circuit Court of Appeals have released us from our folly,² it would be the better part of discretion to renounce our former pretensions and amend the order in Rigid Conduit so that it would not provide as above.

The instant order does not do this.

I am against it.

² *Theater Enterprises, Inc. v. Paramount Film Distributing Corp.*, 346 U. S. 537; *National Lead Company v. F. T. C.*, 227 F. 2d 825.

Findings

IN THE MATTER OF
 JACQUES DE GORTER ET AL. TRADING AS PELTA FURS
 ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
 COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 6297. Complaint, Feb. 25, 1955—Decision, May 11, 1956

Order requiring furriers in Los Angeles, Calif., to cease false advertising and misbranding of fur products in violation of the Fur Products Labeling Act and the Federal Trade Commission Act.

Before *Mr. Abner E. Lipscomb*, hearing examiner.
Mr. John T. Walker and *Mr. Edward F. Downs* for the Commission.
Walley & Davis, of Los Angeles, Calif., for respondents.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

The Commission, having fully considered the entire record herein, including the initial decision of the hearing examiner and the cross-appeals therefrom, and having rendered its decision granting the appeal of counsel in support of the complaint and denying the appeal of respondents, and having vacated and set aside the initial decision, finds that this proceeding is in the interest of the public and makes this, its findings as to the facts, conclusions drawn therefrom, and order, the same to be in lieu of said initial decision.

FINDINGS AS TO THE FACTS

1. Respondents, Jacques De Gorter and Suze C. De Gorter, are individuals trading as Pelta Furs, with their office and principal place of business located at 437 West Seventh Street, Los Angeles, California.
2. Respondents, Jacques De Gorter and Suze C. De Gorter, individually and trading as Pelta Furs, for several years last past have been engaged in the purchase and distribution of fur products, including fur coats, jackets, stoles and related fur garments.
3. Respondents stipulated that in the course of their business, they are in substantial competition in commerce with other firms, corporations, copartnerships and individuals also engaged in the sale of fur products to members of the purchasing public, and it is established by uncontroverted evidence that respondents obtained approximately 25% of their fur products by means of purchases made outside the State of California, and that such fur products were shipped to them

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at their place of business in California. The evidence also shows that these fur products were thereafter advertised in newspapers having an interstate circulation. The evidence further shows that in the months of September, October and November, 1953, respondents sold and shipped one fur product each month to purchasers outside the State of California, and that in the month of December of the same year, respondents so sold and shipped four fur products. Although these seven sales in commerce represent only a small proportion of all respondents' sales during that period of time, they are not mere isolated instances, but constitute a course of trade in commerce among and between the various States of the United States, as "commerce" is defined in the Federal Trade Commission Act. It is further found that the activities of the respondents in procuring fur products from sources outside the State of California, and thereafter advertising and offering for sale in newspapers of interstate circulation, and then selling and shipping and delivering such fur products in commerce clearly bring their business activities within the concept of "commerce" under the Fur Products Labeling Act.

4. As established by stipulation, and by other record evidence, respondents, in the course and conduct of their business, caused to be disseminated, in various newspapers having interstate circulation, advertisements containing certain statements and representations, among and including but not limited to the following:

In the "Los Angeles Examiner," issue of September 20, 1953:

*After Thirty-Eight Years—Los Angeles' Largest Exclusive Furrier—PELTA FURS Quits. Going Out of Business Sale! * * * Entire Stock Must Go * * * Slashed Prices * * **

In the "Los Angeles Examiner," issue of October 11, 1953:

*PELTA FURS * * * QUILTS! \$250,000.00 Inventory Sacrificed, Entire Fur Stock MUST GO: At a Fraction of Original Prices! Savings are Tremendous * * **

In the "Los Angeles Examiner," issue of November 22, 1953, substantially the same language appeared as quoted immediately above, with the added statement:

*All Advance 1954 Holiday Gift Furs Now At Cost and Below Cost * * **

In the "Los Angeles Examiner," issue of January 17, 1954:

*Out They Go—For Whatever We can Get! Final days of Pelta Furs Going Out of Business Sale. A Group to be Liquidated at Cost or Below Cost * * * NOTICE—Arrangements Have Been Made to Adequately Take Care of Complete Guarantee and Promised Free Fur Service * * **

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	Were	Now		Were	Now
Fur items.....	\$595	\$166	Fur items.....	\$1,095	\$333
Do.....	675	188	Do.....	1,175	398
Do.....	750	244	Do.....	1,250	444
Do.....	795	299			

In the "Los Angeles Times," issue of September 26, 1954:

MANUFACTURER'S FINANCIAL SACRIFICE! Many at Cost! Many Below Cost! Many Marked Regardless of Cost! * * *

In the "Los Angeles Times," issue of October 17, 1954:

DISCOUNT SALE! Tremendous Inventory of Selected Furs. PRICED REGARDLESS OF COST! * * *

	Value to—	Now		Value to—	Now
Fur items.....	\$250	\$88	Fur items.....	\$750	\$388
Do.....	350	128	Do.....	975	488
Do.....	450	188	Do.....	3,500	1,488
Do.....	595	288			

As established by Commission's Exhibit No. 14, respondents, on May 17, 1953, published in the Los Angeles Examiner an advertisement, as follows:

DELTA FURS consolidates with famous wholesale mink manufacturer. More Room Required! Complete Stock \$250,000.00 Exquisite Styles Now on Sale ½ price. Present unchanged price tags remain on garment. YOU MAY DEDUCT ONE-HALF! ! !

5. Advertisements disseminated in commerce, by respondents, typical examples of which are quoted above and which advertisements were intended to and did aid, promote and assist, directly and indirectly, in the sale and offering for sale by respondents of fur products, are shown by stipulation or otherwise to have been false and deceptive through failure to set forth information required by Section 5 (a) of the Fur Products Labeling Act, by omitting to state:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur products, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations:

(b) That fur products contained or were composed of bleached, dyed or otherwise artificially colored fur, when such was the fact;

(c) The name of the country of origin of imported fur contained in such fur products.

6. Besides it having been so stipulated by respondents, the record shows and it is found that certain of respondents' fur products were misbranded as follows:

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(a) The name or names of the animals producing the fur contained in such fur products were in violation of Section 4 (1) of the Fur Products Labeling Act, falsely and deceptively identified as "mink" on the reverse side of the label attached thereto, on the obverse side of which appeared the proper identification of such fur product;

(b) They did not have affixed thereto labels showing the information required under the provisions of Section 4 (2) of the Fur Products Labeling Act and in the manner and form prescribed by the rules and regulations promulgated thereunder;

(c) Labels attached to fur products set forth the name of an animal other than the name of the animal that produced the fur, in violation of Section 4 (3) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder;

(d) Required information was mingled with non-required information on labels, in violation of Rule 29 (a) of the said rules and regulations;

(e) Required information was not completely set forth on one side of the labels, as required by Rule 29 (a) of the aforesaid rules and regulations;

(f) Required information was set forth in handwriting on labels, in violation of Rule 29 (b) of the aforesaid rules and regulations;

(g) Required information was set forth in improper sequence on labels, in violation of Rule 30 of the aforesaid rules and regulations.

7. As established by stipulation and other evidence of record, certain of respondents' products were falsely and deceptively invoiced, as follows:

(a) Certain of respondents' fur products were falsely and deceptively invoiced, in that they were not invoiced as required under the provisions of Section 5 (b) (1) of the Fur Products Labeling Act, and in the manner and form prescribed by the rules and regulations promulgated thereunder;

(b) Certain of respondents' fur products were falsely and deceptively invoiced in that respondents, on invoices furnished to purchasers of said fur products, set forth the name of an animal other than the name of the animal that produced the fur, in violation of Section 5 (b) (2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder;

(c) In violation of the Fur Products Labeling Act, they were not invoiced in accordance with the rules and regulations promulgated thereunder, in the following respects:

(1) Required information was set forth in abbreviated form in violation of Rule 4 of the aforesaid rules and regulations;

(2) Respondents failed to set forth an item number or mark assigned to fur products in violation of Rule 40 (a) of the aforesaid rules and regulations.

8. Advertisements, typical examples of which are heretofore quoted, which show discount sales and comparative and fictitious prices, must be considered in connection with respondents' method of determining the prices at which their fur products shall be sold, and of setting forth such prices on the price tags attached to each fur product. The evidence shows that when a shipment of fur products is received by respondents, price tags are prepared bearing three prices, the largest of which is set forth in plain figures and may be read by anyone. The other two prices are written in code, and may only be read by the respondents or members of their sales staff who know the code. The plainly shown maximum price is referred to by the respondents as the "regular price," and represents respondents' maximum asking price. When a sale is advertised, the plainly marked price is shown as the regular price or value of the item featured, and the higher of the two coded prices is shown as the sale price. The lower of the two coded prices represents the price below which respondents cannot sell the product and still make a profit. These price tags are not altered or removed from the garments when they are placed on sale, and the only price that can be read by the customers is the first or maximum price. These maximum prices are realized by respondents during the off-season in only 10% of their sales, and in the fur-selling season in less than 50% of their sales.

