IN THE MATTER OF

CARTER PRODUCTS, INC.

Docket 4970. Order and opinion, Sept. 20, 1955

Order denying respondent's motion for an order disqualifying hearing examiner from making report on additional evidence and vacating and terminating the proceedings.

Before *Mr. James A. Purcell*, hearing examiner.
Mr. Fletcher G. Cohn and *Mr. Lewis F. Depro* for the Commission.
Breed, Abbott & Morgan, of New York City, for respondent.

ORDER DENYING RESPONDENT'S MOTION FOR DISQUALIFICATION OF THE HEARING EXAMINER

This matter having come on to be heard upon the motion and affidavit filed by counsel for the respondent on March 28, 1955, as supplemented by the motion and affidavit filed on April 18, 1955, requesting that the hearing examiner be disqualified for alleged bias and the proceedings terminated; and

The Commission having determined, for reasons set forth in the accompanying opinion, that said motion should be denied:

It is ordered, That respondent's motion be, and it hereby is, denied.

OPINION OF THE COMMISSION

By GWYNNE, Commissioner:

Respondent's motion and supplement thereto, with accompanying affidavits is filed under the Commission Rules which permit such a procedure whenever any party shall deem the hearing examiner disqualified, for any reason, to continue to preside in any hearing. Respondent charges the hearing examiner with personal bias and animosity toward respondent and its counsel and with partiality and bias in the conduct of the rehearing. The motion asks that an order issue disqualifying the hearing examiner from making and filing his report upon the additional evidence in this case and vacating and terminating the proceedings.

Complaint was issued on May 28, 1943, and charged respondent with false and deceptive advertising of its product, Carter's Little Liver Pills. After extensive hearings involving over 10,000 pages of testimony and 2,200 exhibits, the hearing examiner on July 22, 1946, filed his report, as required by the procedure in effect at that time. In March, 1951 the Commission made findings and issued its order to

cease and desist.[1] Upon appeal, the Circuit Court of Appeals set aside the Commission's order [2] on the ground that the hearing examiner had unduly restricted the cross-examination of certain expert witnesses of counsel supporting the complaint, namely, Drs. Bollman, Lockwood and Case. Thereafter, the Supreme Court vacated the judgment of the Court of Appeals and remanded the case with instructions that the proceeding be reopened for further evidence and order consistent with the opinion of the Court of Appeals.[3] Further hearings were then held before the same examiner who had heard the case from the beginning. Drs. Bollman and Case were further examined. Dr. Lockwood had died in the meantime and his testimony and the exhibits supporting the same were stricken from the record.

The charges made by respondent will be considered in the order presented in its brief.

POINT I

The examiner accused respondent and its counsel of abuse of process in the following particulars

A. Referring to "counsel with great financial backing in a paramount and demonstrated desire to block and frustrate the remedial processes vested by law in the Commission"

This has reference to the ruling of the hearing examiner on certain motions and offers of proof made by respondent. The complete statement at this point is as follows:

"*Fifth Motion:* This motion is but another effort to introduce into the present record the testimony of Dr. Twiss, coupled with supporting testimony of others, on the ground, primarily, that such new studies, experiments, methods, statistical analyses, new theories on the therapeutic value of cholagogues and choleretics in increasing the formation or flow of bile, and the many kindred scientific points which respondent would inject anew into this case, are all superior to the tests and results obtained by certain of Commission witnesses, although respondent's counsel discreetly refrains from any like criticism of comparable tests made at his behest and testified by his witnesses. Such additional testimony, if permitted, would, as hereinabove pointed out, result in a trial *de novo* with concomitant further delay and great expense. The record now existing herein is eloquent demonstration of the vast and practically limitless reaches of scientific ramifications which may be inquired into by counsel with great financial backing and a paramount and demonstrated desire to block

[1] 47 F. T. C. 1137.
[2] 201 F. 2d 446; 5 S. & D. 478.
[3] 346 U. S. 327; 5 S. & D. 581.

and frustrate the remedial processes vested by law in this Commission. It is, accordingly,

Ordered, That respondent's Fifth Motion, in its entirety, be denied."

B. Charging counsel with being desirous of "patching up Morrison's testimony and, perhaps, substituting therefor the testimony of Drs. Twiss and Arkin"

Morrison was a previous witness for respondent, in whose testimony the hearing examiner had apparently placed very little confidence. The complete sentence taken from the hearing examiner's ruling is:

"With ample opportunity to appraise the conduct, lack of candor and demeanor of the witness, as well also his questionable professional conduct, and having thus expressed himself concerning his utter lack of confidence in Morrison's testimony, based upon the latter's lack of objectivity in setting up and conducting his experiments, as also the truthfulness of his testimony concerning results procured by him, and having accorded such testimony no weight in arriving at his recommendations to the Commission, the Examiner must come to the inevitable conclusion that his lack of confidence as to Morrison must prove disturbing to respondent's counsel, hence gives rise to the quite understandable motive that counsel is desirous of patching up Morrison's testimony and, perhaps, *substituting* therefor the testimony of Twiss and Arkin rather than to rationalize and justify Morrison's testimony."

C. Characterizing certain offers of proof as "thinly veiled attempts, under the guise of offers of proof, to sit in appellate judgment on the findings and conclusions of the Commission"; insinuating that "other experts could be had for a price"; referring to witnesses as "every Tom, Dick and Harry who erupted with a new theory," and various other statements

POINT II

The hearing examiner filed his report before decision could be made by the Commission on the respondent's motion for disqualification

The record indicates that the evidence was closed on April 30, 1954. Thereafter, there were various motions, and a ruling thereon by the hearing examiner was filed on February 9, 1955. The supplemental report on additional evidence received on the remand was filed March 31, 1955. The motion to disqualify was filed on March 28, 1955.

POINT III

The hearing examiner suppressed in his rulings and supplemental report all reference to the admissions and self-contradictions of Commission's witness, Dr. Bollman

The record shows that Dr. Bollman was examined at some length. The attorneys and the hearing examiner devoted considerable atten-

tion to what were claimed to be inconsistencies in the Doctor's testimony in the original hearing and his testimony in this hearing. In connection with this matter, and with reference to such testimony, the hearing examiner used the term "straighten out", to which words counsel for respondent takes exception. In his report the hearing examiner devotes considerable space to Dr. Bollman's testimony, assesses its value and gives his reasons therefor.

POINT IV

The hearing examiner attempted to circumvent the opinion of the Court of Appeals

This charge is based on the refusal of the hearing examiner to grant respondent's motion to offer the testimony of Dr. Arkin, a statistician.

During the original hearing, Dr. Morrison testified for respondent concerning certain tests he had made. In those same hearings Dr. Bollman undertook to discredit the findings of Dr. Morrison by means of a statistical document or chart which he had prepared and which he said was a method of his own for analyzing Dr. Morrison's experiments and tests. This document, Exhibit 202, was received in evidence. Respondent undertook to question Dr. Bollman as to his use of this document in connection with other matters. The refusal of the hearing examiner to permit this cross-examination was held by the Circuit Court of Appeals to be error.

In his supplemental report the hearing examiner sets out his views as to the value of Dr. Morrison's testimony and his reasons for not accepting the testimony of Dr. Arkin.

POINT V

The hearing examiner adopted verbatim the answering memorandum of counsel in support of the complaint

POINT VI

The hearing examiner made improper and prejudicial remarks in the presence of the witness, Dr. Bollman, and in connection with his testimony

In connection with the cross-examination of Dr. Bollman, counsel for respondent made frequent reference to various medical writings and questioned the witness in regard to them. There were frequent clashes in regard to this matter and in connection therewith the hear-

ing examiner expressed his views as to the law. Respondent complains particularly of the following statements:

> "that the less of that type of stuff that you read into this record the better off we will be"

and

> "I feel that an extended cross-examination based upon that point would be more or less a waste of time and a tempest in a teapot".

Respondent claims that the statements and the conduct of the hearing examiner in this regard indicated bias and that the influence on the witness prejudiced the rights of the respondent.

POINT VII

The examiner omitted in his rulings and in his supplemental report all reference to the effect of the recross-examination of the Commission's witness, Dr. Case, in discrediting such witness' testimony

POINT VIII

In the examination of Drs. Case and Bollman, there was a constant subtle effort by the examiner to suggest or supply answers or reasons for answers by the witnesses and to give previews of what their testimony should be

Several instances are cited, as follows:

On one occasion, the hearing examiner stated that certain testimony "had been gone into in detail yesterday". He then stated his understanding of the testimony and asked the witness if the statement were correct. The witness agreed that it was correct.

Other instances were also cited where the hearing examiner purported to give his recollection of the testimony and there were frequent clashes with counsel and disagreement as to what the testimony was.

On another occasion, counsel for respondent stated that he was about to ask the witness "some crucial questions, and I don't like to be interrupted at this point". He was interrupted by the hearing examiner and at the conclusion of the colloquy, the hearing examiner said "Now you can go ahead with your so-called crucial questions."

POINT IX

The examiner's narrow and begrudging interpretation of the spirit and letter of the mandates of the Ninth Circuit Court of Appeals and the United States Supreme Court and of the Commission's order reopening this case for further evidence (not just for further cross examination) is erroneous, an affront to those courts and to this Commission, and constitutes the crowning badge of bias on the examiner's part

The above brief statement of the circumstances surrounding some of the charges is not meant to be complete. The detailed history of the whole matter could not be given in this opinion. Statements and conduct complained of must be viewed against the background of the entire case and must be examined in connection with the other statements and conduct of all the parties involved in the trial. The conclusions announced hereafter are based on a consideration of the entire record.

Many cases are cited by both parties in their respective briefs. The applicable rules of law are reasonably well settled, although their application to a particular set of facts is sometimes difficult. As was said in the Crown Zellerbach Corporation case, Docket No. 5421:

"* * * the 'personal bias or prejudice' which must be shown to disqualify [an examiner] must not only be 'personal' as against the party claiming it but must be of such a character as to overcome the presumption of the hearing officer's integrity and of the clearness of his perceptions and of such strength as to beget a mental or moral condition which renders the officer either willing to do wrong, although he sees the right, regarding the justiciable matters before him, or, else, incapable of rightly seeing the justice of the cause, or impartially enforcing the right involved as between the parties before him."

Coming to a consideration of specific charges, we do not see how the date of the filing of the hearing examiner's report has any effect on the ruling of this motion or on the ultimate decision of the case. The respondent's rights are not affected and it is difficult to find any evidence of bias or animosity under Point II.

Other charges are based on rulings claimed to have been incorrectly made or conclusions adopted which are contrary to the facts. See for example Points III, IV, V, VII and VIII. The question of the propriety of these rulings and conclusions may be presented to the Commission at the proper time. Bias and prejudice cannot be presumed simply from the fact that an error has been committed. The

fact of the error is to be considered together with the other facts and circumstances which have a reasonable tendency to prove or disprove bias and prejudice. The error must not be one of judgment alone but must be of such a character as to indicate a wrong attitude toward a litigant, or a mental or moral condition which prevents a fair trial. We do not here pass on the correctness of any ruling or decision of the hearing examiner. Our conclusion simply is that, based on the entire record, bias and animosity has not been shown.

Respondent also complains of certain statements made by the hearing examiner during the course of the trial and claims that they indicate bias and prejudice.

This case has been in litigation for an unusually long period of time. The record is long and the questions involved are complicated and difficult. The case was vigorously tried by able counsel on both sides. They were diligent, and often persistent, in setting forth their views. The hearing examiner displayed a desire to prevent undue delays and to keep the record at the minimum required to present the facts. Given such a situation, it is understandable that periods of disagreement and irritation developed, which sometimes found expression in words that might better have been left unspoken. They too are to be considered against a background of the entire case and with due regard to what was said and done by all the parties to the litigation.

The appeal of respondent is denied and it is directed that an order issue accordingly.

IN THE MATTER OF

WALDBAUM, CIPES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket 6381. Complaint, June 29, 1955—Decision, Sept. 20, 1955

Consent order requiring a firm in New York City to cease importing into the United States and selling silk scarves manufactured in Japan which were "so highly flammable as to be dangerous when worn," in violation of the Flammable Fabrics Act.

Before *Mr. John Lewis*, hearing examiner.
Mr. John T. Walker for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Waldbaum, Cipes, Inc., a corporation, Jay Cipes and Sidney Waldbaum, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the rules and regulations promulgated thereunder, 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 Waldbaum, Cipes, Inc., is a New York corporation. Respondents Jay Cipes and Sidney Waldbaum are president and secretary-treasurer, respectively of respondent Waldbaum, Cipes, Inc. The individual respondents formulate, direct, and control the policies of said corporation. The business address of all respondents is 15 West 37th Street, New York, New York.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have imported into the United States articles of wearing apparel, as the term "articles of wearing apparel" is defined in the Flammable Fabrics Act, which, under the provisions of Section 4 of said Act, as amended, were so highly flammable as to be dangerous when worn by individuals. Respondents have sold, offered for sale, introduced, delivered for introduction, and transported and caused to be transported in commerce, as "commerce" is defined in the Flammable Fabrics Act, the said articles of wearing apparel, imported as aforesaid. Respondents have also transported and caused to be transported the said articles of wearing apparel, imported as aforesaid, for the purpose of sale and delivery after sale in commerce.

Among the articles of wearing apparel mentioned hereinabove were silk scarves manufactured in Japan.

PAR. 3. Respondents, in the course of their business, are engaged in competition in commerce with others in the sale and offering for sale of scarves which are not flammable "articles of wearing apparel" under the definition of the Flammable Fabrics Act.

PAR. 4. The acts and practices of respondents were and are in violation of the Flammable Fabrics Act and of the rules and regulations promulgated thereunder, and as such 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.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on June 29, 1955, charging them with having violated the Flammable Fabrics Act and the rules and regulations issued thereunder, and the Federal Trade Commission Act. After being served with said complaint, respondents entered into an agreement, dated August 2, 1955, 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 and Procedure of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all 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 respondents waive 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, and that said 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.

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 dis-

position of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice and Procedure, and the hearing examiner, accordingly, makes the following findings, for jurisdictional purposes, and order:

1. Respondent Waldbaum, Cipes, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, and respondents Jay Cipes and Sidney Waldbaum are president and secretary-treasurer, respectively of respondent Waldbaum, Cipes, Inc. The individual respondents formulate, direct, and control the policies of said corporation. The business address of all respondents is 15 West 37th Street, New York, New York.

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 Flammable Fabrics Act and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That the respondent Waldbaum, Cipes, Inc., a corporation, and Jay Cipes and Sidney Waldbaum, individually and as officers of the said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. (*a*) Importing into the United States; or

(*b*) Selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(*c*) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce;

any article of wearing apparel, which, under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

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 20th day of September, 1955, 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

BRAINERD L. MELLINGER ET AL. TRADING AS SKIL-WEAVE CO. ET AL.

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

Docket 6226. Complaint, June 30, 1954—Decision, Sept. 22, 1955

Consent order requiring sellers in Los Angeles, Calif., of a correspondence course in reweaving, to cease representing falsely that invisible French reweaving could be learned easily and quickly, and that anyone between 16 and 60 years of age could become an expert weaver through study of their course, could start a prosperous career, doing business at home in any city or on a farm, a large volume of it by mail, with reweaving work supplied by dry cleaners, department stores, and laundries.

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

Mr. William L. Pencke and *Mr. Edward F. Downs* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Brainerd L. Mellinger and Sibyle O. Mellinger, copartners trading and doing business as Skil-Weave Co., and Brainerd L. Mellinger, Jr., and Augustine Ott, individuals, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Brainerd L. Mellinger and Sibyle O. Mellinger are copartners trading and doing business under the firm name and style of Skil-Weave Co. and Brainerd L. Mellinger, Jr. and Augustine Ott are individuals who participate in the management and operation of said business and the promulgation of the advertising policies thereof. The principal office and place of business of all of said respondents is located at 1717 Westwood Boulevard, Los Angeles 24, California.