Respondent Jacques De Gorter testified that he never identified a particular garment in advertisements, and that therefore he sold any of his fur garments at any of the three prices marked on the tag, preferably the maximum if he could get it. He further testified that if a customer offered him one of the coded prices and he concluded that he could not sell the garment at the higher price, then he would sell it for the price offered.

The conclusion is warranted, and it is therefore found that:

(a) When respondents advertise a sale and list the plainly ticketed price as the regular price of the item on sale, they are using a fictitious price in the sense that it is not the price at which the garment has been customarily and usually sold by the respondents in the recent course of their business in violation of Rule 44 (a) of the aforesaid rules and regulations.

(b) The respondents, by the use of comparative prices as shown in the above-quoted advertisements, misrepresented the savings to be effected by purchasers of respondents' fur products in violation of Rule 44 (b) and (c) of the aforesaid rules and regulations.

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It is established by stipulation and other evidence of record that:

(a) Respondents have misrepresented the grade, quality or value of certain of their fur products by advertising such fur products by the use of illustrations which showed such fur or fur products to be higher priced products than the ones so advertised in violation of Rule 44 (f) of the aforesaid rules and regulations.

(b) Respondents, in violation of Rule 44 (g) of the aforesaid rules and regulations, have misrepresented certain of their fur products as being:

- (1) from the stock of a business in the state of liquidation; and
- (2) from the stock of a business consolidated with that of a famous mink manufacturer.

(c) Respondents, by doing the acts and engaging in the practices above found, have failed to maintain full and adequate records disclosing the facts upon which the claims and representations were based, in violation of Rule 44 (e) of the aforesaid rules and regulations.

FIRST CONCLUSION

It is concluded that this proceeding is in the public interest for the protection of consumers and others within the purpose and intent of the Fur Products Labeling Act; that respondents through misbranding, false, misleading and deceptive statements, representations and advertising, and false invoicing of fur products as covered, in Paragraphs 1-8, inclusive, intended to, and did, aid, promote and assist, directly or indirectly in the sale of said fur products; and that the use of the aforesaid practices by respondents has been and is unlawful within the meaning of the Fur Products Labeling Act and of the rules and regulations promulgated thereunder and constitute unfair methods of competition, and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

9. By means of the statements contained in advertisements, typical examples of which are set forth above, respondents represented that the firm of Pelta Furs, and the owners thereof, were going out of the fur business; were discontinuing operations, and disposing of or liquidating their entire stock of fur products at "distress" prices, and that members of the public could purchase such products at, or for less than, the amount respondents had paid for them. The record shows, however, that respondents did not go and are not now out of the fur business; did not discontinue operations and did not dispose of or liquidate their entire stock at "distress" prices or otherwise. Accordingly, the aforesaid representations as to reduced prices and as to savings to be effectuated thereby, and respondents' acts, prac-

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tices, statements and representations relating thereto, are false, misleading and deceptive.

10. By means of statements contained in advertisements, typical examples of which are set forth above, and by oral representations made by respondents or their sales people, respondents represented directly or by implication that price tags affixed to fur products offered for sale by them were the usual prices charged by respondents for their fur products in the recent regular course of business. The evidence substantiates and it is found that said quoted prices were primarily for bargaining purposes; the actual price at which respondents generally expected to and did sell such fur products during the recent regular course of their business was a lower price, as set forth in a series of coded prices on the price tags. The final coded price represented the lowest price at which the fur product can be sold and still permit respondents to make a profit. The selling prices so represented in code were not understandable as a price marked on said price tags to a substantial portion of the purchasing public, but could be easily understood by respondents and their sales people.

Respondent Jacques De Gorter testified that he sold fur products, or authorized their sale, at any of the three prices marked on the price tag, preferably the maximum. He further testified that if a customer would not purchase at the higher price but offered a price within the maximum and minimum code prices, then he would on occasion sell, or authorize the sale, at the price offered.

Accordingly, it is found that when respondents advertise a sale and list the plainly ticketed price as one at which a fur product has been customarily and usually sold in the recent course of business they are using fictitious prices. And, by use of the comparative prices as shown in the above-quoted advertisements, respondents have misrepresented the savings to be effected by prospective purchasers of their fur products. In summary, by affixing to fur products price tags showing plainly marked price values containing fictitious prices and by the aforesaid advertised reductions in price, such as one-half off and by comparative pricing, coupled with oral representations made by respondents and their sales people, respondents are found to have engaged in false, misleading and deceptive practices.

It is further established by stipulation and other probative evidence that respondents by means of illustrations or depictions of higher priced or more valuable fur products than those actually available for sale at the advertised selling price have represented that such fur products are of a higher grade, quality, or value than is the fact.

11. The complaint herein alleges and the record shows that the principal acts and practices complained of occurred in 1953, prior to

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the dissolution of the partnership between the two respondents, which occurred on January 31, 1954. The withdrawal of Suze C. De Gorter from the business of Pelta Furs, after participation in the commission of unlawful acts and practices, does not absolve her from responsibility therefor under the Federal Trade Commission Act and the Fur Products Labeling Act. Furthermore, the record contains no evidence which would give adequate assurance to the Federal Trade Commission that she would not again participate in such acts in the future. Accordingly, respondent Suze C. De Gorter must be held equally responsible with respondent Jacques De Gorter for the acts and practices herein found to be in violation of the Fur Products Labeling Act and the Federal Trade Commission Act. Therefore, the dismissal of the complaint as to her is not warranted.

FINAL CONCLUSIONS

It is concluded, as previously indicated, that this proceeding is in the public interest, and that the use by respondents of the false and misleading statements and representations covered in Paragraphs 9 and 10 above has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are in fact true, and to induce the purchase of substantial quantities of respondents' fur products by reason of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors, and substantial injury has been and is being done to competition in commerce.

It is further concluded that the aforesaid acts and practices of respondents, covered in Paragraphs 9 and 10 above, are all to the prejudice and injury of the public and of the respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents, Jacques De Gorter and Suze C. De Gorter, individually and as copartners trading as Pelta Furs or under any other trade name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or the sale, advertising or offering for sale, or the transportation or distribution of any fur product in commerce, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been

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made in whole or in part of fur which had been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured;

2. Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of used fur when such is a fact;

(c) That the fur product contains or is composed of bleached, dyed, or artificially colored fur when such is a fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies or waste fur when such is a fact;

(e) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(f) The name of the country of origin of any imported furs used in the fur product.

3. Setting forth, on labels attached to fur products, the name or names of any animal or animals other than the name or names provided for in Paragraph A (2) (a) above.

4. Setting forth on labels attached to fur products:

(a) Non-required information mingled with required information;

(b) Required information in handwriting;

(c) Required information in a sequence different from that required by Rule 30 (a) of the rules and regulations.

5. Failing to show, on labels attached to fur products, all of the required information on one side of such labels.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of used fur when such is a fact;

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(c) That the fur product contains or is composed of bleached, dyed, or artificially colored fur when such is a fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur when such is a fact;

(e) The name and address of the person issuing such invoices;

(f) The name of the country of origin of any imported furs contained in the fur product.

2. Using on invoices the name or names of any animal or animals other than the name or names provided for in Paragraph B (1) (a) above, or setting forth thereon any form or misrepresentation or deception, directly or by implication, with respect to such fur products.

3. Setting forth required information in abbreviated form.

4. Failing to show the item number or mark of fur products on the invoices pertaining to such products, as required by Rule 40 of the rules and regulations.

C. Falsely or deceptively advertising fur products, through the use of any advertisement, public announcement, or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products, and which:

1. Fails to disclose:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur products contain or are composed of bleached, dyed, or otherwise artificially colored fur when such is a fact;

(c) The name of the country of origin of imported furs contained in fur products.

2. Represents directly or by implication:

(a) That the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of their business;

(b) That a sale price enables purchasers of fur products to effectuate any savings in excess of the difference between the said price and the price at which comparable products were sold during the time specified or, if no time is specified, in excess of the difference between said price and the current price at which comparable products are sold;

(c) That an amount set forth on price tags, or otherwise relating or referring to fur products, represents the value or the usual price at which said fur products had been customarily sold by respondents in the recent regular course of their business, contrary to fact;

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(d) That any such product is of a higher grade, quality, or value than is the fact, by means of illustrations or depictions of higher priced or more valuable products than those actually available for sale at the advertised selling price, or by any other means.

(e) That any of such products are:

1. from the stock of a business in a state of liquidation, contrary to fact;

2. from the stock of a business recently consolidated with another, contrary to fact.

3. Makes pricing claims or representations of the type referred to in Paragraph C (2) (a), (b), and (c) above, unless there is maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based.

It is further ordered, That respondents, Jacques De Gorter and Suze C. De Gorter, individually and as copartners trading as Pelta Furs or under any other trade name, and respondents' representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of fur products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do further cease and desist from making, directly or by implication, any of the representations prohibited by Paragraph C (2) 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.

Commissioners Gwynne and Mason dissenting in part.

ON APPEAL FROM INITIAL DECISION

By KERN, Commissioner:

Respondents, retailers of furs, were charged in a complaint, issued February 25, 1955, with false advertising, misbranding and false invoicing of fur products in violation of the Fur Products Labeling Act and rules and regulations promulgated thereunder, and, further, the acts complained of also were alleged to constitute unfair methods of competition and unfair and deceptive practices under the Federal Trade Commission Act.

In due course, the hearing examiner filed his initial decision in which he found that respondents had engaged in all of the questioned acts and practices. On the basis of these findings he concluded that such acts constituted 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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Both sides have appealed from the initial decision. Respondents contend on appeal that the complaint against them should be dismissed. Counsel in support of the complaint appeals from the failure of the hearing examiner to prohibit as violative of the Fur Products Labeling Act, as well as the Federal Trade Commission Act, respondents' use, in their advertising, of fictitious or false comparative price and value representations as to fur products.

The facts in this proceeding are not seriously in dispute. Most of the factual issues have been resolved by stipulations between counsel and the only issues remaining for consideration arise out of disputed interpretations and conclusions to be drawn from facts on the record, stipulated and otherwise.

Respondents' contention that no cease-and-desist order should be entered against them essentially is based upon a two-pronged plea:

(1) That respondents were not, and are not now, engaged in interstate commerce.

(2) That Rule 44 (a) to (g), inclusive, of the rules and regulations promulgated by the Commission under the Fur Products Labeling Act, is not binding upon respondents since it, Rule 44, is beyond the Commission's authority under that Act.

On the question of whether respondents are engaged in commerce, it was stipulated on the record by agreement of counsel, and the hearing examiner found, that respondents are in substantial competition in commerce with other firms, corporations, copartnerships and individuals also engaged in the sale of fur products to members of the purchasing public. And, the hearing examiner found uncontroverted evidence showing that 25% of the fur products dealt in by respondents consisted of purchases outside of California which are shipped to them at their place of business in that State, and that these products were advertised in newspapers having interstate circulation. The hearing examiner also found that respondents sold and shipped fur products to purchasers outside of California, thus engaging in a course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act. Since the record clearly discloses that respondents procured fur products outside of California and thereafter advertised them in newspapers with interstate circulation, their business activities clearly come "within the concept of commerce under the Fur Products Labeling Act." We are of the opinion that the hearing examiners' conclusion that respondents' business activities come within the ambit of both Acts is correct and is substantiated on the record.

Our conclusion that respondents are engaged in interstate commerce, both as defined by the Fur Products Labeling Act and by the

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Federal Trade Commission Act, as indicated above, and our rulings hereinafter on respondents' second plea on appeal and on the appeal of counsel in support of the complaint render it unnecessary specifically to discuss in this opinion respondents' exceptions on appeal as such.

Respondents' second plea on appeal and the cross-appeal of counsel in support of the complaint raise the remaining issue, which we state as follows:

1. Is Rule 44 of the Rules and Regulations under the Fur Products Labeling Act, relating to misrepresentation of prices and values with regard to fur products, within the rule making authority conferred upon the Commission by the Act?

Under Section 8 (b) of the Fur Products Labeling Act, the Commission is both empowered and directed to prescribe rules and regulations governing the manner of disclosing information required by the Act and those necessary and proper for purposes of its administration and enforcement. Agency rulemaking authority embraces statements of general applicability designed to implement or interpret existing law and policy. Hence, if the acts cataloged as price misrepresentations and the matters which persons are forbidden to "advertise" under the various paragraphs of Rule 44 are practices forbidden under the Act itself, then the rule must be regarded as a valid exercise of the Commission's authority to promulgate rules.

The validity of the rule's prohibitions against pricing misrepresentations turns primarily on the meaning of the following emphasized language in Section 5 (a) (5):

SEC. 5. (a) For the purposes of this Act, a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement, representation, public announcement, or notice which is intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of such fur product or fur—

* * * * *

(5) contains the name or names of any animal or animals other than the name or names specified in paragraph (1) of this subsection, *or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur*; * * * [Emphasis supplied.]

There can be no doubt but that the underscored language, when literally read, comprehends all forms of misrepresentation or deception in connection with the advertising of furs and fur products. That this phrase constitutes a separate and substantive rule of law rather than a mere amplification of other requirements of the Act also is clear. Attesting to this is the fact that a comparable provision in reference to false invoicing (Section 5 (b) (2)) is likewise prefaced by the disjunctive "or" and in the misbranding section (Section 4 (1)) a similar expression is entirely segregated from the requirements for

affirmative disclosure as to the presence of used fur, waste fur, and other matters and is an integral part of one of the various definitive provisions relating to misbranded fur products. Thus, under that subsection, a fur product is misbranded when falsely or deceptively labeled and also when the label contains any form of misrepresentation or deception with respect to it.

Relevant to this aspect and another circumstance indicating that the phrase under consideration was to stand alone is the fact that similar but not identical language appeared in the first two bills considered by the Congress on the subjects of fur labeling, advertising and invoicing. Prior to the statute's final enactment by the 82d Congress, legislation had been considered in the 80th and 81st Congresses. The definitions of deceptive advertising and invoicing provided under each of the two original bills introduced in the 80th Congress appeared in one section comprising one paragraph and containing two numbered provisions. Under each bill, one numbered provision forbade use of animal names other than those elsewhere specified in the Act, and the other rendered advertising and invoicing false when "any other form of misrepresentation or deception other than misbranding is practiced directly or by implication in connection with the sale of such article or fur."

The House committee considered the particular bill pending before that body and reported out a substitute bill which treated the subjects of false advertising and invoicing separately and imposed certain affirmative disclosure requirements. The revisions necessitated for the disclosure requirements and in another respect for defining false and deceptive advertising comprised four new, separately numbered subsections, and the original two provisions were retained to constitute a fifth subsection, but without numerical differentiation between them as formerly. The language of the committee's substitute in reference to general deception was identical to that of Section 5 (a) (5), as today effective.

We note, too, that Section 5 (a) (5) of the Fur Act is somewhat analogous to Section 15 (a) (2) of the Federal Trade Commission Act. The former is in the disjunctive and consists of a specific provision that is followed by a more general provision. The specific expression condemns the use of any animal names for fur products other than those listed in the Fur Products Name Guide without regard to whether such use would be, or tends to be, deceptive. This resembles the flat prohibition of Section 15 (a) (2) of the Federal Trade Commission Act against the use of dairy terms in oleomargarine advertising suggesting that such margarine is a dairy product and irrespective of whether deception has been engendered. As

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recently held in *Reddi-Spread Corp. v. Federal Trade Commission*, No. 11673, 3d Cir., Jan. 18, 1956, it is not necessary for the Commission to prove deception in proceedings instituted under the section relating to the advertising of margarine. It is apparent that the obvious intent and effect of the first provision of Section 5 (a) (5) of the Fur Act was to make unlawful *per se* the use of animal names not listed in the Fur Guide with the second element of the disjunction then providing that all forms of provable deception should also be unlawful. Reading the statute in this fashion, there is no tenable basis for conclusions that the broad provision is limited by the specific provision that precedes it.

Having concluded that the provision against misrepresentation and deception was not to be a mere adjunct to other language in Section 5 (a) (5) and that it constituted instead a separate and substantive rule of law, we turn to the question of whether Congress may have intended to exclude misrepresentation of prices from its application. While the legislative reports do not specifically or expressly indicate that Congress intended to proscribe pricing misrepresentations, neither do they show that this form of misrepresentation was to be excluded. The report submitted in the House which antedated the brief conference report on the final draft of bill emphasized the requirements for affirmative disclosure set out in Sections 4 and 5. However, the report submitted by the Senate Committee which antedated the conference report referred to Section 4 relating to misbranding and stated that a product would be considered to be misbranded if falsely or deceptively labeled or identified or "if the label contains any form of misrepresentation or deception"; and it added, among other things, that Section 5, the false advertising section, closely followed the language of Section 4.

Nor does the testimony received during the legislative hearings contain any conclusive indication that instead of a literal interpretation the phrase under consideration should be given some secondary meaning, perhaps, restricting it to advertising misrepresentations solely related to physical or zoological characteristics and attributes of fur articles. On the contrary, there was recognition in certain of the testimony as to enforcement problems then being encountered by the Commission in the administration of its Trade Practice Rules for the Fur Industry, particularly those directed against price misrepresentations. Two of those rules (Rules 25 and 29) had provisions similar to those in Rule 44.

The absence of references in the Act to pricing misrepresentations is nowise controlling. "[I]f Congress has made a choice of language which fairly brings a given situation within a statute, it is unimpor-

tant that the particular application may not have been contemplated by the legislators." *Barr v. United States*, 324 U. S. 83, 90 (1945). Furthermore, statutory expressions are to be broadly construed within the limitations of their literal meaning and the ascertainable legislative intent. The plain meaning of the statute will prevail as long as it does not lead to absurd results or clash with policy behind the legislation. *U. S. v. American Trucking Associations, Inc.*, 310 U. S. 534, 543 (1940).