PAR. 2. Respondents are now, and have been for more than two years last past, engaged in the sale and distribution in commerce

among and between the States of the United States of a course of instruction designed to prepare students thereof for work as commerical reweavers. Said course is pursued through the medium of the United States mails. Respondents, in the course and conduct of said business, cause their said course of instruction to be transported from their said place of business in the State of California to the purchasers thereof located in other States of the United States. Respondents maintain, and at all times hereinafter mentioned have maintained, a substantial course of trade in said correspondence course in commerce among and between the various States of the United States.

PAR. 3. Respondents, in the course and conduct of said business and for the purpose of inducing the sale of said course of instruction in commerce, have made many claims and representations respecting said course and the benefit which would accrue to those purchasing the same. Said claims, statements and representations are made in advertisements inserted in newspapers and magazines, and in circulars and other printed matter disseminated generally to prospective purchasers. The statements, claims, representations and implications arising by reason thereof, are, in substance, as follows:

1. That Invisible French reweaving may be learned easily and quickly by anyone through the study of respondents' correspondence course of instruction.

2. That any normal person between the ages of 16 and 60 years can become an expert reweaver through the study of said course.

3. That men and women who have completed said course of instruction can make big profits at home in their full or spare time, have the opportunity to start a prosperous career and become financially independent, and that earnings up to $5.00 an hour is a minimum charge, that $10 or more an hour is common and that $200.00 a week is possible.

4. That French reweaving is a little known profession and that the work is easy to perform.

5. That persons completing respondents' course of instruction can successfully operate a reweaving business at home in any large or small city, or on a farm, and that a very large volume of invisible reweaving business can be done by such persons by mail.

6. That reweaving is seldom available in small communities and that even the largest cities have only a few shops.

7. That an insurance company once paid respondent Augustine Ott $1500 for about 60 hours of Skil-Weave work on an antique which was equal to $25 an hour, and that while such order is exceptional, it illustrates the possibilities in said reweaving business.

8. That persons who have completed said course of instruction receive a certificate which identifies them as graduate Skil-Weavers and qualifies them as skilled reweavers and automatically entitles them to a twelve-months' membership in the Skil-Weavers Guild, to receive and feature the guild insignia, and benefit from national advertising of the Skil-Weavers Guild.

9. That reweaving work is supplied to such persons by dry cleaners, department stores and laundries.

PAR. 4. All of the statements, representations and implications hereinabove set forth were and are false, deceptive, misleading or exaggerated. In truth and in fact:

1. Invisible French reweaving cannot be learned easily or quickly by anyone through the study of respondents' correspondence course.

2. Many persons, between the ages of 16 and 60, or of any other age cannot become expert reweavers through the study of respondents' course. An expert reweaver must have the aptitude and manual dexterity and other characteristics not possessed by many persons. Reweaving strains the eyes of some persons to the extent that they cannot engage in such work. Under ordinary circumstances, persons possessing the necessary qualifications must study and practice under the personal supervision and guidance of a competent instructor before they become expert.

3. The represented earnings of persons who have completed respondents' course are greatly exaggerated. Generally speaking, persons completing said course cannot make big profits at home either in spare or full time; neither can they start a prosperous career or become financially independent. Even for experienced workers, the average pay is substantially less than $5 an hour and $200.00 a week.

4. French reweaving is generally known as a means of repairing or restoring damaged textile articles. It is not easy to perform since it requires a high degree of painstaking effort.

5. Persons having completed respondents' said course cannot successfully operate a reweaving business at home, regardless of their locations. The volume of such business done by mail is not large. Such as is done is generally confined to established reweaving concerns and not by persons from their homes.

6. Reweaving services in small communities are readily available and numerous reweaving establishments operate in virtually all cities.

7. The claim that respondent Augustine Ott received $1,500 for 60 hours' work—which claim is emphasized and reiterated through respondents' advertising material—is grossly exaggerated. The fact is that for this work Mrs. Ott was paid $1,440 for 288 hours' work requiring two persons, or $2.50 an hour per person.

8. While persons who have completed respondents' course of instruction receive a certificate, they are thereby not qualified as skilled reweavers. There is no such organization as Skil-Weavers Guild and the Skil-Weavers Guild insignia is of no validity. No national or other advertising is provided by respondents or any one in their behalf, for the benefit of such persons.

9. Dry cleaners, department stores or laundries do not furnish reweaving work to respondents' graduates but have such work done by established reweaving concerns.

PAR. 5. The use by respondents of the false, deceptive and misleading statements and representations set out in Paragraph 3 hereof has the tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken and erroneous belief that such statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' course of instruction.

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

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On June 30, 1954, the Federal Trade Commission issued its complaint in this proceeding, charging the respondents with unfair and deceptive acts and practices in connection with the sale in commerce of a course of instruction designed to prepare students thereof for work as commercial reweavers, in violation of the Federal Trade Commission Act.

Thereafter, on July 26, 1954, respondents filed with the Commission their answer to the complaint, and on July 8, 1955, entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the hearing examiner a Stipulation For Consent Order disposing of all the issues involved in this proceeding.

Respondents are identified in the stipulation as individuals and copartners, with their office and principal place of business located at 1717 Westwood Boulevard, Los Angeles 24, California.

Respondents admit all the jurisdictional allegations set forth in the complaint, and stipulate that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance therewith.

It is stated in the Stipulation For Consent Order that all parties thereto withdraw the answer filed by respondents on July 26, 1954,

and for all legal purposes said answer will hereafter be regarded as withdrawn. All parties expressly waive a hearing before a hearing examiner or the Commission; the making of findings of fact or conclusions of law by the hearing examiner or the Commission; the filing of exceptions and oral argument before the Commission; and all further and other procedure before the hearing examiner or the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents agree that the order contained in the stipulation shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon. Respondents specifically waive any and all right, power, or privilege to challenge or contest the validity of such order.

It is also agreed that said Stipulation For Consent Order, together with the complaint, shall constitute the entire record in this proceeding, upon which the initial decision shall be based. The stipulation sets forth that the complaint herein may be used in construing the terms of the aforesaid order, which may be altered, modified, or set aside in the manner provided by statute for orders of the Commission.

Respondents specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated in the complaint to be in violation of the law.

The order embodied in the aforesaid stipulation differs from the order accompanying the complaint herein in minor particulars only.

In view of the facts outlined above, it appears that the order embodied in the stipulation will safeguard the public interest to the same extent as could be accomplished by the issuance of an order after full hearing and all other adjudicative procedure waived in said stipulation. Accordingly, in consonance with the terms of the aforesaid stipulation, the hearing examiner accepts the Stipulation For Consent Order submitted herein; finds that this proceeding is in the public interest; and issues the following order:

It is ordered, That the respondents, Brainerd L. Mellinger and Sibyl O. Mellinger (spelled Sibyle O. Mellinger in the complaint), as individuals or as copartners trading as Skil-Weave Co., or under any other name, and respondents Brainerd L. Mellinger, Jr., and Augustine S. Ott, individually and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of courses of instruction in reweaving in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That invisible French weaving can be learned easily or quickly by taking respondents' course;

2. That it is easy to learn reweaving, or that one can become an expert reweaver by taking respondents' course of instruction, unless it is restricted to the patch or overlay method of reweaving and unless it is disclosed that anyone taking said course of instructions must have normal use of hands, good eyesight, with or without glasses, and is temperamentally disposed to learn reweaving;

3. That the potential earnings for persons completing respondents' course of instruction are greater than they are in fact;

4. That French reweaving is little known or is easy to perform;

5. That persons completing respondents' course can successfully operate a reweaving business by mail;

6. That reweaving is not available in small communities or that only a few reweaving establishments are operated in cities;

7. That any respondent received greater compensation for reweaving than is the fact;

8. That the issuance of certificates to persons who have completed respondents' course qualifies them as skilled reweavers;

9. That an organization know as Skil-Weavers Guild exists or that the Skil-Weavers insignia is of any validity;

10. That respondents, or any one in their behalf, provide national advertising for the benefit of persons who have completed their course;

11. That through the efforts of respondents dry cleaners, department stores, laundries or similar business organizations supply reweaving work to persons who have completed respondents' course, or that the amount of such reweaving work available at such sources is greater than it is in fact.

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 22nd day of September, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Brainerd L. Mellinger and Sibyl O. Mellinger (spelled Sibyle O. Mellinger in the complaint), copartners trading and doing business as Skil-Weave Co., and Brainerd L. Mellinger, Jr., and Augustine Ott, individuals, 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

DUMAS OF CALIFORNIA, INC., ET AL.

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

Docket 6284. Complaint, Jan. 10, 1955—Decision, Sept. 22, 1955

Consent order requiring manufacturers in Los Angeles, Calif., to cease violating the Wool Products Labeling Act through falsely labeling ladies' coats as to vicuna, wool and cashmere content, and failing to label other coats as required.

Before *Mr. John Lewis*, hearing examiner.

Mr. George E. Steinmetz for the Commission.

Blau, Shaw & Miller, of Beverly Hills, Calif., and *Mr. Milton J. Levy*, 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 Dumas of California, Inc., a corporation, and Herbert Bass, individually and as an officer 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 Dumas of California, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California. Respondent Herbert Bass is President of said respondent corporation. This respondent individually formulates, directs and controls the acts, policies and practices of said corporate respondent. The offices and principal place of business of each said respondent are located at 818 South Broadway, Los Angeles 14, California.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January, 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 said Act, wool products as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (1) of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products were ladies' coats labeled or tagged by respondents as consisting of "50% Vicuna, 50% Wool"; "67% Cashmere, 33% Wool" and also "100% Wool"; whereas in truth and in fact said wool products did not consist of 50% vicuna, 50% wool; 67% cashmere, 33% wool nor 100% wool.

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

PAR. 5. The acts and practices of respondents, as alleged herein, were and are in violation of the Wool Products Labeling Act of 1939, and of the Rules and Regulations promulgated thereunder, 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 JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on January 10, 1955, 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. After being duly served with said complaint, respondents appeared by counsel and filed their answer thereto. Thereafter this proceeding came on for hearing before the undersigned, theretofore duly designated to act as hearing examiner in said proceeding, on July 22, 1955, in Washington, D. C. At the opening of said hearing and before the taking of testimony, there was submitted to the hearing examiner an agreement for consent order, dated July 12, 1955, and signed by counsel supporting the complaint, counsel for respondents, and respondents, and approved by the Director of the Commission's Bureau of Litigation, providing for the full disposition of this proceeding without hearing. After the submission of said agreement, counsel for respondents was permitted to make a statement for the record by way of explanation of the circumstances surrounding the particular viola-

tions charged in the complaint and in extenuation thereof. Counsel's remarks were received with the understanding that they did not constitute an admission by respondents concerning any of the substantive allegations of the complaint and that they did not impair the effectiveness of the agreement submitted to the hearing examiner, including the order therein provided for. There being nothing further to come before the hearing examiner, the hearing was thereupon closed on the basis of the aforesaid agreement for consent order.

Respondents, pursuant to the aforesaid agreement, have agreed to the withdrawal of their answer and have admitted all the jurisdictional allegations of 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. Said agreement further provides that all parties expressly waive a hearing before the hearing examiner or the Commission, and all further and other procedure to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents have also agreed that the order to cease and desist issued in accordance with said agreement for consent order shall have the same force and effect as if made after a full hearing, and specifically waive any and all right, power, or privilege to challenge or contest the validity of said order. It has been further agreed that the complaint herein may be used in construing the terms of the order provided for in said agreement, and that the signing of said 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement for consent order, the answer heretofore filed by respondents being hereby deemed withdrawn, and it appearing that the order provided for in said agreement for consent order conforms in all respects to the proposed order in the notice portion of the complaint and that said agreement provides for an appropriate disposition of this proceeding, the same is hereby accepted and ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Commission's Rules of Practice, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. The respondent corporation, Dumas of California, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California with its principal place of business located at 818 South Broadway, Los Angeles, California. The respondent Herbert Bass is now and at all times mentioned in the complaint has been president of said corporate respondent and maintains his business

office and address at the same address as the corporate respondent, namely 818 South Broadway, Los Angeles, California.

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 Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondent Dumas of California, Inc., a corporation; respondent Herbert Bass, individually and as an officer of said corporation; and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of ladies' coats or other "wool products," as such products are defined in and are subject to the said Wool Products Labeling Act of 1939; which products contain, purport to contain, or in any manner are represented as containing "wool," "reprocessed wool" or "reused wool" as such terms are defined in said Act, do forthwith cease and desist from misbranding said products by:

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

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

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

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

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

3. Misrepresenting in any manner the true character and amount of the constitutent fibers used in the manufacture of such wool products, or the representative percentage of the various fibers contained therein.

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.

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 22nd day of September, 1955, 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

LILLI ANN CORP. ET AL.

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

Docket 6336. Complaint, Apr. 26, 1955—Decision, Sept. 22, 1955

Consent order requiring a manufacturer and its importing subsidiary in Los Angeles, Calif., to cease violating the Wool Products Labeling Act and the Federal Trade Commission Act through misbranding certain fabrics and ladies' coats as to their fiber content, using information on labels in French without an accompanying English translation, and falsely representing the content of piece goods in invoices, orders, and confirmations of orders.

Before *Mr. John Lewis*, hearing examiner.
Mr. George E. Steinmetz for the Commission.
Mr. Milton J. Levy, 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 Lilli Ann Corp., a corporation, Soufflet-America, Inc., a corporation, and Adolph P. Schuman, individually and as an officer of each of said corporations, hereinafter referred to as the 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. The corporate respondent Lilli Ann Corp., is a corporation organized and existing under and by virtue of the laws of the State of California, being engaged in the manufacture, sale and distribution of women's coats and suits. The corporate respondent Soufflet-America, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York and constitutes a wholly-owned subsidiary of said Lilli Ann Corp.; said Soufflet-America, Inc., functioning primarily as an importing organization for and on behalf of said Lilli Ann Corp.

Respondent Adolph P. Schuman is president of each of said corporate respondents and this individual respondent formulates, directs and controls the acts, policies and practices of each of said corporate respondents. The principal offices and places of business of all said

respondents are located at 2701 Sixteenth Street, San Francisco 3, California.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since the commencement of the year 1954, respondents have imported into the United States and thereafter 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 said Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (1) of said Wool Products Labeling Act of 1939 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 misbranded wool products were ladies' coats labeled or tagged "Cashmere Of France—Woven In Paris For Lilli Ann," whereas in truth and in fact said products consisted largely of wool from the genus sheep with lesser quantities of Cashmere, being the hair or fleece of the Cashmere goat, together with minor quantities of rabbit hair.

Further, among such misbranded wool products imported into the United States and thereafter sold in commerce by the respondents were fabrics labeled or tagged as consisting of "50% Vicuna 50% Wool"; "50% Vigogne 38% Laine 12% Nankin", "45% Cashmeir 43% Laine—12% Poil Nankin;" and "100% Wool"; whereas in truth and in fact said fabrics were not composed respectively of 50% Vicuna, 50% Wool; 50% Vigogne, 38% Laine, 12% Nankin; 45% Cashmeir, 43% Laine, 12% Poil Nankin; or 100% Wool.

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

PAR. 5. Certain of said wool products described as fabrics were further misbranded in that statements of fiber content set forth on labels or tags attached thereto were confined to the French lanugage without setting forth the same in English in addition thereto, as required under the provisions of Rule 7 of the Rules and Regulations promulgated pursuant to said Wool Products Labeling Act.

PAR. 6. Certain of said wool products consisting of fabrics were misbranded by the respondents in that labels or tags attached thereto describe a portion of the fiber content as "Nankin" instead of using the

common generic name of said fiber in the English language as required under Rules 7 and 8 of the Rules and Regulations promulgated pursuant to said Wool Products Labeling Act.