In the circumstances here, moreover, we are convinced that the Congress' goal was a legislative solution of the fur industry's major problems including that of deceptive pricing representations and that, when enacting this legislation, its intention was to proscribe all deceptive advertising practices in connection with the sale of fur articles.

The respondents' appeal is without merit and denied accordingly. The appeal of counsel supporting the complaint challenges, among other matters, the initial decision's failure to prohibit all of the practices covered therein, including particularly respondents' pricing practices, as violative of the Fur Products Labeling Act and the rules and regulations promulgated thereunder. His appeal is granted. Having determined that the initial decision was deficient in that and related respects, we, in the discharge of the ultimate responsibility for determining the merits of this proceeding and in the interests of conforming its disposition with the views expressed in this opinion, have appended hereto the Commission's findings as to the facts, conclusions and order to cease and desist. These are adopted in lieu of the initial decision of the hearing examiner which is hereby vacated and set aside.

Commissioners Gwynne and Mason dissented in part in the decision herein.

OPINION OF CHAIRMAN GWYNNE, DISSENTING IN PART

By GWYNNE, Chairman:

I dissent from that part of the majority opinion which grants the appeal of counsel supporting the complaint. It is my view that Rule 44 of the Rules and Regulations under the Fur Products Labeling Act is not warranted by anything in that law.

The hearing examiner found that certain practices of respondents violated the Fur Products Labeling Act and issued an order accordingly. He also found that respondents had made certain other representations which were contrary to the Federal Trade Commission Act and issued an order in accordance with such findings.

I agree with his findings and order.

Authority for Rule 44 and for the conclusion of the majority is claimed to be found in the underlined portion of Section 5 (a) (5) of the Fur Products Labeling Act. Section 5 (a) (5) is as follows:

“(5) contains the name or names of any animal or animals other than the name or names specified in paragraph (1) of this subsection, *or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur;*”

The majority opinion contains the following:

“There can be no doubt but that the underscored language, when literally read, comprehends all forms of misrepresentation or deception in connection with the advertising of furs and fur products. That this phrase constitutes a separate and substantive rule of law rather than a mere amplification of other requirements of the Act also is clear.”

On the basis of this interpretation, the majority opinion “vacated and set aside” the initial decision and adopted new findings in lieu thereof and issued a new order. Among other things, the order prohibits advertising which represents directly or by implication:

(a) That the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of their business;

(b) That a sale price enables purchasers of fur products to effectuate any savings in excess of the difference between the said price and the price at which comparable products were sold during the time specified or, if no time is specified, in excess of the difference between said price and the current price at which comparable products are sold;

(c) That an amount set forth on price tags, or otherwise relating or referring to fur products, represents the value or the usual price at which said fur products had been customarily sold by respondents in the recent regular course of their business, contrary to fact;

(d) That any such product is of a higher grade, quality, or value than is the fact, by means of illustrations or depictions of higher priced or more valuable products than those actually available for sale at the advertised selling price, or by any other means;

(e) That any of such products are:

1. from the stock of a business in a state of liquidation, contrary to fact;

2. from the stock of a business recently consolidated with another, contrary to fact.

Such an order is justified under the Federal Trade Commission Act but not under the Fur Products Labeling Act.

The interpretation placed by the majority on the Fur Products Labeling Act violates well-established principles of statutory construction and is contrary to the intent of Congress in passing the Act. The clause in question, instead of being a separate and substantive rule of law is limited by the specific provision which precedes it. This is in accordance with the principle of *ejusdem generis*. "*Ejusdem generis* means literally of the same kind or species." *People v. Machalski*, 115 N.Y.S. 2d 28.

"The principle (*ejusdem generis*) requires that general terms appearing in a statute in connection with precise, specific terms shall be accorded meaning and effect only to the extent that the general terms suggest items or things similar to those designated by the precise or specific terms. In other words, the precise terms modify, influence or restrict the interpretation or application of the general terms where both are used in sequence or collocation in legislative enactments." *State v. Thompson* (Washington 1951), 232 P. 2d 87.

"The rule is based on the supposition that if the legislature had intended the general words to be considered in an unrestricted sense, it would not have enumerated the particular things." *Smith v. Higginbotham* (Maryland 1946), 28 A. 2d 754.

The law itself and the Congressional history also throw light on the proper interpretation of the section in question. Paragraphs (1), (2), (3), and (4) of Section 5 (a) contain specific provisions prohibiting false advertising relating to the character or quality of the fur itself. Paragraph (5) contains another specific provision, to wit, that the advertisement shall not contain "the name or names of any animal or animals other than the name or names specified in Paragraph (1) of this subsection." Congress evidently concluded that some amplification of that provision was necessary. For example, deception might be caused as to the character or quality of furs by means other than the use of names; pictures or slogans or other means could be employed which might not come within the strict category of "names".

Paragraph (6) prohibits an advertisement which "does not show the name of the country of origin of any imported furs or those contained in a fur product." If the majority view is correct, Paragraph (6) is not necessary and adds nothing to Section 5. In fact, that is true of the other paragraphs in the section.

I fail to see how the use of the disjunctive "or" supports the majority view. The word "or" is common in many statutes where the principle of *ejusdem generis* was held applicable. Nor can I see any analogy between the section here considered and Section 15 (a) (2) of the Federal Trade Commission Act. There is nothing in the Act

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or in the legislative history to indicate that Congress intended the Fur Products Labeling Act to cover the types of deceptive advertising heretofore set out.

I would adopt the findings and order of the hearing examiner and deny both appeals.

Commissioner Mason joins in this dissent.

IN THE MATTER OF

FEDERAL LIFE AND CASUALTY COMPANY

Docket 6312. Order and opinion, May 11, 1956

Interlocutory order reversing ruling of hearing examiner who limited scope of proceeding to states without regulating statutes, and returning the matter to him to determine whether insurance advertising activity beyond the reach of state regulation may be involved.

Before *Mr. Frank Hier*, hearing examiner.

Mr. J. W. Brookfield, Jr. and *Mr. Donald K. King* for the Commission.

Beaumont, Smith & Harris, of Detroit, Mich., for the respondent.

ORDER GRANTING APPEAL FROM HEARING EXAMINER'S ORDER LIMITING
SCOPE OF PROCEEDING

Counsel in support of the complaint having filed an interlocutory appeal from a ruling of the hearing examiner limiting the scope of this proceeding to the respondent's advertising representations disseminated in the States of Rhode Island and Mississippi and in the District of Columbia; and

The Commission having concluded, for the reasons set forth in its opinion in the matter of *The American Hospital and Life Insurance Company*, Docket No. 6237, issued April 24, 1956, that the examiner was in error in so ruling:

It is ordered, That the appeal of counsel in support of the complaint be, and it hereby is, granted.

It is further ordered, That insofar as the hearing examiner's order of November 16, 1955, purports to limit the scope of this proceeding to advertising representations disseminated in Rhode Island, Mississippi and the District of Columbia, said order is hereby reversed.

It is further ordered, That the respondent's request for consideration of other alleged errors in the examiner's order, raised for the first time in the answering brief, be, and it hereby is, denied.

Commissioners Gwynne and Mason dissenting in part and concurring in part.

JOINT OPINION OF CHAIRMAN GWYNNE AND COMMISSIONER MASON,
DISSENTING IN PART AND CONCURRING IN PART

In *American Hospital and Life Insurance Company* (Docket 6237) we stated our views as to the proper accommodation of federal-state authority over the insurance industry under the unique conditions of

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the McCarran Insurance Act. We did not, however, on the record there presented, attempt to define the precise scope of federal power, nor do we believe that such definition could be accomplished in any single proceeding.

The hearing examiner found here that the respondent was licensed to sell insurance and did sell in all the states of the Union, except Montana and Utah; that the business is handled through general agents in the states and respondent does not sell by mail; that in all but three jurisdictions, state regulating statutes did exist; that some of respondent's agents have used radio and television advertising in interstate commerce, sometimes with and sometimes without respondent's permission.

We believe that there *may* be an area of insurance advertising activity in commerce—for example, radio or TV—within the peculiar aegis of the federal government and effectively beyond the reach of state regulation.

We would, therefore, return this proceeding to the hearing examiner for the limited purpose of identifying such commercial activity and determining the extent to which those practices may be condemned under Section 5 of the Federal Trade Commission Act. Before passing upon such a novel question, we believe that due administrative process requires full opportunity for counsel on both sides to brief the issue.

To this limited degree we concur in the order herein.

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IN THE MATTER OF
LUXURIOUS WOOLLENS, LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket 6518. Complaint, Feb. 20, 1956—Decision, May 11, 1956

Consent order requiring manufacturers in New York City to cease violating the Wool Products Labeling Act through misrepresenting the percentage of beaver fur in certain wool fabrics on sales invoices and shipping memoranda and on attached labels, and through furnishing similar labels to customers for attachment to garments manufactured from the fabrics; through furnishing false guaranties that certain of their wool products were not misbranded; and through failing to label certain wool products as required.