PAR. 7. Respondents further misbranded certain of their wool products described as ladies' coats labeled or tagged "Cashmere Of France," by failing to set forth the actual percentage of Cashmere contained therein as required by Rule 19 of the Rules and Regulations made pursuant to said Wool Products Labeling Act.

PAR. 8. The acts and practices of said respondents as herein alleged in Paragraphs 2 through 7 were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the meaning and intent of the Federal Trade Commission Act.

PAR. 9. In the course and conduct of their business and for the purpose of inducing the purchase of their products described as fabrics or piece goods, respondents have circulated in commerce among their purchasers; invoices, orders, and confirmation of orders containing various statements and representations, among which the following are typical:

50% Vicuna
50% Wool
and
63% Cashmere
37% Wool

PAR. 10. Through the use of said terms and percentages to describe their several fabrics as aforesaid, respondents represented, directly and by implication, that said fabrics were composed of 50% vicuna and 50% wool, and 63% cashmere and 37% wool; whereas, in truth and in fact said fabrics did not consist of 50% vicuna and 50% wool, or 63% cashmere and 37% wool, as the terms vicuna and cashmere are generally understood by a substantial portion of the purchasing public, namely, the hair or fleece of the Vicuna, and of the Cashmere goat.

PAR 11. The use by respondents of the foregoing false and deceptive statements and representations with respect to their several fabrics had the tendency and capacity to mislead and deceive a substantial number of their purchasers into the erroneous and mistaken belief that such statements and representations were true, and has caused numbers of their purchasers to purchase or acquire substantial quantities of respondents' fabrics because of such erroneous and mistaken belief.

PAR. 12. The acts and practices of the said respondents as hereinabove alleged in Paragraphs 9 to 11, inclusive, were all to the

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

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 26, 1955, 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. After being duly served with said complaint, respondents appeared by counsel and thereafter entered into a stipulation, with counsel supporting the complaint, dated July 18, 1955, providing for the entry of a consent order disposing of all the issues in this proceeding. Said stipulation for consent order, which has been signed by counsel supporting the complaint, counsel for respondents, and respondents, and approved by the Director of the Commission's Bureau of Litigation, was submitted to the undersigned hearing examiner, theretofore duly designated, at the hearing convened on July 22, 1955, in Washington, D. C. After the submission of said stipulation, counsel for respondents was permitted to make a statement for the record by way of explanation of the circumstances surrounding the particular violations charged in the complaint and in extenuation thereof. Counsel's remarks were received with the understanding that they did not constitute an admission by respondents concerning any of the substantive allegations of the complaint and that they did not impair the effectiveness of the stipulation submitted to the hearing examiner, including the order therein provided for. There being nothing further to come before the hearing examiner, the hearing was thereupon closed on the basis of the aforesaid stipulation for consent order.

Respondents, pursuant to the aforesaid stipulation, have admitted all the jurisdictional allegations of 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. Said stipulation further provides that all parties expressly waive a hearing before the hearing examiner or the Commission, and all further and other procedure to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents have also agreed that the order to cease and desist issued in accordance with said stipulation shall have the same force and effect as if made after a full hearing, and specifically waive any and all right, power, or privilege to challenge or contest the

validity of said order. It has been further stipulated and agreed that the complaint herein may be used in construing the terms of the order provided for in said stipulation, and that the signing of said stipulation is for settlement purposes only and does not constitute an admission by respondents 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 stipulation for consent order; and it appearing that the order provided for in said stipulation conforms in all respects to the proposed order in the notice portion of the complaint and that said stipulation provides for an appropriate disposition of this proceeding, the same is hereby accepted and ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Commission's Rules of Practice, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. The corporate respondent, Lilli Ann Corp., is now, and during all of the times mentioned in the complaint has been, a corporation, organized and existing under and by virtue of the laws of the State of California. The corporate respondent Soufflet-America, Inc., is now, and during all of the times mentioned in said complaint has been, a corporation organized and existing under and by virtue of the laws of the State of New York, being a wholly owned subsidiary of said corporate respondent Lilli Ann Corp. The individual respondent Adolph P. Schuman is President of each of said corporate respondents and all said respondents maintained their principal offices and places of business at 2701 Sixteenth Street, San Francisco 3, California.

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 Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That the respondents Lilli Ann Corp., a corporation; Soufflet-America, Inc., a corporation; and the officers of each of said corporations, and Adolph P. Schuman, individually and as an officer of each of said corporations; and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the importation into the United States or the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "com-

merce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of fabrics or ladies' coats or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding or misrepresenting such products by:

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

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

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

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

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

3. Failing to set forth on fiber content labels or tags the common generic names of the fiber contents in their wool products;

4. Stamping, tagging, labeling, or otherwise identifying such products as containing the hair or fleece of the Cashmere goat without setting out in a clear and conspicuous manner on each such stamp, tag, label, or other means of identification, the percentage of such Cashmere content therein;

5. Failing to stamp, tag, label or otherwise identify such products in terms of the English language; provided that in the event such stamps, tags, labels, or other means of identification contain any of the required information in a language other than English, all of the required information shall appear both in such other language and in the English language.

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

and (b) of Section 3 of the Wool Products Labeling Act of 1939, and *Provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

It is further ordered, That the respondents Lilli Ann Corp., a corporation, Soufflet-America, Inc., a corporation, and the officers of each of said corporations, and Adolph P. Schuman, individually and as an officer of each of said corporations, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of fabrics, ladies' coats, or other products, do forthwith cease and desist from directly or indirectly:

1. Using the word "Cashmere" or any simulation thereof, either alone or in conjunction with other words, to designate, describe, or refer to any product which is not composed entirely of the hair of the Cashmere goat; *Provided, however*, That in the case of any product composed in part of the hair of the Cashmere goat and in part of other fibers or materials, such term may be used as descriptive of the Cashmere content if there are used in immediate connection or conjunction therewith, in letters of at lease equal size and conspicuousness, words truthfully designating such other constituent fibers or materials.

2. Representing in any manner that said products contain a greater percentage of Cashmere than is the fact.

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 22nd day of September, 1955, 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

BENEFICIAL STANDARD LIFE INSURANCE COMPANY

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

Docket 6309. Complaint, Mar. 11, 1955—Decision, Sept. 29, 1955

Consent order requiring a Los Angeles insurance company to cease misrepresenting the benefits and duration of its health and accident insurance policies.

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

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

Hill & Attias, of Beverly Hills, Calif., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (Title 15, U. S. Code, Sections 1011 to 1015, inclusive), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Beneficial Standard Life Insurance Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Beneficial Standard Life Insurance Company, is a corporation duly organized, 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 756 South Spring Street, Los Angeles 14, California.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged as an insurer in the business of insurance in commerce, as "commerce" is defined in the Federal Trade Commission Act, by entering into insurance contracts with insureds located in various States of the United States other than the State of California, in which States the business of insurance is not regulated by State law to the extent of regulating the practices of respondent alleged in this complaint to be illegal. Respondent maintains, and at all times men-

tioned herein has maintained, a substantial course of trade in said insurance policies in commerce between and among the several States of the United States.

Respondent during the two years last past has issued a variety of policies providing indemnification for losses resulting from accidental injury and sickness, including those designated and identified by it as forms:

1. World-Wide Hospital and Surgical Expense Policies. Form 82, 83–B, 85, 86, 86–B, 90, 91, 96, 96–A, 97.

2. Paramount Sickness and Accident Policy Form 223–B.

3. Double Superior Sickness and Accident Policy Form 42–D, 42–E, 42–G, 42–M.

4. Superior Sickness and Accident Policy Form 41–H.

5. Champion Sickness and Accident Policy Form 23–G, 23–H.

Respondent is licensed as provided by state law to conduct an insurance business in the States of Alabama, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Penna., South Carolina, Tennessee, Texas, Washington, Wyoming, and in the territories of Alaska and Hawaii. Respondent is not now, and for more than two years last past has not been, licensed as provided by state law to conduct an insurance business in any state other than those last above mentioned.

Respondent has sold a substantial number of its policies to insureds now residing in states other than those in which respondent has been duly licensed, as aforesaid, and respondent mails to such insureds or policyholders notices and receipts relating to the payment of renewal premiums and receives and accepts from such insureds or policyholders premiums mailed to it renewing the coverage purchased for the period of time covered by the premium submitted. The renewal of term insurance in this manner constitutes trade in commerce to the same extent as the original purchase of said insurance.

PAR. 3. In the course and conduct of said business and for the purpose of inducing the purchase of said insurance policies, respondent has made, and is now making numerous statements and representations concerning the benefits provided in said policies, by means of advertisements inserted in newspapers, and by circulars, folders, and other advertising material distributed throughout the United States. Typical, but not all inclusive of such statements and representations are the following:

1. PAYS 4 WAYS
SICKNESS :: HOSPITAL BENEFITS
ACCIDENT :: ACCIDENTAL DEATH
Regardless of Age to Limits of Policy

* * *

THESE BENEFITS NEVER GET LESS REGARDLESS OF AGE TO POLICY LIMIT

***Just put the big end of the [premium] notice, together with your payment into the envelope and drop it in the mail box. This is all you ever have to do to retain for yourself and family the fine protection your policy affords. ***

AGE 3 MONTHS TO 70 YEARS ELIGIBLE

2. NO MEDICAL EXAMINATION is required, and you do not have to belong to any employee group to secure this valuable protection. ***

3. $100.00 A MONTH will be paid you when you are sick and unable to work. It is payable (as long as you are disabled) after the third day and for as long as six months. You do not have to be confined in order to receive this benefit as long as you are under the care of a qualified doctor.

4. $1,000.00 DEATH BENEFIT will be paid to your beneficiary if you are fatally injured as a result of ANY asccident.

5. Beneficial PARAMOUNT SICKNESS AND ACCIDENT POLICY Benefits quoted below are for men under 55 paying monthly premiums of $5.

* * *

$1,000.00 DISMEMBERMENT BENEFIT will be paid for listed specific losses of limbs or eyesight from ANY accident.

* * *

$100.00 A MONTH will be paid to you from the first day you are disabled as the result of *any injury.*
This benefit is payable from the first day you are disabled and as long as you are unable to work up to two full years. This benefit is paid whether you are injured on the job or off the job.

* * *

$150.00 A MONTH will be paid you during the first month you are confined to a hospital whether by sickness or accident.

6a. Can YOU easily spare the $500.00 to $2,000.00 or more which may be required for Hospitals, Surgeons, and other expenses when YOU or a member of YOUR family have an operation.

CASH when *YOU* are SICK or INJURED for * * *

* * *

SURGEONS FEES

* * *

EVERY TIME YOU ARE HOSPITALIZED

6b. You'll like the *BIG CASH PAYMENTS* * * * up to $20.00 a day for hospitals * * * up to $300.00 for operations * * *

7. THE DOUBLE SUPERIOR SICKNESS & ACCIDENT POLICY Protects You From The First Day

* * *

SICKNESS BENEFITS START FROM FIRST DAY

PAR. 4. Through the use of such statements and representations and others of similar import and meaning not specifically set out herein respondent represents, and has represented, directly or by implication:

1. That the policies of insurance advertised in the manner set out in subparagraph 1, Paragraph 3, can be continued in effect indefinitely or to a specified age limit at the sole option of the insured so long as he makes the required premium payments within the time provided by said policies.

2. That in determining whether or not the cash benefits provided for in respondent's World-Wide Hospital and Surgical Expense Policies, the policies advertised in the manner set out in subparagraph 2 of Paragraph 3 will be paid for loss resulting from sickness or accident, the respondent will not take into consideration the physical condition of the insured prior to or at the time the policy is issued.

3. That the insured will be indemnified in the sum of $100.00 per month for a period of 6 months starting with the third day for losses resulting in disability caused by any and all sickness, which renders the insured unable to engage in his regular work.

4. That the beneficiary of the insured will be indemnified in the sum of $1,000.00 if insured should suffer loss of life due to a fatal injury as a result of any accident.

5. That respondent's Paramount Sickness & Accident policies provide for benefits for loss of a limb or eyesight due to any accident in addition to the regular accident benefits and hospital benefits provided. According to this representation such a policyholder who is under 55 years and has been paying a $5 monthly premium and who has lost a limb or his eyesight as a result of any accident and has been unable to work due to this disability for a period of two years would be entitled to benefits totaling $3,550.00 in all cases.

6a. That respondent's policies containing surgical benefits provide benefits which make paying surgery bills up to $2,000.00 easy.

6b. That respondent's policies containing surgical benefits provide for full indemnification for the actual cost of surgery for all operations up to $300.00.

7. That respondent's Double Superior policies completely cover the insured with respect to loss due to all sickness from the day said policies are issued.

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

1. Respondent's said policies cannot be continued in effect indefinitely or until a specified age limit at the sole option of the insured as

long as the required premiums are paid within the time provided. On the contrary respondent may cancel said policies at the end of any premium term by refusal to accept the renewal premium.

2. The respondent does take into consideration the physical condition of the insured prior to and at the time the policy was issued in determining whether or not the cash benefits provided by said insurance policies will be paid for loss resulting from sickness or accident after the effective date of the policy. The respondent's policies provide in effect that insured will not receive any benefits for loss caused by sickness, the cause of which is traceable to a condition existing prior to the effective date of said policies.

3. The indemnification contained in respondent's insurance policy 223–B, concerning which the representation set out in subparagraph 3, paragraph 4, was made, does not provide benefits to the insured in the sum of $100.00 per month for a period of 6 months starting with the third day for losses resulting in disability caused by any and all sickness, but on the contrary said respondent's policy provides that:

(*a*) No cash benefits, disability or otherwise, are payable for any loss resulting from sickness, if the cause of such sickness is traceable to a condition existing prior to or within 15 days after the effective date of the policy.

(*b*) Such cash benefits, if payable at all, cover periods of disability caused by sickness only if during such period the insured is prevented from attending to any kind of work or business.

(*c*) No cash benefits will be paid for a period of over three months as indemnification for loss due to any type of hernia, apoplexy, tuberculosis, cancer or ulcers.

(*d*) No benefits are payable for a loss contracted or incurred outside the limits of the United States, Canada, Alaska or Hawaii.

(*e*) No cash benefits are payable for any loss to which a contributing cause is War (whether declared or undeclared) or any act of war; any attempt by the insured to commit suicide, while sane or insane; insanity or mental infirmity of the insured; intentionally self-inflicted injury; taking of poison or inhaling gas, whether voluntarily or involuntarily; the insured riding a motorcycle; a venereal disease or its complications, an injury to or disease or ailment of the genito-urinary organs, not common to both sexes; or childbirth.

4. The beneficiary of insured will not be indemnified in the sum of $1,000.00 if insured should suffer loss of life due to a fatal injury as a result of any accident; on the contrary respondent's policies so represented provide that cash benefits are payable for loss of life only if such loss results directly and independently of all other causes from accidental bodily injury and occurs within 30 days of

the date of the accident. In no event will cash benefits be payable for loss of life if a contributing cause of such loss is hernia or any of the causes listed above in subparagraph (e) of Paragraph Five, or if the loss was incurred outside of the United States, Canada or Hawaii.

Further, a cash benefit of $1,000.00 is not payable for loss of life from acidental bodily injury, not otherwise excluded, if the insured shall carry with another company, corporation, association or society other insurance covering the same loss without giving written notice to the Company, then in that case the Company shall be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of like indemnity in all policies covering such loss, and for the return of such part of the premium paid as shall exceed the pro rata for the indemnity thus determined.

5. Respondent's Paramount Sickness and Accident policies do not provide for benefits for loss of a limb or eyesight due to any accident in addition to the regular accident benefits and hospital benefits provided. On the contrary these policies provide that no payment for dismemberment is due unless it occurred within thirty days of the accident and unless the loss is due to accidental bodily injury incurred directly and independently of any and all other causes.