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

Mr. Donald R. Moore for the Commission.

Mr. Frederick E. M. Ballon, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Luxurious Woollens, Ltd., a corporation, Max Wasserman, individually and as an officer of said corporation, and Paul A. Raich, individually and as General Manager of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Luxurious Woollens, Ltd., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Max Wasserman is president and secretary, and respondent Paul A. Raich is general manager of the corporate respondent and they formulate, direct and control the acts, policies and practices of the corporate respondent. Respondents have their principal place of business at 234 West 37th Street, New York, New York.

PAR. 2. Respondents, in the course and conduct of their business, are and were in competition with other corporations and with firms and individuals likewise engaged in the sale of wool products in commerce.

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PAR. 3. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more specifically since January 1, 1954, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in that Act, wool products, as "wool products" are defined therein.

PAR. 4. Certain of those wool products were misbranded by respondents, within the intent and meaning of Section 4 (a) (1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such wool products were fabrics labeled or tagged by respondents as consisting of 65% Beaver Fur and 35% Wool; 60% Beaver Fur and 40% Wool; and 50% Beaver Fur and 50% Wool; whereas, in truth and in fact, the products were not composed of 65% Beaver Fur and 35% Wool; 60% Beaver Fur and 40% Wool; or 50% Beaver Fur and 50% Wool, as represented by the respondents.

PAR. 5. Certain of these wool products were further misbranded by respondents 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 and the Rules and Regulations promulgated thereunder.

PAR. 6. Respondents have also furnished false guaranties that certain of their wool products were not misbranded, in violation of Section 9 of the Wool Products Labeling Act. Respondents furnished such guaranties, having reason to believe that the wool products falsely guaranteed may be introduced, sold, transported or distributed in commerce.

PAR. 7. The acts and practices of the respondents, as set forth above, are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, 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.

PAR. 8. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of wool products by manufacturers of garments and other wool products for resale to retailers and distributors in commerce, respondents have:

(a) Made various representations as to the fiber content of their wool products in sales invoices and shipping memoranda applicable thereto. Among and typical, but not all inclusive of such representa-

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tions, are the following: 65% Beaver Fur and 35% Wool; 60% Beaver Fur and 40% Wool; 50% Beaver Fur and 50% Wool.

(b) Furnished to customers labels to be attached to garments manufactured from certain of respondents' wool products, which labels represented the fiber content as follows: 60% Beaver Fur—40% Imported Lamb's Wool; 65% Beaver Fur—35% Imported Lamb's Wool.

PAR. 9. The aforesaid statements and representations on invoices, shipping memoranda and labels for use on garments manufactured from respondents' wool products, are false, misleading and deceptive. In truth and in fact, respondents' products do not contain beaver fur fibers and wool in the proportions represented; the products contain substantially smaller amounts of beaver fur fibers than represented and in addition appreciable quantities of undisclosed fur fibers; the products do not contain lamb's wool as represented.

PAR. 10. The false, misleading and deceptive representations on invoices, shipping memoranda and on labels furnished to customers 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 were and are true, and to induce the purchase of such products on account of such belief induced as aforesaid. As a result thereof, substantial trade in commerce has been diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

PAR. 11. By means of invoices, shipping memoranda and labels furnished to customers, as described in Paragraph Eight herein, respondents place in the hands of others the means and instrumentalities whereby such others may mislead and deceive members of the purchasing public as to the character and amount of the constituent fibers in their wool products.

PAR. 12. The acts and practices of the respondents, as set forth in Paragraphs Eight through Eleven herein, were all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on February 20, 1956, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and the Federal Trade Commission Act through the misbranding of certain wool products, the furnishing of false guaranties that wool products are

not misbranded, and the making of false, misleading and deceptive representations on invoices, shipping memoranda and labels for use on garments manufactured from respondents' wool products. After being duly served with said complaint, the respondents, in lieu of submitting answer to said complaint, entered into an agreement on March 19, 1956, for a consent order with counsel supporting the complaint, disposing of all the issues in this proceeding in accordance with Section 3.25 of the Rules of Practice and Procedure of the Commission, which agreement has been approved by the Director and the Assistant Director of the Bureau of Litigation.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement also provides that the agreement disposes of all of the proceeding as to all parties. Respondents in the agreement waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that said agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The agreement also provided that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Luxurious Woollens, Ltd., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Max Wasserman is president

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and secretary, and respondent Paul A. Raich is general manager of the corporate respondent and they formulate, direct and control the acts, policies and practices of the corporate respondent. Respondents have their principal place of business at 234 West 37th Street, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, which is in the public interest, and of the respondents hereinabove named; the complaint herein states a cause of action against said respondents under the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

ORDER

It is ordered, That the respondent, Luxurious Woollens, Ltd., a corporation; its officers; the respondent, Max Wasserman, individually and as an officer of the corporation; the respondent, Paul A. Raich, individually and as General Manager of the corporation; and respondents' representatives, agents and employees, directly or through any corporate device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce (as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act) of piece goods or other "wool products" (as "wool products" are defined in the Wool Products Labeling Act), do forthwith cease and desist from:

A. Misbranding such products by:

1. Attaching or using stamps, tags, labels or other means of identification which represent that such products contain a certain percentage of beaver hair or fiber which is contrary to fact;

2. Otherwise falsely or deceptively stamping, tagging, labeling or identifying such products as to the character or amount of their constituent fibers;

3. Failing to affix securely 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 the total fiber weight) of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where the percentage of 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 manu-

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facturer 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 of such wool product in commerce (as "commerce" is defined in the Wool Products Labeling Act of 1939).

B. Furnishing false guaranties that piece goods, or other wool products (as "wool products" are defined in the Wool Products Labeling Act) are not misbranded under the provisions of the Wool Products Labeling Act, when there is reason to believe that the wool products so guaranteed may be introduced, sold, transported, or distributed in commerce.

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 respondent, Luxurious Woollens, Ltd., a corporation; its officers; the respondent, Max Wasserman, individually and as an officer of the corporation; the respondent, Paul A. Raich, individually and as general manager of the corporation; and 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 piece goods, or other wool products, do forthwith cease and desist from:

A. Misrepresenting in invoices, by labels separately furnished or in any other manner the character or amount of the constituent fibers contained in such products.

B. Furnishing to or placing in the hands of others stamps, tags, or labels by means of which the respondents' products, or garments made from them, may be falsely or deceptively stamped, tagged, labeled or otherwise identified, either as to the character or amount of their constituent fibers or in any other respect.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner, as corrected by his order filed April 13, 1956, shall on the 11th day of May 1956, become the decision of the Commission; and, accordingly:

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.

IN THE MATTER OF
CORDAGE INSTITUTE ET AL.

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

Docket 5848. Complaint, Feb. 15, 1951—Decision, May 12, 1956

Consent order requiring 18 corporate manufacturers of hard fiber rope, cordage, and wrapping twine and their trade association, to cease concertedly maintaining geographical price zones or zone price differentials in the sale of their products; and

Dismissing for failure of proof charges of fixing uniform delivered prices and terms and conditions of sale; of concertedly classifying customers for pricing purposes and fixing discounts and terms and conditions of sales for each class; of disseminating among themselves through respondent Institute their current and future quotations of prices, terms and conditions of sales; and holding meetings at which prices and trade practices and policies designed to eliminate competition among themselves were discussed and acted upon.

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

Mr. Floyd O. Collins and *Mr. J. Wallace Adair* for the Commission.
Jackson, Nash, Brophy, Barringer & Brooks, of New York City,
for Cordage Institute, *R. C. Utess* and *H. M. Wall*.

Mr. Karl F. Steinmann, of Baltimore, Md., for *J. S. McDaniel*.
Gaston, Snow, Rice & Boyd, of Boston, Mass., for *Plymouth
Cordage Co.*

Mr. Daniel G. Connolly, of Brooklyn, N. Y., for *American Manu-
facturing Co. and Cupples Co., Inc.*

Hiscock, Cowie, Bruce, Lee and Mawhinney, of Syracuse, N. Y.,
for *Columbian Rope Co., The Edwin H. Fidler Co. and R. A.
Kelly Co.*

Kibler, Hervey & Kibler, of Newark, Ohio, for *The E. T. Rugg Co.*
Younge, Frederick & Rutherford, of Peoria, Ill., for *Peoria
Cordage Co.*

Prescott, Bullard & McLeod, of New Bedford, Mass., for *New
Bedford Cordage Co.*

Pillsbury, Madison & Sutro, of San Francisco, Calif., and *Mr. Hugh
Fullerton*, of Washington, D. C., for *Tubbs Cordage Co. (Calif.) and
Tubbs Cordage Co. (Wash.)*

Clark, Brown, McCown, Fortenbaugh & Young, of Philadelphia,
Pa., for *Wall Rope Works, Inc.*

Parsons, Closson & McIlwaine, of New York City, for *Whitlock
Cordage Co.*

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Mr. Bernard J. Ferguson, of Woodside, N. Y., for Cating Rope Works, Inc.

Stevens, DeLong & Dry, of Reading, Pa., for The Thomas Jackson & Son Co.

Shook, Law & Olson, of Washington, D. C., for Waterbury Rope Sales Corp.

Smith, McCallister & Gibney, of Xenia, Ohio, for The Hooven & Allison Co.

Mr. Gladstone P. Lillicrapp, of Easton, Pa., for Rinek Cordage Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Cordage Institute, a non-profit membership association, its officers and members and employees, J. S. McDaniel, R. C. Utess, S. W. Metcalf, W. S. Miles, Jr., E. G. Roos, H. M. Wall, Plymouth Cordage Co., a corporation, American Manufacturing Company, a corporation, Columbian Rope Company, a corporation. The Edwin H. Fitler Company, a corporation, R. A. Kelly Company, a corporation, The E. T. Rugg Company, a corporation, Peoria Cordage Company, a corporation, New Bedford Cordage Company, a corporation, Tubbs Cordage Company, a corporation (Calif.), Tubbs Cordage Company, a corporation (Wash.), Wall Rope Works, Inc., a corporation, Whitlock Cordage Company, a corporation, Cating Rope Works, Inc., a corporation, Cupples Company, Inc., a corporation, The Thomas Jackson & Son Company, a corporation, Waterbury Rope Sales Corporation, a corporation, The Hooven & Allison Company, a corporation, and Rinek Cordage Company, a corporation, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The products involved in this proceeding are rope, cordage and twine made of fiber from abaca, agave and other plants from which hard fiber is obtained. Such products are commonly known and referred to as hard fiber rope, cordage and twine. Said products are used extensively by the Navy and all branches of the Armed Services; by steamship companies and those in the fishing industry; by railroads and other common carriers; by steel companies, coal companies, oil companies, farmers and ranchers. It is used by substantially everyone engaged in a productive enterprise or economic activity.

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PAR. 2. Respondent, Cordage Institute, hereinafter referred to as Respondent Institute, is an unincorporated non-profit membership association, whose membership is composed of corporations, partnership firms and individuals who are engaged in the Continental United States in the manufacture, sale and distribution of rope, cordage and twine wholly or in chief value of abaca, agave, or other hard fiber, and commodities commonly known as tarred hemp. The home office and principal place of business of said respondent is located at 350 Madison Avenue, New York, New York. Its Articles of Association state its purposes and objects to be:

- (a) To promote the interest of the industry and improve its services to the public.
- (b) To compile, distribute and exchange information;
- (c) To establish trade standards; and
- (d) To cooperate in handling all problems of common interest to the industry.

The officers of Respondent Institute are President, Secretary, Treasurer, Executive Committeemen and members of such other committees as are designated from time to time.

The President of Respondent Institute is also Chairman of the Executive Committee and its Articles of Association declare his authority and duties to be coextensive with and limited to those of Chairman of the Executive Committee.

It is the duty of the Executive Committee to determine the policies, supervise the carrying out of the purposes and objects, and direct the business and financial matters of Respondent Institute.

The duties of the Secretary are to keep the records of the Institute and of all the committees; keep informed as to conditions prevailing in the industry, the happenings of importance and of interest to the members, and to transmit to the members such information as is deemed helpful and instructive to them.

The Executive Committee and Respondent Institute have from time to time authorized and directed the Secretary to collect and disseminate among the members, at regular intervals, statistics and information such as:

- (1) Monthly sales statistics in cordage business by products.
- (2) Monthly charts indicating (a) trend of business for the industry, and (b) trend of percentage of total business by each company.
- (3) Monthly statistics of Manila fibers showing stocks on hand, consumption, etc.
- (4) Monthly reports of sales of distress or obsolete merchandise.
- (5) Copies of printed price lists of the respective members.
- (6) Surveys of wages, hours and labor conditions.

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- (7) Statistics on Manila fiber production.
- (8) List of brand names of various products.
- (9) Special studies and activities, such as cost accounting systems.

Respondent, J. S. McDaniel, whose address is 350 Madison Avenue, New York, New York, is now and has been since its organization the Secretary of Respondent Institute, and has performed and is now performing all the duties of said office.

Respondent, R. C. Utess, whose address is Noble and West Streets, Brooklyn 22, New York, is President of Respondent Institute and Chairman of its Executive Committee.

Respondent, S. W. Metcalf, whose address is 309 Genesee Street, Auburn, New York, is a member of the Executive Committee of Respondent Institute.

Respondent, W. S. Miles, Jr., whose address is 1502 South Washington Street, Peoria 2, Illinois, is a member of the Executive Committee of the Respondent Institute.

Respondent, E. G. Roos, whose address is North Plymouth, Massachusetts, is a member of the Executive Committee of Respondent Institute.

Respondent, H. M. Wall, whose address is 48 South Street, New York, New York, is a member of the Executive Committee of Respondent Institute.

PAR. 3. Respondent, Plymouth Cordage Co., hereinafter referred to as Respondent Plymouth, is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its home office and principal place of business located at Plymouth, Massachusetts. Respondent is engaged in manufacturing and selling hard fiber cordage, wrapping twine, baler twine and binder twine and is a member of Respondent Institute. In addition to two wholly owned subsidiary corporations in Canada, respondent owns and operates as a division of respondent, The Federal Fiber Mills, located at 1101 South Peters Street, New Orleans, Louisiana.

Respondent, American Manufacturing Company, hereinafter referred to as Respondent American, is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its home office and principal place of business located at Nobel and West Streets, Brooklyn 22, New York. Respondent is engaged in manufacturing and selling hard fiber cordage, wrapping twine, baler twine and binder twine. It is a member of Respondent Institute. It owns and operates a branch factory located at 11th and LaFayette Streets, St. Louis, Missouri. Said branch factory is operated under the name, St. Louis Cordage Mills, and is also a member of Respondent Institute.

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Respondent, Columbian Rope Company, hereinafter referred to as Respondent Columbian, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its home office and principal place of business located at 309 Genesee Street, Auburn, New York. Said respondent is now and has been engaged in manufacturing hard fiber cordage, wrapping twine, baler twine and binder twine and is a member of Respondent Institute.

Respondent, The Edwin H. Fidler Company, hereinafter referred to as Respondent Fidler, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business located at 5625 Tacony Street, Philadelphia 24, Pennsylvania. Respondent is now and has been engaged in manufacturing hard fiber cordage, wrapping twine and baler twine. Respondent is wholly owned by Respondent Columbian but functions as a separate corporation and is a member of Respondent Institute.

Respondent, R. A. Kelly Company, hereinafter referred to as Respondent Kelly, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its home office and principal place of business located at Xenia, Ohio. Respondent is wholly owned by Respondent Columbian and is operated as a branch of Columbian. It is a member of Respondent Institute.

Respondent, The E. T. Rugg Company, hereinafter referred to as Respondent Rugg, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its home office and principal place of business located at Newark, Ohio. Respondent is now and has been engaged in manufacturing hard fiber cordage, wrapping twine and baler twine. Respondent is a member of Respondent Institute.

Respondent, Peoria Cordage Company, hereinafter referred to as Respondent Peoria, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its home office and principal place of business located at 1502 South Washington Street, Peoria 2, Illinois. Respondent is now and has been engaged in manufacturing hard fiber, cordage, wrapping twine, baler twine and binder twine. Respondent is a member of Respondent Institute.

Respondent, New Bedford Cordage Company, hereinafter referred to as Respondent New Bedford, is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its home office and principal place of business located at Court and Ash Streets, New Bedford, Massachusetts. Respondent is now and has been engaged in manufacturing hard fiber cordage and wrapping twine. Respondent is a member of Respondent Institute.

Respondent, Tubbs Cordage Company, is a corporation organized and existing under and by virtue of the laws of the State of California, with its home office and principal place of business located at 225 Bush Street, San Francisco 4, California. Said Respondent owns and operates as a division of Respondent, a manufacturing plant located at Orange, California. Said division is operated under the trade name of Great Western Cordage. Respondent and its division, Great Western Cordage, are both members of Respondent Institute.

Respondent, Tubbs Cordage Company (of Washington) is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its home office and principal place of business located at 2021 15th Avenue, West, Seattle, Washington. Said Respondent is a subsidiary of the Respondent Tubbs Cordage Company of San Francisco, California, but is operated separate and apart from the parent corporation. Said Respondent is engaged in manufacturing, selling and distributing hard fiber cordage and twine and is a member of Respondent Institute.

Respondent, Wall Rope Works, Inc., hereinafter referred to as Respondent Wall, is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 48 South Street, New York 5, New York. Said Respondent is now and has been engaged in manufacturing hard fiber cordage and wrapping twine. Respondent is a member of Respondent Institute.

Respondent, Whitlock Cordage Company, hereinafter referred to as Respondent Whitlock, is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 46 South Street, New York 5, New York. Respondent is now and has been engaged in manufacturing hard fiber cordage and wrapping twine. Respondent is a member of Respondent Institute.