The said policies also provide that the insured must make an election within 90 days of the accident whether to receive the benefits provided for loss of limbs or eyesight or the regular benefits for accident. In no case are both benefits payable.

A policyholder who is under 55 years and has been paying $5 monthly permium who has lost one limb immediately as a result of an accident and who has been unable to work due to this disability for two years, if he is entitled to any benefits, could receive under the provisions of those policies as little as $250.00 if he elected to take the dismemberment benefit, or $2,550.00 if he elected to take the regular accident and hospital benefits. In no case would he be entitled to receive both dismemberment and accident and hospitalization benefits totaling $3,550.00 as represented.

6. The policies referred to by the advertising claims set out in subparagraphs 6a and 6b of Paragraph Four (for example, Form No. 82) do not provide for full indemnification for the actual cost of surgery for all operations up to $300.00. For example, Policy Form No. 82 lists 185 different types of operations and sets a maximum amount payable for each. Of these the policy provides that indemnification up to $300.00 will be allowed only for one type of operation Appendectomy, and then only to policyholders paying the highest listed premium. This policy provides for a maximum payment of only $75.00 or less for 113 of the 185 listed types of operations. Such

benefits certainly will not make paying surgery bills up to $2,000.00 easy.

7. Respondent's Double Superior policies do not cover the insured with respect to loss due to all sickness and accidents from the day said policies are issued, but on the contrary respondent's policies provide that respondent assumes no liability for sickness or disease contracted or traceable to conditions existing before said policies have been in force for a period of 30 days, and assumes no liability for losses due to accident unless such loss results directly and independently of all other causes from accidental bodily injury.

PAR. 6. The use by the respondent of the aforesaid false and misleading statements and representations with respect to the terms and conditions of its said policies and its failure to reveal the limitations of said coverage found in said policies have had, and now have, the tendency and capacity to mislead and deceive, and have misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid statements and representations were and are true and to induce said portion of the purchasing public to purchase insurance coverage from the respondent because of said erroneous and mistaken belief.

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

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The charges contained in the complaint in this proceeding are that Beneficial Standard Life Insurance Company, a California corporation with its office and principal place of business located at 756 South Spring Street, Los Angeles 14, California, has violated the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (Title 15, U. S. Code, Section 1011 to 1015, inclusive), by falsely and deceptively advertising the indemnification for losses resulting from accidental injury and sickness, provided by insurance policies which it has offered for sale and sold in commerce.

Following issuance and service of the complaint and prior to the filing of an answer, respondent entered into a Stipulation For Consent Order with counsel supporting the complaint, which was approved by the Director, Buerau of Litigation, and transmitted to the hearing examiner.

This stipulation provides, among other things, that respondent admits all the jurisdictional allegations set forth in the complaint and

that the record herein may be taken as if findings of jurisdictional facts had been made in accordance with such allegations; that the stipulation, together with the complaint, shall constitute the entire record herein; that the complaint may be used in construing the order agreed upon, which may be altered, modified, or set aside in the manner provided by statute for orders of the Commission; that the signing of the stipulation is for settlement purposes only and does not constitute an admission by respondent that it has violated any law as alleged in the complaint; and that the order provided for in the stipulation and hereinafter included in this decision shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon.

All parties waive the filing of answer, hearing before a hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which respondent may be entitled under the Federal Trade Commission Act and the Rules of Practice of the Commission; and respondent specifically waives any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with the stipulation.

The order agreed upon conforms to the order contained in the notice accompanying the complaint, except for the omission therefrom of the provision "(B) Misrepresenting in any other manner or by any other means the terms or provisions of said insurance policies," and disposes of all the issues raised in the complaint. The Stipulation For Consent Order is therefore accepted, this proceeding is found to be in the public interest and the following order is issued:

It is ordered, That the Beneficial Standard Life Insurance Company, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any accident, health, hospital or surgical insurance policy, do forthwith cease and desist from representing, directly or by implication:

1. That said insurance policy may be continued in effect indefinitely or for any period of time, when, in fact, said policy provides that it may be cancelled by respondent or terminated under any circumstances over which insured has no control, during the period of time represented;

2. That no medical examination is required or that applicant's health is not a factor in securing insurance, unless the representation

is clearly and conspicuously limited in immediate connection therewith to insurance on claims not caused by previous conditions of health of the insured;

3. That said policy provides for indemnification to insured in cases of sickness or accident generally or in any or all cases of sickness or accident, when such is not the fact;

4. That said policy provides a monthly or other cash benefit to insured, when disabled by sickness or accident, for a longer period of time or in a larger amount than is in fact provided;

5. That said policy provides for the payment of certain benefits in addition to other benefits when such is not the fact;

6. That said policy will pay in full or in any specified amount or will pay up to any specified amount for any medical, surgical or hospital service unless the policy provides that the actual cost to the insured for that service will be paid in all cases up to the amount represented;

7. That said policy provides indemnification for losses caused by accident or sickness immediately upon the effective date of said policy when such is not the fact.

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 29th day of September, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Beneficial Standard Life Insurance Company, a corporation, 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.

IN THE MATTER OF

ILLINOIS COMMERCIAL MEN'S ASSOCIATION

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

Docket 6245. Complaint, Oct. 14, 1954—Decision, Oct. 4, 1955

Consent order requiring an insurance company in Chicago to cease misrepresenting the terms and benefits of its accident policies.

Before *Mr. Loren H. Laughlin*, hearing examiner.

Mr. Paul R. Dixon and *Mr. Robert R. Sills* for the Commission.

Mr. Richard K. Decker of *Lord, Bissell & Brook*, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (Title 15, U. S. Code, Sections 1011 to 1015, inclusive), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Illinois Commercial Men's Association, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Illinois Commercial Men's Association, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 332 South Michigan Avenue, Chicago 90, Illinois.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged as an insurer in the business of insurance in commerce, as "commerce" is defined in the Federal Trade Commission Act, by entering into insurance contracts with insureds located in various States of the United States other than the State of Illinois, in which States the business of insurance is not regulated by State law to the extent of regulating the practices of respondent alleged in this complaint to be illegal. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said insurance policies in commerce between and among the several States of the United States.

Generally, such policies provide that in consideration of a stated sum of money, sometimes referred to as a premium, and other considerations, respondent promises to indemnify the insured for losses resulting from accidental injury in accordance with the various terms and conditions of said policy.

Said policy has become known in the insurance business, and is sometimes hereinafter referred to as "Accident policy."

PAR. 3. Respondent is licensed, as provided by Illinois State law, to engage in the business of insurance as hereinbefore generally described in Paragraph 2 of this complaint, in the State of Illinois. Respondent is not now, nor has it been during the two years last past, licensed to engage in the business of insurance in any State of the United States other than the State of Illinois.

Respondent solicits business by mail in the various States of the United States in addition to the State of Illinois. As a result thereof it has entered into insurance contracts with insureds located in many states in which it is not licensed to do business. Respondent's business practices are not regulated by any of these states as it is not subject to the jurisdiction of such states.

PAR. 4. In the course and conduct of its business, respondent, during the two years last past and continuing to the present time, disseminated and caused to be disseminated, in the form of circulars and other printed and written matter, advertisements concerning the terms and provisions of its "Accident policy." These advertisements were disseminated through the United States mails in commerce between and among the various States of the United States. The purpose and effect of these advertisements was and is to induce members of the public to purchase one or more of the policies so advertised.

PAR. 5. In the course and conduct of its said business in said commerce, as aforesaid, the respondent has disseminated, among others of similar import and meaning, not herein set out, advertisements relating to its policy containing statements hereinafter set forth:

1. Although you must be between the age limits specified at the right at the time you apply for ICMA membership, there is NO limit to the age at which you may continue your protection.

2. *With ICMA you're protected 24 hours a day.* On or off the job, at home or on trips, ICMA covers you for EVERY accident you might have with only three exceptions: ICMA doesn't cover 1) suicide, 2) wartime military or naval service or acts of war, or 3) airplane accidents UNLESS you're a fare-paying passenger on a regularly scheduled commercial airliner, which IS covered.

These are the ONLY exceptions that ICMA has * * *, whereas many policies cover you only for certain specified accidents, leaving you unprotected for the common accidents likely to happen. With ICMA

you're covered around the clock—you never have to worry about whether a certain accident is covered or not—and this is mighty important to you since you can't select your accidents to suit your policy! THE IMPORTANT POINT is that these benefits cover you for ALL accidents * * * ANYTIME, ANYWHERE * * * with only three exceptions: * * * These are the ONLY exceptions that ICMA has.

3. GET THESE MAN-SIZED BENEFITS
WHEN AN ACCIDENT STRIKES YOU

These are the benefits provided by two ICMA policies. One ICMA policy would pay one-half as much for each of the benefits listed below. You may apply for either one or two policies.

$214.00 A MONTH FOR
TOTAL DISABILITY
($50.00 a week up to two years)
$107.00 A MONTH FOR
PARTIAL DISABILITY
($25.00 a week up to 6 months)
$10,000.00 FOR ACCIDENTAL DEATH
(At age 70, this benefit becomes $2,000)
$10,000.00 FOR ANY ONE OF THESE
ACCIDENTAL LOSSES:
(a) Both hands or feet
(b) Sight of both eyes
(c) One hand and one foot
$5,000.00 FOR ACCIDENTAL LOSS
OF ONE HAND OR FOOT
$2,500.00 FOR ACCIDENTAL LOSS
OF SIGHT OF ONE EYE
$100.00 FOR HERNIA

You'll get these generous benefits when an accident strikes:
$ 107.00—A MONTH for total disability
$ 53.00—A MONTH for partial disability
$5,000.00—IN CASE OF ACCIDENTAL DEATH
AND MANY OTHER BENEFITS RANGING UP TO $5,000
* * * as listed on the enclosed application.
Note that you can DOUBLE these benefits
simply by applying for two policies!

PAR. 6. Through the use of said statements and representations, and others of similar import and meaning not specifically set out in Paragraph 5, the respondent represents and has represented, directly or by implication, with respect to its said policy that:

1. The indemnity provided against loss by accident may be continued indefinitely at the option of the insured.

2. The indemnity provided covers all accidents, anytime, anywhere, with only three exceptions, namely: suicide; wartime military or naval service or acts of war; or airplane accidents unless the policyholder is a fare-paying passenger on a regularly scheduled commercial airline.

3. In the case of a single accident the insured is indemnified for total disability, partial disability, loss of life, limbs or vision, and hernia in any amount equal to the total of the payments provided for all these conditions.

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

1. The policy provides that it is cancellable by respondent; and that it is automatically terminated upon the payment to the policyholder for loss of limb or total loss of vision of eye or eyes.

2. Under the terms of respondent's policy no indemnification is provided:

(1) In any event unless the injury or injuries involved are "received through accidental means independently of all other cases";

(2) In the case of total disability, unless such injury or injuries also "independently of all other causes, immediately, wholly and continuously disable" the policyholder from "doing work of any kind or transacting any business";

(3) In the case of loss of life, loss of limb or total loss of vision of eye or eyes, unless such loss results, "independently of all other causes" from such injury or injuries and provided, further, "that such loss occurs within 90 days after the accident which caused it" and that the policyholder "shall have been wholly and continuously disabled from time of receiving said injuries" until the time of said loss.

3. The insured is not indemnified in case of a single accident in an amount equal to the total of the payments provided for all of the various conditions. On the contrary, such indemnification is limited to an amount smaller than such total by the following provisions in respondent's policy which restrict the amount of payments which will be made in case of a single accident:

(1) "All weekly indemnity for loss of time paid to a policyholder for bodily injuries resulting in loss of life, loss of vision or loss of limb shall be deducted from the sum payable for any such loss respectively. Any sum paid to a policyholder for loss of limb or loss of vision shall be deducted from the sum payable for loss of life."

(2) "In case hernia shall be the result of such bodily injuries (as have been heretofore described) the Association shall in no event be liable for more than Fifty Dollars indemnity."

(3) Indemnity for partial disability is provided only if such disability is preceded by total disability and the right to indemnity for such total disability shall have terminated.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements and representations with respect to the terms and

conditions of its said policy and its failure to reveal the limitations of its said coverage found in said policy have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid statements and representations were and are true and to induce said portion of the purchasing public to purchase insurance coverage from the respondent because of said erroneous and mistaken belief.

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

INITIAL DECISION AND ORDER BY LOREN H. LAUGHLIN, HEARING EXAMINER

The initial hearing in this proceeding was opened in Chicago, Illinois, on July 13, 1955, pursuant to due notice theretofore given to the parties. Thereupon counsel for both parties jointly moved the hearing examiner to defer the reception of evidence and to recess the initial hearing for thirty days to permit negotiation of an agreement containing a consent cease and desist order disposing of the whole proceeding. This motion was granted and the proceeding was ordered so continued by the hearing examiner, after having first carefully considered the nature of the proceeding, the requirements of the public interest, the representations of both parties and the probability of an agreement being reached by the parties which would result in a just disposition of all of the issues involved.

In accordance with the said order and within the time granted therefor, on August 4, 1955, counsel for both parties submitted to the hearing examiner for his approval an agreement for consent order, including a proposed order, such document having been properly executed both by counsel supporting the complaint and by the respondent by its vice president and by its attorneys of record. Said agreement bears date of July 13, 1955, and has been approved by the Director of the Commission's Bureau of Litigation.

Upon due consideration of said agreement the undersigned hearing examiner finds that said agreement has been properly prepared, approved, and submitted to him for his approval in accordance with the requirements of Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, effective on and after May 21, 1955.

The hearing examiner specially finds that by said agreement the parties have agreed:

That a true copy of the complaint issued against the respondent on October 14, 1954, was thereafter duly served by registered mail on the respondent; and that respondent is now and at all times mentioned therein has been a corporation organized and existing under the laws of the State of Illinois and having its principal place of business in Chicago, Illinois, as alleged in said complaint;

That the signing of this agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated any law as alleged in the complaint;

That respondent has admitted all the jurisdictional allegations set forth 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;

That respondent may withdraw the answer and both parties waive a hearing before a hearing examiner or the Commission, and all further and other procedure before the hearing examiner and the Commission to which the parties may be entitled under the Federal Trade Commission Act and the Rules of Practice of the Commission; and that the proposed order therein provided for shall have the same force and effect as if made after a full hearing with findings of fact and conclusions of law;

That respondent has also specifically waived any and all right, power, or privilege to challenge or contest the validity of the order to be entered in accordance with said agreement;

That the complaint may be used in construing the proposed order, which may be altered, modified or set aside in the manner provided by statute for orders of the Commission; and

That said agreement, together with the complaint, shall constitute the entire record herein; that said agreement shall be filed with the hearing examiner for his consideration in accordance with Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and that said order shall have no force and effect unless and until it becomes the order of the Commission.

The hearing examiner further finds from the complaint and said agreement that the Commission has jurisdiction over the person of respondent; that the Commission also has jurisdiction over the subject matter of this proceeding under the provisions of the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (Title 15, U. S. Code, Sections 1011 to 1015, inclusive); that the complaint alleges acts of respondent which are violative of the provisions of the Federal Trade Commission Act, in that it alleges in substance that respondent insurance company in the course of its business has

disseminated, and continues to disseminate, certain written false and misleading advertisements concerning the provisions, exceptions and limitations of its "Accident policy" by mail in interstate commerce in the various States of the Union other than in its domiciliary and sole licensing State of Illinois, in which other States respondent is not regulated by State law; and that such advertisements have the tendency to deceive and do deceive and have deceived a substantial portion of the purchasing public; that this proceeding is to the interest of the public; and that the proposed order conforms to the order set forth in the "Notice" portion of the complaint with the two exceptions that are recommended by counsel supporting the complaint, namely, that the words "health, hospital or surgical" should be properly deleted from the preamble of the proposed order as respondent sells accident insurance only; and that the general misrepresentation clause, Section (b) of said proposed order, should be properly deleted because it is unnecessary in view of the breadth of remainder of such proposed order. The hearing examiner takes official notice and finds that respondent is chartered only as an assessment accident insurance association under the laws of the State of Illinois and that the proposed order is appropriate and adequate for the prompt and complete disposition of this proceeding.