Respondent, Cating Rope Works, Inc., hereinafter referred to as Respondent Cating, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its home office and principal place of business located at 58-29 - 64th Street, Maspeth, New York. Respondent is now and has been engaged in manufacturing hard fiber cordage and wrapping twine. Respondent is a member of Respondent Institute.

Respondent, Cupples Company, Inc., hereinafter referred to as Respondent Cupples, is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its home office and principal place of business located at 386 - 3rd Avenue, Brooklyn, New York. Respondent is now and has been engaged in

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manufacturing hard fiber cordage and wrapping twine. Respondent is a member of Respondent Institute.

Respondent, The Thomas Jackson & Son Company, hereinafter referred to as Respondent Jackson, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business located at Reading, Pennsylvania. Respondent is now and has been engaged in manufacturing hard fiber wrapping twine. Respondent is a member of Respondent Institute.

Respondent, Waterbury Rope Sales Corporation, hereinafter referred to as Respondent Waterbury, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its home office and principal place of business located at 88 Wallabout Street, Brooklyn 11, New York. Respondent is now and has been engaged in manufacturing hard fiber cordage and wrapping twine. Respondent is a member of Respondent Institute.

PAR. 4. Respondent, The Hooven & Allison Company, hereinafter referred to as Respondent Hooven, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its home office and principal place of business located at Xenia, Ohio. Respondent is now and has been engaged in manufacturing hard fiber cordage, wrapping twine, baler twine and binder twine.

Respondent, Rinek Cordage Company, hereinafter referred to as Respondent Rinek, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business located at Easton, Pennsylvania. Respondent is now and has been engaged in the manufacture of hard fiber cordage.

Respondent Hooven and Respondent Rinek are not members of Respondent Institute, but they have aided and abetted and participated in the carrying out and maintaining the wrongful and unlawful acts and practices herein alleged.

PAR. 5. The Respondent Institute and Respondent McDaniel and the members of the Executive Committee of said Institute, are not engaged in the manufacture or sale and distribution of any commodity in commerce, but said respondents have aided, abetted, furthered and participated in some or all of the concerted actions, understandings and agreements herein described and actively cooperated and participated in the planning, maintaining and carrying out of some or all of the acts and practices done pursuant thereto and in furtherance thereof.

PAR. 6. In the course and conduct of their respective businesses the respondent manufacturers manufacture hard fiber rope, cordage and

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twine and sell and distribute said products to purchasers thereof in various States of the United States, pursuant to which sales said products are shipped and transported, to the purchasers thereof across State lines into States other than the State of origin of said shipments. Each of said respondent manufacturers, in the manner aforesaid, maintains a constant current of trade in commerce among and between the various States of the United States.

PAR. 7. Respondent manufacturers in the course and conduct of their respective businesses have at all times been in competition with other firms and individuals in the manufacture, sale and distribution of rope, cordage and twines in commerce among and between the various States of the United States, and have been and are now in competition with one another except to the extent to which such competition has been restrained, lessened, injured and suppressed by the understandings, agreements and concerted actions herein set forth.

PAR. 8. Respondent manufacturers manufacture and sell approximately 65 percent of all the hard fiber twine and approximately 80 percent of all the hard fiber rope and cordage manufactured and sold in the Continental United States. Because of their dominant position in the industry, respondents are able to and do, to a substantial degree, control the prices at which said products are sold and limit and eliminate the effects of other competitive elements.

PAR. 9. For more than three years last past the respondent manufacturers and Respondent Institute (including its officers and various committees and committee members) have been engaged in and carrying out an unlawful combination, understandings and agreements, and a planned common course of action to fix and establish uniform identical delivered prices for hard fiber rope, cordage and twine and to lessen, limit, restrict and restrain competition in price and otherwise, among and between respondents in the sale and distribution of hard fiber rope, cordage and twine in interstate commerce, and pursuant to and in furtherance of said planned common course of action, agreements and understandings respondents have done and performed, and are now doing and performing among others, the following acts and practices:

(a) Agreed upon uniform identical delivered prices to be quoted and charged, and upon terms and conditions of sale to be imposed, and have systematically quoted and charged such prices to and imposed such terms and conditions upon their customers and prospective customers;

(b) Classified customers for pricing purposes and fixed and agreed upon discounts and terms and conditions of sales applicable to sales to customers in each classification;

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(c) Established and maintained identical geographical zones for pricing purposes and systematically applied agreed upon uniform identical zone price differentials in the sale of their products;

(d) Computed or averaged delivery or transportation costs within each price zone from some agreed upon shipping point or points to all delivery points therein and used the amount thus obtained in calculating selling prices in order to prevent differences in delivery costs from the various plants of respondents to their customers creating differences in prices of the products laid down at the customer's place of business;

(e) Agreed to disseminate and have disseminated among themselves and by and through Respondent Institute at frequent intervals current and future quotations of prices, terms and conditions of sales offered to the trade by various respondent manufacturers; and

(f) Have held meetings at which prices, terms and conditions of sales and trade practices and policies designed to eliminate competition in price and otherwise between respondents were discussed and acted upon.

PAR. 10. Each respondent manufacturer, in calculating, making and announcing delivered price quotations, terms and conditions of sale at which it offers to sell and does sell hard fiber rope, cordage and twine, does so by dividing the continental United States into six Geographic Zones. Thereafter, subject to the customer classification herein alleged, each respondent manufacturer quotes to each customer in a given zone identical delivered prices to those it quotes to each of its other customers in said zone, irrespective of the places of delivery in the zone or differences in delivery costs. Each respondent manufacturer has adopted and uses an arbitrary zone price differential for each of the six zones. The zone price differentials, zone numbers and zone boundaries used by each respondent manufacturer are identical to the zone price differentials, zone numbers and zone boundaries used by each of the other respondent manufacturers, regardless of the geographic location of the factory of such respondent.

Each of the respondents, through the use of said pricing system, charges and collects a false amount as freight or delivery costs on substantially every sale made by it. On some sales the amount charged is more and on the others it is less than the actual freight or delivery cost, and only in very few instances is the amount charged and collected as delivery cost identical with the actual delivery cost. The actual differences in delivery costs between two zones are not identical to the zone differentials used by the respondents; neither do the differentials used bear any reasonable relationship to the actual differences in outbound freight or transportation costs between said zones.

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Said pricing system enables respondents to match, and has resulted in the matching of delivered prices by all of said respondents at every destination in the United States, thereby nullifying the effectiveness of differences in delivery costs as an element of competition between the respondents, and has precluded purchasers and prospective purchasers from finding or obtaining any price advantage in dealing with one respondent manufacturer as against another.

Each of said respondents, has adopted and is using the acts, practices and methods described in this Paragraph 10 for the purpose and with the effect of contributing to the hindrance, lessening and injury to competition in price and otherwise between and among said respondents in the sale and distribution of their products, and thereby furthers and helps the carrying out of the purposes and objects of the agreements and understandings between the respondents, as herein alleged.

PAR. 11. The capacity, tendency and effect of said understandings, agreements, combination and planned common course of action and the acts and practices of the respondents, and each of them, done and performed pursuant thereto and in furtherance thereof, are now and have been to substantially lessen, restrict, restrain and injure competition among and between respondents in the sale and distribution of hard fiber rope, cordage and twine in commerce within the intent and meaning of the Federal Trade Commission Act; have a dangerous tendency to and have actually hindered, restricted, and prevented price competition between and among said respondents in the sale and distribution of said products in said commerce; have empowered and enabled respondents to a substantial degree, to control the market and enhance the prices of said products above the prices which would prevail under a condition of natural, normal and free competition among said respondents and deprived the purchasing public of a free and open competitive market in which to purchase said products.

PAR. 12. The acts and practices of the respondents and each of them, as herein alleged, are all to the injury and prejudice of the public and competition and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

ORDER REMANDING CASE TO HEARING EXAMINER

Counsel in support of the complaint and the respondents both having filed appeals from the hearing examiner's initial decision dismissing the complaint in this proceeding at the close of the case in chief, and the matter having been heard on briefs of counsel (oral

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argument not having been requested), and the Commission having rendered its decision vacating and setting aside the initial decision:

It is ordered, That the case be, and it hereby is, remanded to the hearing examiner for further proceedings in conformity with the Commission's decision.

ON APPEAL FROM INITIAL DECISION

Chairman Howrey delivered the opinion:

This case is before the Commission upon an appeal, filed by counsel in support of the complaint, from the hearing examiner's initial decision, issued at the close of the case in chief, dismissing the complaint. The basis of the decision was that a prima facie case had not been established. The respondents also appealed, contending that the examiner was in error in finding that the respondents, during the N.R.A. period, agreed upon and put into operation a zone plan for pricing their products, and that they have continued its use down to the present time.

We believe that counsel in support of the complaint have established a prima facie case with respect to that portion of the complaint which charged that the respondents collusively and unlawfully established geographical zones and freight differentials for pricing purposes.