The agreement for consent order is therefore accepted by the hearing examiner and ordered placed on file, but neither it nor this initial decision and order shall become parts of the official record of this proceeding, or be published unless, and until, this initial decision and order are approved by, and become a part of the official decision and order of the Commission.

ORDER

It is ordered, That respondent, Illinois Commercial Men's Association, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any accident insurance policy, do forthwith cease and desist from:

(A) Representing, directly or by implication:

(1) That said insurance policy may be continued in effect indefinitely or for any period of time, when, in fact, said policy provides that it may be canceled by respondent or terminated under any circumstances over which insured has no control, during the period of time represented.

(2) That said policy provides for indemnification to insured in cases of accident generally or in any or all cases of accident, when such is not the fact.

(3) That said policy provides for the payment of certain benefits in addition to other benefits when such is not the fact.

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 4th day of October, 1955, 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.

IN THE MATTER OF

AMERICAN WHOLESALE FURNITURE COMPANY ET AL.

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

Docket 6258. Complaint, Nov. 3, 1954—Decision, Oct. 4, 1955

Consent order requiring dealers in Chicago to cease using the word "Wholesale" in their corporate name and representing falsely thereby that their merchandise, including furniture, rugs, appliances, and luggage, was sold to the general public at wholesale prices.

Before *Mr. Loren H. Laughlin*, hearing examiner.
Mr. William R. Tincher for the Commission.
Mr. Julius J. Schwartz, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that American Wholesale Furniture Company, a corporation, and Peter K. Barskis and Eleanora Barskis, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Wholesale Furniture Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 916 South Wabash Avenue, Chicago 5, Illinois. The individual respondents, Peter K. Barskis and Eleanora Barskis, are President and Secretary-Treasurer, respectively, of the corporate respondent. These individuals formulate, control and direct the practices and policies of said corporate respondent. Said individual respondents have their offices at the same place as the corporate respondent.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the business of offering for sale and selling furniture, rugs, appliances, luggage and other merchandise. A substantial percentage of such sales are made to members of the general public.

PAR. 3. In the course and conduct of their business, respondents cause and have caused substantial quantities of their merchandise, when sold to the aforesaid class of customers, to be transported from their place of business in the State of Illinois to the purchasers thereof located in various other States and maintain and have maintained a course of trade in their merchandise, with such customers, in commerce, among and between various States of the United States.

PAR. 4. In the conduct of their aforesaid business, respondents use and have used the name of the corporate respondent, American Wholesale Furniture Company, in radio broadcasts and in and on form letters, circulars, folders, invoices and cards designated as "Buyer's Pass," all of which have been and are circulated among or supplied to the aforesaid class of prospective purchasers.

PAR. 5. Through the use of the word "Wholesale" in and as a part of said corporate name, respondents represent, and have represented, that they operate as a wholesaler in dealing with the general public and that their merchandise is offered for sale and sold to members of the general public at wholesale prices.

PAR. 6. Said representation is and was false, misleading and deceptive. In truth and in fact, respondents do not operate as a wholesaler in dealing with the general public and the prices at which their merchandise is offered for sale and sold to the general public are not wholesale prices but are substantially greater than wholesale prices.

PAR. 7. Respondents are in direct and substantial competition with other corporations and with individuals and firms likewise engaged in the sale of merchandise of the same kind to the general public, in commerce, between and among various States of the United States.

PAR. 8. The use by respondents, as aforesaid, of the false, misleading and deceptive statement and representation has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statement and representation was and is true and to induce the purchase of respondents' merchandise as a result of such erroneous and mistaken belief. As a consequence, trade in commerce has been unfairly diverted to respondents from their competitors and injury has been and is being done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are and 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 AND ORDER BY LOREN H. LAUGHLIN, HEARING EXAMINER

Counsel supporting the complaint, and the attorney of record for respondents on August 5, 1955, submitted to the hearing examiner for his approval an agreement for consent order, including a proposed order, which will result in a just disposition of all of the issues involved in this proceeding. Such document has been properly executed by counsel supporting the complaint, by the respondent American Wholesale Furniture Company, a corporation, by its President, Peter K. Barskis, by the individual respondents, Peter K. Barskis, and Eleanora Barskis, and also by the attorney of record for all respondents. Said agreement bears date of July 28, 1955, and has been approved by the Director of the Commission's Bureau of Litigation.

Upon due consideration of said agreement, the proposed order contained therein, and the complaint, the undersigned hearing examiner finds that said agreement has been properly prepared, approved, and submitted to him for his consideration and approval in accordance with the requirements of Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, effective on and after May 21, 1955.

The hearing examiner specially finds that by the terms of said agreement:

All parties have agreed that a true copy of the complaint issued against the respondents on November 3, 1954, was thereafter duly served by registered mail on each of the respondents; that the respondent American Wholesale Furniture Company is a corporation organized, existing and having its principal place of business as alleged in the complaint and that the individual respondents are officers of said corporation and that they also have the same principal office and place of business as said corporation.

Respondents have admitted all the jurisdictional allegations set forth in the complaint and have agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations.

All parties have agreed that this agreement is for settlement purposes only and does not constitute an admission by the respondents that they have engaged in any method, act or practice violative of law.

All parties have expressly waived the filing of answer, a hearing before a hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing ex-

aminer and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

Respondents have further agreed that the proposed order therein provided for shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereof, and specifically waive any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with said agreement.

All parties have further agreed that said agreement, together with the complaint, shall constitute the entire record herein and shall be filed with the hearing examiner for his consideration in accordance with Section 3.21 of the Commission's Rules of Practice for Adjudicative Proceedings; that the complaint may be used in construing the terms of the proposed order which may be altered, modified or set aside in the manner provided by statute for the orders of the Commission; and that the proposed order may be entered upon the said record without further notice.

The hearing examiner further finds from the complaint and said agreement that the Commission has jurisdiction over the person of each and all of the respondents and that it has jurisdiction over the subject matter of this proceeding under the Federal Trade Commission Act; that the complaint alleges acts of respondents which have been and are violative of the provisions of the Federal Trade Commission Act; that this proceeding is to the interest of the public; that the proposed order conforms substantially to and does not depart in any major respect from the order contained in the "Notice" portion of the complaint, the form of said proposed order having been slightly revised in order to more explicity reflect the intent and meaning of the original order, and such proposed order is fully appropriate and adequate for the prompt and complete disposition of this proceeding.

The agreement for Consent Order is therefore accepted by the hearing examiner and ordered placed on file, but neither it nor this initial decision and order shall become part of the official record of this proceeding or be published unless, and until, this initial decision and order are approved by the Commission and become final and a part of its official decision and order in this proceeding.

ORDER

It is ordered, That respondents, American Wholesale Furniture Company, a corporation, and its officers, and Peter K. Barskis and

Eleanora Barskis, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any other corporate or other device, in connection with the offering for sale, sale or distribution of merchandise to the general public, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "wholesale" or any other word or words of similar import as a part of any corporate or trade name, or representing in any manner, directly or indirectly, that they operate as a wholesaler.

2. Representing that the prices at which they offer to sell or sell their merchandise are wholesale prices.

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 did, on the 4th day of October, 1955, 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

FUELGAS CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF THE CLAYTON ACT AND THE FEDERAL TRADE COMMISSION ACT

Docket 6362. Complaint, June 7, 1955—Decision, Oct. 6, 1955

Consent order requiring a corporation with main office at Chester, N. Y., and branch offices in Pennsylvania and New Jersey, to cease selling liquefied petroleum gas, its "Homgas" steel containers for storage and transportation thereof, gas service equipment, and gas burning appliances, and leasing of its said steel containers and gas service equipment on condition that the purchaser-distributor or lessee not use or deal in competitors' goods; and to cease threatening to cancel, and actually canceling, distributors' contracts and otherwise intimidating distributors unless they rigidly adhered to such exclusive-dealing contracts.

Before *Mr. William L. Pack*, hearing examiner.
Mr. Andrew C. Goodhope for the Commission.
Levine & Levine, of Hurleyville, N. Y., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress commonly known as the Clayton Act, the Federal Trade Commission having reason to believe that Fuelgas Corporation, a corporation, Morris Birnbaum and Daniel Birnbaum, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of Section 3 of said Act (15 U.S.C.A. Sec. 14), and pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission having reason to believe that said respondents have violated the provisions of Section 5 of said Act (15 U.S.C.A. Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint stating its charges as follows:

COUNT I

PARAGRAPH 1. Respondent Fuelgas Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business located at Chester, New York, with branches located at Moosic, Pennsylvania; Frackville, Pennsylvania; Honesdale, Pennsylvania; and Clinton, New Jersey.

Respondent Morris Birnbaum, an individual, is president of Fuelgas Corporation. Respondent Daniel Birnbaum, an individual, is secretary-treasurer of respondent Fuelgas Corporation. Both said individual respondents at all times hereinafter mentioned have controlled and directed the policies and practices of corporate respondent, Fuelgas Corporation, including the methods, acts and practices mentioned herein.

PAR. 2. Respondents are now, and for many years have been, engaged in the purchase, sale and distribution of liquefied petroleum gas (hereinafter sometimes referred to as "gas"), steel containers for storage and transportation of liquefied petroleum gas, gas service equipment consisting of equipment necessary to distribute gas from gas cylinders to one or more gas burning appliances, and gas burning appliances such as stoves, refrigerators and hot water heaters. Such products are sold under respondents' trade name, "Homgas."

Respondents' business operations are carried on in southeastern New York State, eastern and northeastern Pennsylvania and northern and western New Jersey where all the distributors to whom its products are sold are located. Respondents' total sales are substantial, amounting to $894,000 in 1952 and respondents are an important and substantial competitive factor in the area in which they carry on their business.

The distributors to whom respondents sell their products are small independent businesses which in turn sell the products purchased from the respondents to consumers located in each distributor's territory. Respondents' "Distributor Agreement" used in contracting with the majority of respondents' distributors provides as follows:

> 20. The Distributor agrees not to enter into any contract, undertaking or agreement of any kind as agent of the company, nor to incur any liability of any kind on behalf of the Company, nor directly or indirectly, to hold himself or itself out as the Company's agent, nor permit it to be understood directly or indirectly that the Distributor has any authority to act for the Company or has any connection with the Company other than as herein specifically set forth and described; it being specifically understood and agreed that the Distributor is not the agent or employee of the Company in any respect whatever.
>
> 31. Neither the Distributor nor any of the Distributor's servants, agents or employees, nor any individual whose compensation for services is paid by the Distributor, directly or indirectly, expressly or by implication, shall be deemed an employee of the Company, nor shall any of them be deemed to be employed by the Company for any purpose whatsoever * * *.

PAR. 3. Respondents now sell and distribute, and for many years have been selling and distributing, their above-described products to approximately 90 distributors of liquefied petroleum gas located throughout the States of New York, New Jersey and Pennsylvania

and respondents purchase these products, from sources without the State of New York and cause such products when sold or distributed by respondents to be transported from the place of purchase or storage to purchasers thereof located in States other than the place of purchase or storage and there is now and has been for many years a constant current of trade in commerce in said products between and among the various States of the United States.

PAR. 4. In the course and conduct of their business as herein described, respondents have been for many years in substantial competition in the sale and distribution of liquefied petroleum gas, cylinders for storing and transporting such gas, gas service equipment and gas burning appliances in commerce between and among the various States of the United States with other corporations, persons, firms and partnerships.

PAR. 5. In the course and conduct of their business in commerce, above described, the respondents have made sales and contracts for sale of their liquefied petroleum gas, steel containers for storage and transportation of said gas, gas service equipment and gas burning appliances, and have made leases of their steel containers for storage and transportation of said gas and gas service equipment, and is still making such sales, contracts for sale and leases, on the condition, agreement or understanding that the purchasers or lessees thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the respondents.

The respondents have entered into approximately 90 such contracts for sale and leases with independent dealers and distributors of such products. Typical of such contract provisions are those contained among others in respondents' standard "Distributor Agreement," pursuant to the terms of which respondents have contracted to sell their product to the majority of their distributors, as follows:

12. No liquefied petroleum gas shall be kept, stored, delivered or sold by the Distributor except in the Company's standard cylinders bearing the trade-mark "Homgas."

28. The Distributor shall, at no time, deliver, sell, cause, permit to be removed from inventory any Propane Liquefied Petroleum Gas, unless the same is contained in cylinders, containers, tanks, or receptacles bearing the trade-mark, "Homgas," plainly and conspicuously marked thereon, in a manner to be designated by the Company.

29. The Distributor shall not store, display, deliver, sell or offer for sale any gas or gas burning appliances intended, adapted or which may be adapted to the use of Propane, Butane or other natural or manufactured gas, unless the same is obtained from the Company, nor unless the Company shall desire or permit such articles to be marketed by the Distributor.

This "Distributor Agreement" provides that the contract shall be for a five-year term from the date of signing and is renewed for successive yearly periods unless either party at least 30 days prior to the expiration of the original or any renewal term, terminates the agreement as of the expiration of the term during which said notice was given.

In addition, respondents' "Commercial Propane Sales Contract" used by respondents in contracting to sell to other of their distributors contains, among others, the following provision:

> Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller all of Buyer's liquefied petroleum gas requirements in Buyer's containers to be known and marked under the brand name and trade-mark ....., and Buyer's liquefied petroleum gas equipment, according to the terms and conditions hereinafter set forth.

PAR. 6. Competitors of respondents have been, and are now, unable to make sales of similar products to those sold or leased by respondents to respondents' customers which they could have made but for the conditions, agreements, and understandings described above in Paragraph 5. Customers of respondents who have entered into such contracts of sale or lease agreements have been restricted and hampered in their businesses as a result of being unable to purchase or lease similar commodities at lower prices, at more convenient locations, or upon other more favorable terms than those granted by respondents.

PAR. 7. The effect of such sales and contracts for sale, and leases on such conditions, agreements, or understandings, may be to substantially lessen competition in the line of commerce in which the respondents are engaged and in the line of commerce in which the customers, purchasers, and lessees of respondents are engaged; and may be to tend to create a monopoly in respondents in the line of commerce in which the respondents have been, and are now, engaged.

PAR. 8. The aforesaid acts and practices of respondents constitute a violation of the provisions of Section 3 of the Clayton Act.

COUNT II

PARAGRAPHS 1, 2, 3, 4 and 5 of Count I of this complaint are hereby incorporated into this Count II of this complaint to the same extent and with the same effect as though fully set out herein.

PAR. 6. Respondents in the course and conduct of their business in commerce have employed and now employ the following methods, acts, and practices in competition:

(*a*) Threatening their distributors with cancellation of their contracts with respondents and actually cancelling such contracts unless

such distributors rigidly adhere to their exclusive dealing contracts with respondents, described above in Paragraph 5.

(*b*) Threatening to enforce and actually enforcing provisions in the contract between respondents and their distributors to the effect that such distributors shall not re-enter the same business in a specified territory for a number of years following such cancellation or threatened cancellation, unless such distributors rigidly adhere to their exclusive dealing contracts with respondents, described above in Paragraph 5. The respondents' "Distributor Agreement" in this respect provides as follows:

26. The Distributor expressly covenants and agrees that he will not, during the term of this contract nor for five (5) years after the termination thereof, whether such termination results or is brought about by mutual agreement, under the terms of this contract, or otherwise, directly or indirectly, engage in the business, occupation or trade of selling, marketing, bottling, or otherwise dealing in Propane or Butane gas or gases, natural or manufactured, which is used, intended or designed for cooking, heating, or refrigeration, nor in the sale, distribution, marketing or servicing of any gas tank, gas stove, gas heater, gas range, gas regulator, gas cylinder, or any other appliance, fixture, or material whatever used or intended to be used in connection with distribution, marketing, consumption or use of such gas or gases, either as owner, partner, employer, employee, stockholder, director, officer, clerk, principal, agent, or in any other relation or capacity whatever, nor shall he perform similar services or be similarly engaged for himself or for any person, firm, or corporation engaged in a like or competing line of business as that in which the Company is now or may during the term of this agreement be engaged, in the territory assigned by this agreement to the Distributor as well as in the States of New York, New Jersey, Pennsylvania, and Maryland. During the term of this contract and during the period of five (5) years following its termination, the Distributor agrees and covenants that he shall and will not furnish or disclose to anyone the names of any consumer accounts with trade secrets of the Company nor of other information obtained by the Distributor during the period of this contract or in the course of the Distributor's performance and engagement therein.

Respondents' "Commercial Propane Sales Contract" provides in this respect as follows:

12. Upon such termination or cancellation or breach of this agreement as above provided, Buyer hereby agreed that he will not thereafter establish or conduct, manage, be employed in or be directly or indirectly financially or otherwise interested in the sale and the distribution of liquefied petroleum gases or equipment within a radius of fifty (50) miles from his place or places of business within the territory served under this contract for a period of three (3) years from date of such termination, cancellation or breach.

The result of these threats and actual enforcement have made respondents' distributors subservient to respondents' wishes and will as to the conduct of their businesses lest they be subjected to the

onerous and oppressive provisions of said contracts which if enforced result in the entire loss of their business and inability to continue such business with any other supplier or suppliers of similar products.

PAR. 7. The acts and practices of respondents, as herein alleged, are all to the injury and prejudice of competitors of respondents, of customers and purchasers of respondents, and of the public; have a tendency and effect of obstructing, hindering, and preventing competition in the sale and distribution of liquefied petroleum gas, steel containers used for storage and transportation of liquefied petroleum gas, gas service equipment and gas burning appliances, in commerce, within the intent and meaning of the Federal Trade Commission Act; have a tendency to and have obstructed and restrained such commerce in such merchandise, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges respondents with the use of certain practices in violation of the Clayton Act and the Federal Trade Commission Act. An agreement 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 the answer heretofore filed shall be considered as having been withdrawn, and that the complaint and agreement shall constitute the entire record in the proceeding; 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 to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of 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 made after a full hearing, presentation of evidence and findings and conclusions thereon, respondents specifically waiving any and all right, power and privilege to challenge or contest the validity of such order; that the order may be altered, modified or set aside in the manner provided by statute for other orders of the Commission; and that the signing of 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 appropriate

basis for settlement and disposition of the proceeding, the agreement is hereby accepted and made a part of the record, the following jurisdictional findings made, and the following order issued:

1. Respondent Fuelgas Corporation is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business at Chester, New York. Respondents Morris Birnbaum and Daniel Birnbaum are respectively president and secretary-treasurer of the corporation.

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

ORDER

It is ordered, That the respondents, Fuelgas Corporation, a corporation, Morris Birnbaum, Daniel Birnbaum, individually and as officers of said corporation, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of liquefied petroleum gas, steel containers for such gas, gas service equipment, or gas burning appliances or in connection with the leasing of such gas containers or gas service equipment in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Selling or making any contract for sale or lease of any such products on the condition, agreement or understanding that the purchaser or lessee thereof shall not use, deal in or sell such products obtained or leased from any competitor or competitors of respondents;

2. Enforcing or continuing in operation or effect any condition, agreement or understanding in, or in connection with, any existing contract of sale or lease, which condition, agreement or understanding is that the purchaser of such products from respondents will deal in and sell or lease only such products supplied by respondents and not those of a competitor or competitors of respondents.

It is further ordered, That the respondents, Fuelgas Corporation, a corporation, Morris Birnbaum and Daniel Birnbaum, individually and as officers of said corporation, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of liquefied petroleum gas, steel containers for such gas, gas service equipment, or gas burning appliances or in connection with the leasing of such gas containers or gas service equipment in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or making any contract for sale or lease of any such products on the condition, agreement, or understanding that the pur-

chaser or lessee thereof shall not use, deal in, or sell such products obtained or leased from any competitor or competitors of respondents;

2. Enforcing or continuing in operation or effect any condition, agreement, or understanding in, or in connection with, any existing contract of sale or lease, which condition, agreement, or understanding is that the purchaser of such products from respondents will deal in and sell or lease only such products supplied by respondents and not those of a competitor or competitors of respondents;

3. Cancelling, or directly or by implication threatening the cancellation of, any contract or franchise or selling agreement with respondents' distributors, or with any other customers, for the sale or lease of said products, because of the failure of such purchasers to purchase or deal exclusively in the products sold and distributed by respondents.

4. Enjoining or threatening to enjoin any of respondents' distributors or customers from engaging in the liquefied petroleum gas business for the period of five years, three years or any other period, where such actions are taken by respondents for the purpose or having the effect either of coercing or intimidating such distributors into dealing in respondents' products to the exclusion of products of competitors or for the purpose or having the effect of retaliating against such distributors for their failure or refusal to purchase or deal exclusively in the products sold and distributed by respondents.

5. The performance of any act of intimidation or coercion either through statements, oral or written, made by representatives of respondents either at the time when a distributor agrees to purchase or lease any products from respondents or during the course of any calls made upon distributors or customers at their places of business or at any other time or place, or the use of any other plan, practice, system or method of doing business for the purpose or having the effect of intimidating or coercing the respondents' distributors or other customers to purchase or lease the products or merchandise in which they deal, exclusively from respondents.

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 6th day of October, 1955, 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

NATIONAL FOOD BROKERS ASSOCIATION ET AL.

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

Docket 6363. Complaint, June 13, 1955—Decision, Oct. 7, 1955

Consent order requiring a trade association and its 1750 food broker members—including more than 40 per cent of all the food brokers in the United States, and more than 75 per cent of all whose business did not include buying and selling for their own account—to cease concertedly restraining competition by refusing to solicit business from each other's customers, disciplining members who did not cooperate, denying membership to outsiders for the same reason, and engaging in other restrictive practices.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Raymond L. Hays and *Mr. William W. Rogal* for the Commission.

Williams, Myers & Quiggle, of Washington, D. C., for respondents.

Howie & Robertson, of New York City, also represented John G. Paton 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 respondents named and referred to in the caption hereof and hereinafter more specifically named, designated and described, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent National Food Brokers Association, sometimes hereinafter referred to as respondent NFBA or respondent Association, is a voluntary, unincorporated association with its office and principal place of business located at 527 Munsey Building, Washington 4, D. C.

The membership of respondent NFBA is composed of corporations, partnerships and individuals whose business consists of negotiating the sale of food and grocery products for and on account of the sellers of such merchandise and whose compensation is a commission or brokerage paid by the seller. The member corporations, partnerships and individuals are known as food brokers and the sellers for whom they act are referred to by the aforesaid food brokers as principals.

PAR. 2. The control, direction and management of respondent NFBA's business, affairs, policies, practices and actions are vested in respondent NFBA's Officers, Executive Committee, Advisory Committee and members.

Respondent Watson Rogers has occupied the office of President of respondent NFBA from 1946 to the present time. His address is 527 Munsey Building, Washington 4, D. C.

The President of respondent NFBA is the chief administrative officer of respondent Association and is appointed by aforesaid Executive Committee. The President is responsible for carrying out the policies and decisions of aforesaid Executive Committee. The title of President was assigned to the incumbent of the chief administrative office of respondent NFBA in 1946. Previous incumbents of the chief administrative office of respondent NFBA bore the title of Secretary.

The Executive Committee of respondent NFBA is the governing body of respondent Association. It is composed of seven individuals who are either members or employees, officers or owners of firms holding membership in respondent NFBA.

Respondent Truman F. Graves is the National Chairman and Chairman of the Executive Committee of respondent NFBA; his address is 3464 East Marginal Way, Seattle 4, Washington.

Respondent Walter H. Burns, Sr., is the First Vice-Chairman and a member of the Executive Committee of respondent NFBA; his address is Penn Avenue and Dahlem Street, Pittsburgh 6, Pennsylvania.

Respondent George E. Dillworth is the Second Vice-Chairman and a member of the Executive Committee of respondent NFBA; his address is 1448 Wabash Avenue, Detroit 16, Michigan.

Respondent W. Sloan McCrea is the Member at Large of the Executive Committee of respondent NFBA; his address is 1220 South Miami Avenue, Miami 32, Florida.

Respondent Willis Johnson, Jr., was, in 1954, National Chairman and is at present a member of the Executive Committee of respondent NFBA; his address is 520 East Markham Street, Little Rock, Arkansas.

Respondent E. Norton Reusswig was, in 1953, National Chairman and is at present a member of the Executive Committee of respondent NFBA; his address is 105 Hudson Street, New York 13, New York.

Respondent Clarence Wendt was, in 1952, National Chairman and is at present a member of the Executive Committee of respondent NFBA; his address is 1016 Colcord Building, Oklahoma City 2, Oklahoma.

The Advisory Committee of respondent NFBA is composed of all past holders of respondent Association's highest elective office. Prior to 1946, the incumbent of this office bore the title of President; since 1946, the incumbent has borne the title of National Chairman.

Respondent Roy C. Ossman was National Chairman and a member of the Executive Committee of respondent NFBA during the year 1951 and is at present a member of its Advisory Committee; his address is 1468-70 West 9th Street, Cleveland 13, Ohio.

Respondent Ed. W. Jones was the National Chairman and a member of the Executive Committee of respondent NFBA during the year 1950 and is at present a member of its Advisory Committee; his address is 20 W. 9th Street Building, Kansas City 5, Missouri.

Respondent Ralph D. Davies was the National Chairman and a member of the Executive Committee of respondent NFBA during the year 1949 and is at present a member of its Advisory Committee; his address is 407 Provident Bank Building, Cincinnati 2, Ohio.

Respondent Jack L. Gentry was National Chairman and a member of the Executive Committee of respondent NFBA during the year 1948 and is at present a member of its Advisory Committee; his address is 150 N. Spring Street, Spartanburg, South Carolina.

Respondent Elwin W. Peterson was National Chairman and a member of the Executive Committee of respondent NFBA during the year 1947 and is at present a member of its Advisory Committee; his address is 615 Oakland Avenue, Birmingham, Michigan.

Respondent John O. Crawford was National Chairman and a member of the Executive Committee of respondent NFBA during the year 1946 and is at present a member of its Advisory Committee; his address is 4814 Loma Vista Avenue, Los Angeles 58, California.

Respondent H. Wayne Clarke was President and a member of the Executive Committee of respondent NFBA during the years 1942 to 1945, inclusive, and is at present a member of its Advisory Committee; his address is 1631 K Street, N.W., Washington 6, D. C.

Respondent A. J. Campbell was President and a member of the Executive Committee of respondent NFBA during the year 1941 and is at present a member of its Advisory Committee; his address is 216 E. 7th Street, Charlotte 1, North Carolina.

Respondent Harry L. Wagner was President and a member of the Executive Committee of respondent NFBA during the year 1940 and is at present a member of its Advisory Committee; his address is 406 Market Street, St. Louis 2, Missouri.

Respondent James J. Reilley was President and a member of the Executive Committee of respondent NFBA during the year 1938 and

is at present a member of its Advisory Committee; his address is 905-06 Lafayette Building, Philadelphia 6, Pennsylvania.

Respondent T. H. McKnight, Sr., was President and a member of the Executive Committee of respondent NFBA during the year 1937 and is at present a member of its Advisory Committee; his address is 405 McCall Building, Memphis 2, Tennessee.

Respondent Howard L. Scott was President and a member of the Executive Committee of respondent NFBA during the year 1935 and is at present a member of its Advisory Committee; his address is 401 Harris Avenue, Bellingham, Washington.

Respondent George R. Bennett was President and a member of the Executive Committee of respondent NFBA during the year 1933 and is at present a member of its Advisory Committee; his address is 434 Delaware Avenue, Buffalo 2, New York.

Respondent Wilbur R. Orr was President and a member of the Executive Committee of respondent NFBA during the year 1930 and is at present a member of its Advisory Committee; his address is 507 Temple Building, Danville, Illinois.

Among the members of respondent NFBA are the following named persons, partnerships and corporations:

Truman F. Graves and Winston W. Chambers are copartners doing business under the firm name and style of Graves-Chambers Co., a partnership, with their office and principal place of business located at 3464 East Marginal Way, Seattle 4, Washington, and as such and individually are named as respondents herein.

Respondent Walter H. Burns Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at Penn Avenue and Dahlem Street, Pittsburgh 6, Pennsylvania.

Jean N. Bistline, Roy M. Bistline and Bessie M. Bistline are copartners doing business under the firm name and style of Bistline Brokerage Company, a partnership, with their office and principal place of business located at 120 W. 13th Avenue, Denver 4, Colorado, and as such and individually are named as respondents herein.

Respondent Earl V. Wilson Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1220 South Miami Avenue, Miami 32, Florida.

Willis Johnson, Jr., and William M. Powell are copartners doing business under the firm name and style of Willis Johnson & Company, a partnership, with their office and principal place of business located

at 520 East Markham Street, Little Rock, Arkansas, and as such and individually are named as respondents herein.

Harold J. Lestrade, E. Norton Reusswig, Sidney Kahn and Herbert Davies are copartners doing business under the firm name and style of Lestrade Brothers, a partnership, with their office and principal place of business located at 105 Hudson Street, New York 13, New York, and as such and individually are named as respondents herein.

Ed Allison and Clarence Wendt are copartners doing business under the firm name and style of Allison & Wendt, a partnership, with their office and principal place of business located at 1016 Colcord Building, Oklahoma City 2, Oklahoma, and as such and individually are named as respondents herein.

Respondent The Paul E. Kroehle Co. is a corporation, organized, 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 1468-70 West 9th Street, Cleveland 13, Ohio.

Respondent Meinrath Brokerage Co. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 20 West 9th Street Building, Kansas City 5, Missouri.

Respondent Ralph D. Davies, Inc. is a corporation, organized, 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 407 Provident Bank Building, Cincinnati 2, Ohio.

Respondent Jack L. Gentry is a sole proprietor doing business under the firm name and style of Jack L. Gentry, with his office and principal place of business located at 150 North Spring Street, Spartanburg, South Carolina.

Respondent Peterson Sales, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 615 Oakland Avenue, Birmingham, Michigan.

Calvin H. Baker, John O. Crawford and James Bishop are copartners doing business under the firm name and style of Baker-Crawford-Bishop, a partnership, with their office and principal place of business located at 4814 Loma Vista Avenue, Los Angeles 58, California, and as such and individually are named as respondents herein.

H. Wayne Clarke and G. Leaman are copartners doing business under the firm name and style of Walter Leaman Company, a partnership, with their office and principal place of business located at 1631 K Sreet, N.W., Washington 6, D. C., and as such and individually are named as respondents herein.

Respondent A. J. Campbell is a sole proprietor doing business under the firm name and style of A. J. Campbell Company, with his office and principal place of business located at 216 East 7th Street, Charlotte 1, North Carolina.

Respondent Carter Wagner Brokerage Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 406 Market Street, St. Louis 2, Missouri.

Respondent James J. Reilley is a sole proprietor doing business under the firm name and style of James J. Reilley & Associates, with his office and principal place of business located at 905-06 Lafayette Building, Philadelphia 6, Pennsylvania.

T. H. McKnight, Sr., T. H. McKnight, Jr. and J. M. McKnight are copartners doing business under the firm name and style of T. H. McKnight & Sons, a partnership, with their office and principal place of business located at 405 McCall Building, Memphis 2, Tennessee and as such and individually are named as respondents herein.