As hereinabove indicated, the hearing examiner found that respondents had agreed upon a zone plan which fixed freight differentials and that they had continued to use such plan down to the present time. He conceded that if this were part of a price fixing combination there would be no doubt of its illegality, but held that "* * * in the circumstances here existing the plan is not a price fixing device but is simply a convenient method of charging freight."

The hearing examiner erred, we think, when he held that the zone plan was not a price fixing device.

Under the plan the United States was divided into six zones. Zone 1 comprised roughly New England and the North Atlantic States. Moving westward, provision was made for the other five zones, with Zone 6 comprising the Pacific Coast States. Under the plan, as presently operated, varying freight differentials were established to be added to or deducted from list prices. The plan had the effect of equalizing delivered list prices on rope and twine so that each respondent, regardless of its location, had the same delivered list price in each zone. By delivered list price we mean the quoted cost to the consumer, namely, the list price plus or minus the established freight differential.

A comparison of the price lists and zone differentials shows how the plan worked. For example, most 1952 price lists of companies

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located in Zones 1 and 6, listed a price of \$.50 per pound for 3/4" diameter, best grade, Manila rope and showed freight zone differentials for less-than-carload shipments as follows:

Zones:

1	List Prices
2	1/2¢ lb. over List Prices
3	1¢ lb. over List Prices
4	1 1/2¢ lb. over List Prices
5	1 1/4¢ lb. over List Prices
6	List Prices

At the same time an Ohio company, located in Zone 2, had a list price on comparable rope of \$.50 1/2. Its freight differentials were as follows:

Zones:

2	Printed List prices
3	1/2¢ over printed prices
4	1¢ over printed prices
5	3/4¢ over printed prices
1 and 6.....	1/2¢ under printed prices

Thus, the seller on the Pacific Coast charged more for shipments to nearby Colorado than to more distant Kansas, and more for shipments to Kansas than to Ohio, and more for shipments to Ohio than to Massachusetts. In other words, with one exception (Zone 5), the further the shipping distance the less the freight charge.

Likewise, some of the differentials of the Northeast seller bore little relationship to differing freight costs. He sold in California, for example, at his Massachusetts list price, that is, he charged no freight at all for his longest shipment. On the other hand, he charged 1 1/4¢ for deliveries to less distant Nevada and 1 1/2¢ for deliveries to still less distant Colorado.

The seller in Ohio (Zone 2) had different freight differentials. He started with a list price of 1/2¢ more than the sellers on the two coasts, that is, the delivered cost for the customer across the street in Xenia, Ohio, was more than for customers located in either California or New York. On shipments to the two coasts, that is, the two farthest points from his plant, he not only charged no freight but in fact made a deduction for freight. Some of his in-between shipments were also unrelated to freight costs. He charged less, for example, for shipments to Nevada than for shipments to points nearer his Ohio mill.

As we have indicated, the net result of the varying differentials and varying list prices, generally speaking, was that most respondents quoted the same delivered price to all customers in each zone.

Respondents concede that post-World War II price lists show that most of the respondents used an identical zone plan for charging

freight, but deny there is any evidence of a post-war agreement to use such plan. They contend, assuming *arguendo* that there may be evidence of use of the plan by agreement up to World War II, that war time controls are a complete insulation from any presumption that an agreement continued post war.

While the hearing examiner did not deal specifically with this argument, he met the issue by holding that the zone plan was established many years ago pursuant to an agreement and respondents had continued its use down to the present time. It should be added, it seems to us, that it is unlikely the present plan could have been worked out except in pursuance of some sort of an agreement or understanding. The artificiality and arbitrariness of the zone differentials are such that the plan cannot, *prima facie*, at least, withstand the inference of agreement. See *Fort Howard Paper Co., et al v. Federal Trade Commission*, 156 F. 2d 899, 907.

We think the case should be remanded for further proceedings consistent with this opinion, that is, to permit the respondents to show, if they can, that the zone plan was not established pursuant to agreement or was not a price fixing device. The hearing examiner's initial decision dismissing the complaint is accordingly vacated and set aside.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charged the respondents with entering into a combination in restraint of trade, in violation of the Federal Trade Commission Act. At the conclusion of the reception of evidence in support of the complaint, the hearing examiner granted a motion made by respondents seeking dismissal of the complaint for failure of proof, and issued his initial decision dismissing the complaint. Upon appeal to the Commission by counsel supporting the complaint the Commission in effect affirmed the decision of the hearing examiner except as to one issue raised by the complaint, that involving the use by respondents of geographical zones. As to this issue, the Commission held that a *prima facie* case had been established and the matter was remanded to the hearing examiner for further proceedings in regular course.

An agreement with respect to this remaining issue has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all the jurisdictional allegations in the complaint; that respondents' answers to the complaint shall be considered as having been withdrawn; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that

the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified or set aside in the manner provided for other orders of the Commission; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for an appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Cordage Institute is an unincorporated non-profit membership association, with its office and principal place of business located at 350 Madison Avenue, New York, New York.

Respondent J. S. McDaniel, an individual, was secretary of respondent Institute for a period of more than twenty-five years immediately preceding March 1950.

Respondent R. C. Utess, an individual, was president of the respondent Institute and chairman of its Executive Committee from March 1949 to January 1950.

Respondent S. W. Metcalf, an individual, was a member of the Executive Committee of the respondent Institute from January 1949 to January 1950.

Respondent W. S. Miles, Jr., an individual, was a member of the Executive Committee of the respondent Institute from January 1949 to January 1950.

Respondent E. G. Roos, an individual, was a member of the Executive Committee of the respondent Institute from January 1949 to January 1950.

Respondent H. M. Wall, an individual, was a member of the Executive Committee of the respondent Institute from January 1949 to January 1951.

Respondent Plymouth Cordage Co. is a corporation, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at Plymouth, Massachusetts.

Respondent American Manufacturing Company is a corporation, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at Noble and West Streets, Brooklyn, New York.

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Respondent Columbian Rope Company is a corporation, 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 309 Genesee Street, Auburn, New York.

Respondent The Edwin H. Fidler Company is a corporation, 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 at Devereaux and Milnor Streets, Philadelphia, Pennsylvania.

Respondent R. A. Kelly Company is a corporation, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at Xenia, Ohio.

Respondent The E. T. Rugg Company is a corporation, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at Newark, Ohio.

Respondent Peoria Cordage Company is a corporation, 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 1502 South Washington Street, Peoria, Illinois.

Respondent New Bedford Cordage Company is a corporation, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at Court and Ash Streets, New Bedford, Massachusetts.

Respondent Tubbs Cordage Company is a corporation, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 200 Bush Street, San Francisco, California.

Respondent Tubbs Cordage Company (Washington) is a corporation, existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 2021 - 15th Avenue, West, Seattle, Washington.

Respondent Wall Rope Works, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 48 South Street, New York, New York.

Respondent Whitlock Cordage Company is a corporation, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 46 South Street, New York, New York.

Respondent Cating Rope Works, Inc., is a corporation, 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 58-29 64th Street, Maspeth, New York.

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Respondent Cupples Company Manufacturers (named in the complaint as Cupples Company, Inc.) is a corporation, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 440 South Brentwood Boulevard, St. Louis, Missouri.

Respondent The Thomas Jackson & Son Company is a corporation, 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 at Reading, Pennsylvania.

Respondent Waterbury Rope Sales Corporation is a corporation, 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 88 Wallabout Street, Brooklyn, New York.

Respondent The Hooven & Allison Company is a corporation, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at Xenia, Ohio.

Respondent Rinek Cordage Company is a corporation, 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 at Easton, Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents, Cordage Institute, an unincorporated membership association, J. S. McDaniel, individually and as Secretary of Cordage Institute, R. C. Utess, individually and as President and Chairman of the Executive Committee of Cordage Institute, S. W. Metcalf, individually and as a member of the Executive Committee of Cordage Institute, W. S. Miles, Jr., individually and as a member of the Executive Committee of Cordage Institute, E. G. Roos, individually and as a member of the Executive Committee of Cordage Institute, H. M. Wall, individually and as a member of the Executive Committee of Cordage Institute, and Plymouth Cordage Co., American Manufacturing Company, Columbian Rope Company, The Edwin H. Fidler Company, R. A. Kelly Company, The E. T. Rugg Company, Peoria Cordage Company, New Bedford Cordage Company, Tubbs Cordage Company, Tubbs Cordage Company (Washington), Wall Rope Works, Inc., Whitlock Cordage Company, Cating Rope Works, Inc., Cupples Company Manufacturers, The Thomas Jackson & Son Company, Waterbury Rope Sales Corporation, The Hooven & Allison Company, and Rinek Cordage Com-

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pany, corporations, and their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of hard fiber rope or hard fiber wrapping twine in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, agreement, understanding, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties to this proceeding, to establish or maintain geographical price zones or zone price differentials in the sale of hard fiber rope or hard fiber wrapping twine.

It is further ordered, That the remaining charges of the complaint be, and they hereby are, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 12th day of May, 1956, become the decision of the Commission; and, accordingly:

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.

Commissioner Kern not participating.