Respondent Deming & Gould Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 401 Harris Avenue, Bellingham, Washington.

Respondent George R. Bennett Company, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 434 Delaware Avenue, Buffalo 2, New York.

Respondent Wilbur R. Orr is a sole proprietor doing business under the firm name and style of W. R. Orr and Company, with his office and principal place of business located at 106 North Vermilion Street, Danville, Illinois.

T. F. Robbins, Jr. and L. D. Greenwood are copartners doing business under the firm name and style of Robbins-Greenwood Company, a partnership, with their office and principal place of business located at 7502 Katy Road, Houston 24, Texas, and as such and individually are named as respondents herein.

Respondent Eldridge Brokerage Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 1513 W.O.W. Building, 14th and Farnam Streets, Omaha 2, Nebraska.

Respondent The John G. Paton Co., Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 630 5th Avenue, New York 20, New York.

Respondent Rodway Sales Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 99 Hudson Street, New York 13, New York.

J. P. Wier and J. Neville Wier are copartners doing business under the firm name and style of J. P. Wier Brokerage Company, a partnership, with their principal place of business located at 2301 First Avenue North, Birmingham, Alabama, and as such and individually are named as respondents herein.

Respondent Clarence A. Klag is a sole proprietor doing business under the firm name and style of Clarence A. Klag Company, with his office and principal place of business located at 4 Huron Street, Toledo 4, Ohio.

Respondent Kierce & Dillworth, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 1448 Wabash Avenue, Detroit 16, Michigan.

The entire membership of respondent NFBA consists of approximately 1750 individuals, partnerships and corporations and constitutes a class so numerous as to make it impracticable to specifically name them all as respondents herein. The individuals, partnerships, and corporations hereinbefore specifically named as respondents in various capacities in Paragraph 2 are fairly representative of the class composed of all the members of respondent NFBA and are herewith and hereby made respondents as representatives of a class composed of all NFBA members. Those members of respondent NFBA, as represented by the respondents hereinbefore specifically named in Paragraph 2, are hereby made respondents as though specifically named herein and, together with the specifically named members of respondent NFBA, are sometimes hereinafter referred to as respondent NFBA members.

PAR. 3. In the course and conduct of their respective businesses various respondent NFBA members, acting for and on behalf of their respective principals, secure orders for food and grocery products from buyers, many of which are located in States of the United States other than the States in which the offices of such respondent NFBA members are located, and in the District of Columbia.

Such respondent NFBA members transmit such orders to their respective principals, many of which are located in States of the United States other than the States in which the offices of such respondent NFBA members are located, and in the District of Columbia.

Pursuant to such orders, aforesaid principals, acting as sellers, transport, or cause to be transported, food and grocery products to

aforesaid buyers, many of which are located in States of the United States other than the State of origin of such shipments, and in the District of Columbia.

Such respondent NFBA members are and were, during the period covered by this complaint, engaged in commerce, as "commerce" is defined by the Federal Trade Commission Act, between and among the several States of the United States and in the District of Columbia.

PAR. 4. One or more of respondent NFBA members are located in each of the States of the United States and in the District of Columbia.

The total membership of respondent NFBA consists of more than forty percent (40%) of all food brokers located in the United States.

The total membership of respondent NFBA consists of more than seventy-five percent (75%) of all food brokers located in the United States whose business does not include buying and selling for their own account.

Respondents possess the capacity, ability and means to lessen, restrain and restrict actual and potential competition between and among themselves and others and in fact have lessened, restrained and restricted actual and potential competition in the manner and to the extent herinafter described.

PAR. 5. Each of respondent NFBA members is and was in competition with one or more other respondent NFBA members in the acquisition and retention of the business of principals who sell food and grocery products in commerce between and among the several States of the United States and in the District of Columbia except to the extent that actual and potential competition has been hindered, lessened, restricted, restrained and forestalled by the unfair methods and practices hereinafter set forth.

PAR. 6. Respondent NFBA, respondent Watson Rogers, and the respondent members of the NFBA's Executive Committee and Advisory Committee, who are more particularly defined and described in Paragraph 2 herein, participated in, aided, abetted, furthered and cooperated with the other respondents in establishing and carrying out the understandings, agreements, combinations and planned common course of action hereinafter set forth.

PAR. 7. Respondent NFBA members, acting under the auspices of respondent NFBA, its officers, Executive Committee and Advisory Committee, and, in some instances, acting between and among themselves, since about 1943 and continuing to the present, have agreed and combined among themselves and with others and have united in, acquiesced in and pursued a planned common course of action to adopt,

carry out and maintain in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the several States of the United States and in the District of Columbia, certain restricting, restraining and unfair policies and practices and unfair methods of competition which are more particularly described as follows:

1. Prohibiting, forbidding and refraining from the solicitation of the representation, as food brokers, of sellers of food and grocery products when such sellers were already represented by one or more respondent NFBA members.

2. Adopting a policy and practice whereby respondent NFBA members who solicited such representation of aforesaid sellers were disciplined, reprimanded or suspended from membership in respondent NFBA.

3. Adopting a policy and practice whereby applicants for membership in respondent NFBA were refused membership for the reason that such applicants solicited such representation of aforesaid sellers.

PAR. 8. The agreements, understandings, combination and planned common course of action between and among the respondents, and the acts and practices done in furtherance thereof and in pursuance thereto, as hereinbefore alleged, have a dangerous tendency unduly to hinder and restrain competition between and among respondent NFBA members and between such members and other food brokers with respect to the representation of sellers of food and grocery products in commerce and with respect to the sale and distribution of food and grocery products in commerce, as "commerce" is defined by the Federal Trade Commission Act. Such agreements, understandings, combination and planned common course of action and such acts and practices, all and singly, are to the prejudice and injury of the public 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, as amended.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 13, 1955, issued and subsequently served its complaint on respondents herein who are located and in business as follows:

Respondent National Food Brokers Association is a voluntary, unincorporated association, with its office and principal place of business located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Watson Rogers is now and has been since 1946 President of respondent National Food Brokers Association. His office and principal place of business, as President of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Truman F. Graves is now and was during the year 1955 National Chairman and Chairman of the Executive Committee of respondent National Food Brokers Association. His office and principal place of business, as National Chairman and Chairman of the Executive Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Walter H. Burns, Sr., is now and was during the year 1955, 1st Vice-Chairman and a member of the Executive Committee of respondent National Food Brokers Association. His office and principal place of business, as 1st Vice-Chairman and a member of the Executive Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent George E. Dillworth is now and was during the year 1955, 2nd Vice-Chairman and a member of the Executive Committee of respondent National Food Brokers Association. His office and principal place of business, as 2nd Vice-Chairman and a member of the Executive Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent W. Sloan McCrea is now and was during the year 1955, the Member at Large of the Executive Committee of respondent National Food Brokers Association. His office and principal place of business, as the Member at Large of the Executive Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Willis Johnson, Jr., is now and was during the year 1955, a member of the Executive Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Executive Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent E. Norton Reusswig is now and was during the year 1955, a member of the Executive Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Executive Committee of respondent National Food

Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Clarence Wendt is now and was during the year 1955, a member of the Executive Committee of respondent National Food Brokers Association. His office and prinicpal place of business, as a member of the Executive Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Roy C. Ossman is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Ed. W. Jones is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Ralph D. Davies is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Jack L. Gentry is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent John O. Crawford is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent H. Wayne Clarke is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food

Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent A. J. Campbell is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Harry L. Wagner is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent James J. Reilley is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent T. H. McKnight, Sr., is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Howard L. Scott is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent George R. Bennett is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Wilbur R. Orr is now and was during the year 1955, a member of the Advisory Committee of respondent National Food Brokers Association. His office and principal place of business, as a member of the Advisory Committee of respondent National Food

Brokers Association, is located at 527 Munsey Building, in the City of Washington, District of Columbia.

Respondent Walter H. Burns Company, Inc., 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 Penn Avenue and Dahlem Street, in the City of Pittsburgh, State of Pennsylvania.

Respondent Earl V. Wilson Company is a corporation existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1220 S. Miami Avenue, in the City of Miami, State of Florida.

Respondent The Paul E. Kroehle Co. 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 1468-70 W. 9th Street, in the City of Cleveland, State of Ohio.

Respondent Meinrath Brokerage Co. 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 20 W. 9th Street Building, in the City of Kansas City, State of Missouri.

Respondent Ralph D. Davies, Inc., 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 407 Provident Bank Building, in the City of Cincinnati, State of Ohio.

Respondent Peterson Sales, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 615 Oakland Avenue, in the City of Birmingham, State of Michigan.

Respondent Carter Wagner Brokerage Company 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 406 Market Street, in the City of St. Louis, State of Missouri.

Respondent Deming & Gould Company is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 401 Harris Avenue, in the City of Bellingham, State of Washington.

Respondent George R. Bennett Company, 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 434 Delaware Avenue, in the City of Buffalo, State of New York.

Respondent Eldridge Brokerage Company is a corporation existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 1513

W.O.W. Building, 14th and Farnum Streets, in the City of Omaha, State of Nebraska.

Respondent The John G. Paton Co., 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 630 - 5th Avenue, in the City of New York, State of New York.

Respondent Rodway 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 99 Hudson Street, in the City of New York, State of New York.

Respondent Kierce & Dillworth, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 1448 Wabash Avenue, in the City of Detroit, State of Michigan.

Respondents Truman F. Graves and Winston W. Chambers are copartners doing business under the firm name and style of Graves-Chambers Co., a partnership, with their office and principal place of business located at 3464 East Marginal Way, in the City of Seattle, State of Washington.

Respondents Jean N. Bistline, Roy M. Bistline and Bessie M. Bistline are copartners doing business under the firm name and style of Bistline Brokerage Company, a partnership, with their office and place of business located at 120 W. 13th Avenue, in the City of Denver, State of Colorado.

Respondents Willis Johnson, Jr. and William M. Powell are copartners doing business under the firm name and style of Willis Johnson & Company, a partnership, with their office and principal place of business located at 520 East Markham Street, in the City of Little Rock, State of Arkansas.

Respondents Harold J. Lestrade, E. Norton Reusswig, Sidney Kahn and Herbert Davies are copartners doing business under the firm name and style of Lestrade Brothers, a partnership, with their office and principal place of business located at 105 Hudson Street, in the City of New York, State of New York.

Respondents Ed Allison and Clarence Wendt are copartners doing business under the firm name and style of Allison & Wendt, a partnership, with their office and principal place of business located at 1016 Colcord Building, in the City of Oklahoma City, State of Oklahoma.

Respondents Calvin H. Baker, John O. Crawford and James Bishop are copartners doing business under the firm name and style of Baker-Crawford-Bishop, a partnership, with their office and

principal place of business located at 4814 Loma Vista Avenue, in the City of Los Angeles, State of California.

Respondents H. Wayne Clarke and G. Leaman are copartners doing business under the firm name and style of Walter Leaman Company, a partnership, with their office and principal place of business located at 1631 K Street, N.W., in the City of Washington, District of Columbia.

Respondents T. H. McKnight, Sr., T. H. McKnight, Jr., and J. M. McKnight are copartners doing business under the firm name and style of T. H. McKnight & Sons, a partnership, with their office and principal place of business located at 405 McCall Building, in the City of Memphis, State of Tennessee.

Respondents T. F. Robbins, Jr., and L. D. Greenwood are copartners doing business under the firm name and style of Robbins-Greenwood Company, a partnership, with their office and principal place of business located at 7502 Katy Road, in the City of Houston, State of Texas.

Respondents J. P. Wier and J. Neville Wier are copartners doing business under the firm name and style of J. P. Wier Brokerage Company, a partnership, with their office and principal place of business located at 2301 First Avenue North, in the City of Birmingham, State of Alabama.

Respondent Jack L. Gentry is a sole proprietor doing business under the firm name and style of Jack L. Gentry, with his office and principal place of business located at 150 North Spring Street, in the City of Spartansburg, State of South Carolina.

Respondent A. J. Campbell is a sole proprietor doing business under the firm name and style of A. J. Campbell Company, with his office and principal place of business located at 216 East 7th Street, in the City of Charlotte, State of North Carolina.

Respondent James J. Reilley is a sole proprietor doing business under the firm name and style of James J. Reilley & Associates, with his office and principal place of business located at 905-06 Lafayette Building, in the City of Philadelphia, State of Pennsylvania.

Respondent Wilbur R. Orr is a sole proprietor doing business under the firm name and style of W. R. Orr and Company, with his office and principal place of business located at 106 North Vermilion Street, in the City of Danville, State of Illinois.

Respondent Clarence A. Klag is a sole proprietor doing business under the firm name and style of Clarence A. Klag Company, with his office and principal place of business located at 4 Huron Street, in the City of Toledo, State of Ohio.

On August 8, 1955, there was submitted to the undersigned hearing examiner an agreement between counsel in support of the complaint and respondents and their counsel providing for the entry of a consent order. By the terms thereof respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of such jurisdictional facts had been duly made in accordance with such allegations therein. Respondents expressly waive any further procedural steps before the hearing examiner and the Commission, the making of findings of facts and conclusions of law by either, and all the rights they may have to challenge or contest the validity of the order to cease and desist provided for in such agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties, and the record, on which the initial decision and the decision of the Commission shall be based, shall consist solely of the complaint and the aforesaid agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; 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.

On the basis of the foregoing, the undersigned hearing examiner concludes that this proceeding is in the public interest; that such agreement is an appropriate disposition of the proceeding and in accordance with the action contemplated and agreed upon, makes the following order:

ORDER

It is ordered, That respondents, National Food Brokers Association, a voluntary, unincorporated association, its officers, Executive Committee, Advisory Committee, agents, employees, representatives, successors, assigns and members; Watson Rogers, individually, as President of respondent association and as representative of the members of respondent association, and his successors in said office; Truman F. Graves, individually, as National Chairman and a member of the Executive Committee of respondent association and as representative of the members of respondent association, and his successors in each of said offices; Walter H. Burns, Sr., individually, as First Vice-Chairman and a member of the Executive Committee of respondent association and as representative of the members of respondent association, and his successors in each of said offices; George E. Dillworth, individually, as Second Vice-Chairman and a member of the Executive Committee of respondent association and as representative of the members of respondent association, and his successors in each of said

offices; W. Sloan McCrea, individually, as Member at Large of the Executive Committee of respondent association and as representative of the members of respondent association, and his successors in said office: Willis Johnson, Jr., individually, as a member of the Executive Committee of respondent association and as representative of the members of respondent association, and his successors in said office; E. Norton Reusswig, individually, as a member of the Executive Committee of respondent association and as representative of the members of respondent association, and his successors in said office; Clarence Wendt, individually, as a member of the Executive Committee of respondent association and as representative of the members, of respondent association, and his successors in said office; Roy C. Ossman, Ed. W. Jones, Ralph D. Davies, Jack L. Gentry, John O. Crawford, H. Wayne Clake, A. J. Campbell, Harry L. Wagner, James J. Reilley, T. H. McKnight, Sr., Howard L. Scott, George R. Bennett and Wilbur R. Orr, individually, as members of the Advisory Committee of respondent association and as representative of the members of respondent association, and their successors on said Advisory Committee; Walter H. Burns Company, Inc., a corporation, Earl V. Wilson Company, a corporation, The Paul E. Kroehle Co., a corporation, Meinrath Brokerage Co., a corporation, Ralph D. Davies, Inc., a corporation, Peterson Sales, Inc., a corporation, Carter Wagner Brokerage Company, a corporation, Deming & Gould Company, a corporation, George R. Bennett Company, Inc., a corporation, Eldridge Brokerage Company, a corporation, The John G. Paton Co., Inc., a corporation, Rodway Sales Corporation, a corporation and Kierce & Dillworth, Inc., a corporation, and their respective officers, agents, representatives and employees, individually, as members of respondent association and as representative of all of the members of respondent association; Truman F. Graves and Winston W. Chambers, copartners doing business under the firm name and style of Graves-Chambers Co., a partnership, each individually, as a member of respondent association and as representative of all the members of respondent association; Jean N. Bistline, Roy M. Bistline and Bessie M. Bistline, copartners doing business under the firm name and style of Bistline Brokerage Company, a partnership, each individually, as a member of respondent association and as representative of all of the members of respondent association; Willis Johnson, Jr., and William M. Powell, copartners doing business under the firm name and style of Willis Johnson & Company, a partnership, each individually, as a member of the respondent association and as representative of all the members of respondent association; Harold J. Lestrade, E. Norton Reusswig, Sidney Kahn and Herbert Davies, copartners doing busi-

ness under the firm name and style of Lestrade Brothers, a partnership, each individually, as a member of respondent association and as representative of all of the members of respondent association; Ed Allison and Clarence Wendt, copartners doing business under the firm name and style of Allison & Wendt, a partnership, each individually, as a member of respondent association and as representative of all of the members of respondent association; Calvin H. Baker, John O. Crawford and James Bishop, copartners doing business under the firm name and style of Baker-Crawford-Bishop, a partnership, each individually, as a member of respondent association and as representative of all of the members of respondent association; H. Wayne Clarke and G. Leaman, copartners doing business under the firm name and style of Walter Leaman Company, a partnership, each individually, as a member of respondent association and as representative of all of the members of respondent association; T. H. McKnight, Sr., T. H. McKnight, Jr., and J. M. McKnight, copartners doing business under the firm name and style of T. H. McKnight & Sons, a partnership, each individually, as a member of respondent association and as representative of all of the members of respondent association; T. F. Robbins, Jr. and L. D. Greenwood, copartners doing business under the firm name and style of Robbins-Greenwood Company, a partnership, each individually, as a member of respondent association and as representative of all of the members of respondent association; and J. P. Wier and J. Neville Wier, copartners doing business under the firm name and style of J. P. Wier Brokerage Company, a partnership, each individually, as a member of respondent association and as representative of all of the members of respondent association; Jack L. Gentry, doing business under the firm name and style of Jack L. Gentry, a sole proprietorship, A. J. Campbell, doing business under the firm name and style of A. J. Campbell Company, a sole proprietorship, James J. Reilley, doing business under the firm name and style of James J. Reilley & Associates, a sole proprietorship, Wilbur R. Orr, doing business under the firm name and style of W. R. Orr and Company, a sole proprietorship and Clarence A. Klag, doing business under the firm name and style of Clarence A. Klag Company, a sole proprietorship, individually, as members of respondent association and as representative of all of the members of respondent association, directly or indirectly, or through any corporate or other device, in or in connection with the representing or soliciting the representation of sellers of food or grocery products, or in or in connection with the carrying on of the business of food brokers, 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 agreement, understanding, combination or planned common course of action between two or more of said respondents, or between any one or more of said respondents and another or other persons, partnerships, or corporations not parties hereto, to do, perform, carry out or engage in, either directly or indirectly, or to attempt to do, perform, carry out or engage in, either directly or indirectly, any of the following acts, practices or methods:

1. Refraining from, abstaining from or refusing to solicit the representation, as food brokers, of a seller of food or grocery products when such seller is already represented by a food broker.

2. Compelling, inducing or coercing food brokers to refrain or abstain from soliciting the representation, as food brokers, of a seller of food or grocery products when such seller is already represented by a food broker.

3. Disciplining, reprimanding, suspending or expelling from membership any member of the National Food Brokers Association because such member solicited the representation, as a food broker, of a seller of food or grocery products when such seller was already represented by a food broker.

4. Prohibiting or forbidding the solicitation of representation, as a food broker, of a seller of food or grocery products when such seller is already represented by a food broker.

5. Refusing to endorse applications for membership, declining to elect candidates to membership, or in any manner denying or refusing membership in the National Food Brokers Association, or any similar organization, to any person, partnership or corporation because such person, partnership or corporation solicited the representation, as a food broker, of a seller of food or grocery products when such seller was already represented by a food broker.

6. Engaging in any act or practice, the purpose or effect of which is, directly or indirectly, to further or accomplish any understanding, agreement or combination prohibited herein.

7. Effectuating or attempting to effectuate any act, practice, policy or method, prohibited by any provision or part of this order, through respondent National Food Brokers Association or any other instrumentality, agent, medium or representative.

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 7th day of

October, 1955, 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 Mason concurs on the basis of his own opinion that the order herein imposes no individual civil liability upon any person who, even though a member of the class sued, neither was served with the complaint nor consented to the order.

IN THE MATTER OF

UNION CIRCULATION COMPANY, INC. ET AL.

Docket 5978. Order and opinion, Oct. 10, 1955

Order denying respondents' motion requesting clarification of order prohibiting no-switching agreements among magazine subscription agencies.

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

Mr. Lynn C. Paulson and *Mr. T. Harold Scott* for the Commission.

Mr. Benjamin Kirschstein and *Mr. Gilbert H. Weil*, of New York City, for Union Circulation Co., Inc., and along with—

Mr. Mortimer M. Lerner, of New York City, for National Circulation Co., Inc. and Periodical Sales Co., Inc.;

Mr. William N. Kenefick, of Michigan City, Ind., and *Mr. F. Kenneth Dempsey*, of South Bend, Ind., for Publishers Continental Sales Corp.;

Mr. A. Walter Socolow, of New York City, for Leo E. Light and Roy C. Hodge.

ORDER DENYING RESPONDENTS' MOTION FOR CLARIFICATION OF ORDER TO CEASE AND DESIST

This matter having come on to be heard by the Commission upon respondents' motion filed on May 27, 1955, requesting clarification of the order to cease and desist issued herein on January 25, 1955 [1] or, in the alternative, that the case be remanded to the hearing examiner for the purpose of redrafting the order, and answer of counsel supporting the complaint in opposition thereto; and

The Commission having determined, for the reasons appearing in the accompanying opinion of the Commission, that the motion and request for oral argument thereon should be denied:

It is ordered, That respondents' said motion and request for oral argument thereon be, and they hereby are, denied.

OPINION OF THE COMMISSION

By GWYNNE, Chairman:

Respondents' motion requests clarification of the cease and desist order entered herein on January 25, 1955 so as to render it clear that the order is not intended to refer to such "parties" as have been engaging in false, fraudulent, deceptive or otherwise unlawful acts,

[1] Order to cease and desist, dated Jan. 25, 1955, is reported in 51 F. T. C. 647.

practices or methods of competition in the course of selling magazine subscriptions. Grounds for the request are (1) that such clarification would conform and be consistent with the presently intended scope of the final order, and (2) unless so clarified or modified, the order is not supported by the law and findings of fact.

The case on appeal was very thoroughly presented by both sides in written briefs and by oral argument. In addition, counsel for respondents have supported this motion by written brief to which counsel for the complaint have filed a written reply. It is not believed therefore that further oral argument is necessary and request therefor is denied.

The complaint was under Section 5 of the Federal Trade Commission Act and charged respondents with unfair methods of competition, first, in a planned common course of action in the matter of "no-switching" agreements in the securing of magazine subscriptions and, second, in a common course of action in attempting to persuade and influence magazine publishers to withhold their business from subscription agencies not entering into such agreements.

The Commission found that the respondents had entered into contracts, one of the purposes of which was stated as follows:

"To prevent and eliminate the switching of, or inducing representatives of the respective agencies to violate their contracts or working arrangements with, or enticing away any representatives from their respective agencies."

The contracts contained the following provision:

"It is understood and agreed that no representative, contracting manager, crew operator, or solicitor, shall directly or indirectly negotiate with, endeavor to entice away, or authorize any representatives, contracting managers, crew operators or solicitors of the other agency. * * *

"It is further understood and agreed that the aforementioned terms and conditions do not obtain in any case (1) where the individual has not been engaged in the magazine business for at least one year, or (2) where the individual has not been engaged with either agency for at least one year, (3) except where the one year absence or inactivity has been occasioned by draft into military services or similar war contributions."

Although counsel supporting the complaint also argued that the no-switching agreements are boycotts affecting third parties and are therefore unreasonable and illegal per se, nevertheless both the hearing examiner and the Commission based their conclusions as to the legality of the contracts on their respective views as to the reason-

ableness of the contracts under all the circumstances. The conclusion of the Commission was that the contracts were an unreasonable restraint and it issued an order requiring respondents to cease and desist from:

"1. Entering into, carrying out, enforcing or giving effect to any agreement not to employ parties who have previously been actively engaged for themselves or for others in the business of soliciting magazine subscriptions."

The motion of respondents would rewrite the order substantially as follows:

"1. Entering into, carrying out, enforcing or giving effect to any agreement not to employ parties who have previously been actively engaged for themselves or for others in the business of soliciting magazine subscriptions, except with regard to such parties who in the course of such business have been using unfair methods of competition, or unfair or deceptive acts or practices."

This would involve a ruling by the Commission about a contract which the respondents never made and the effects of which were not explored at the trial. The wording of the contracts does not indicate an intention to apply the no-switching rule only "to such parties who in the course of such business have been using unfair methods of competition, or unfair or deceptive acts or practices." Nor do the statements of respondents and other evidence indicate that such was the intention. There is not sufficient evidence in the record by which the reasonableness of the suggested contract could be tested. Furthermore, the proposed order would leave unsettled the means by which the unfair methods of competition or unfair or deceptive acts or practices are to be determined (see FTC v. Wallace, 75 F. 2d 733).

The matters referred to in the second phase of respondents' motion were fully considered both in the initial decision of the hearing examiner and in the opinion of the Commission. After considering the entire record, the Commission found as an ultimate fact "that the no-switching agreements are, under all the circumstances, an unreasonable restraint and constitute unfair methods of competition within the meaning of Section 5 of the Federal Trade Commission Act.

Accordingly, respondents' motion is denied.

IN THE MATTER OF

HARVEY J. STRAUSS DOING BUSINESS AS H. J. STRAUSS FURS

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

Docket 6371. Complaint, June 27, 1955—Decision, Oct. 12, 1955

Consent order requiring a furrier in Lowell, Mass., to cease misbranding and falsely advertising fur products in violation of the Fur Products Labeling Act and the Federal Trade Commission Act.

Before *Mr. John Lewis*, hearing examiner.
Mr. John J. McNally for the Commission.
Mr. Wallace H. Levy, of Lowell, Mass., for respondent.

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 Harvey J. Strauss, an individual, doing business as H. J. Strauss Furs, 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 Harvey J. Strauss is an individual doing business as H. J. Strauss Furs, with his office and principal place of business located at 44 Bridge Street, Lowell, Massachusetts.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has advertised and offered for sale 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 has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. 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. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act and of the Rules and Regulations promulgated thereunder in that certain of the labels affixed thereto:

(*a*) Failed to meet the minimum size requirements of Rule 27 of the said Rules and Regulations.

(*b*) Contained non-required information intermingled with required information in violation of Rule 29 (a) of the Rules and Regulations.

(*c*) Set forth required information in handwriting in violation of Rule 29 (b) of the Rules and Regulations.

(*d*) Did not set forth an item number or mark assigned to such products, in violation of Rule 40 of the Rules and Regulations.

PAR. 5. 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. 6. Certain of said fur products were falsely and deceptively invoiced, in violation of the Fur Products Labeling Act, in that required information was set forth in abbreviated form, in violation of Rule 4 of the Rules and Regulations promulgated thereunder.

PAR. 7. Certain of said fur products were falsely and deceptively advertised, in violation of the Fur Products Labeling Act. Respondent has caused the dissemination of certain advertisements concerning said products by means of newspapers, radio broadcasts, 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. 8. Among and including the advertisements referred to in Paragraph Seven hereof, but not limited thereto, were advertisements of respondent which appeared in various issues of the "Lowell Sun," a publication having wide circulation in the State of Massachusetts, and also having circulation in other States of the United States. Other advertisements of respondent were in the form of continuities broadcast over Radio Station WCAP, Lowell, Massachusetts; a radio station having wide coverage in the States of Massachusetts and New Hampshire.

PAR. 9. Certain of said fur products were falsely and deceptively advertised in that certain of the advertisements, disseminated in commerce as aforesaid by respondents, 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.

Certain of said advertisements falsely and deceptively failed 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, in violation of Section 5 (a) (1) of the Fur Products Labeling Act;

(*b*) That fur products contained or were composed of bleached, dyed or otherwise artificially colored fur, when such was the fact, in violation of Section 5 (a) (3) of the Fur Products Labeling Act;

Certain of said advertisements also falsely and deceptively:

(*c*) Set forth certain of the required information in abbreviated form in violation of the Fur Products Labeling Act and of Rule 4 of the Rules and Regulations promulgated thereunder;

(*d*) Misrepresented, in violation of the Fur Products Labeling Act, and of Rule 44 (a) of the said Rules and Regulations, fur products as being offered at or for less than wholesale prices;

(*e*) Misrepresented, by means of comparative prices and percentage savings claims, not based upon current market values, the amount of savings to be effectuated by purchasers of said fur products, in violation of Rule 44 (b) of the said Rules and Regulations;

(*f*) Misrepresented, in violation of the Fur Products Labeling Act and of Rules 44 (c) and 49 of the Rules and Regulations promulgated thereunder, the aggregate value of the fur products being offered for sale by respondent;

(*g*) Misrepresented, in violation of the Fur Products Labeling Act and of Rules 44 (G) and 49 of the Rules and Regulations promulgated thereunder, that the advertised fur products were bankrupt stock, were purchased by respondent, and were from the stock of a famous and reputable furrier.

Respondent, in making the claims and representations as to value referred to in subparagraphs (*d*), (*e*) and (*f*) hereof, has failed to maintain full and adequate records disclosing the facts upon which such claims and representations were purportedly based, in violation of the Fur Products Labeling Act and Rule 44 (e) of the Rules and Regulations promulgated thereunder.

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

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on June 27, 1955, charging him with having violated the Fur Products Labeling Act and the rules and regulations issued thereunder, and the Federal Trade Commission Act. After being served with said complaint, respondent appeared by counsel and entered into an agreement, dated August 5, 1955, 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 and Procedure of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all 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 waive 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, and that said 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.

This proceeding having now come on for final consideration on the complaint and the aforsesaid 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 this proceeding, 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 findings, for jurisdictional purposes, and order:

1. Respondent Harvey J. Strauss is an individual doing business as H. J. Strauss Furs with his office and principal place of business located at 44 Bridge Street, in the city of Lowell, State of Massachusetts.

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

ORDER

It is ordered, That respondent, Harvey J. Strauss, an individual doing business as H. J. Strauss Furs, or under any other name, and respondent's representatives, agents and employees, directly or through an corporate or other device, in connection with the advertising or offering for sale of fur products 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 has 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. 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 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 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. Attaching to fur products labels which fail to meet the minimum size requirements of Rule 27 of the Rules and Regulations.

3. Setting forth on labels attached to fur products required information in handwriting, or mingled with non-required information.

4. Failing to set forth on labels attached to fur products, an item number or mark assigned to such products.

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 artificialy 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, on invoices pertaining to fur products, required information in abbreviated form.

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 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. Fails to disclose that fur products contain or are composed of bleached, dyed, or otherwise artificially colored fur when such is the fact;

3. Abbreviates words or terms of required information.

4. Represents, directly or by implication:

(*a*) That fur products are being offered at or for less than wholesale prices when such is contrary to the fact;

(*b*) That a sale price enable 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*) The aggregate value of fur products to be greater than is the fact;

(*d*) That fur products are bankrupt stock, or that they were purchased by respondent, or were from the stock of a famous or reputable furrier when such is contrary to the fact.

5. Makes pricing claims or representations of the type referred to in Paragraph C (4) (*a*), (*b*), or (*c*) above, unless there is maintained by respondent 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 12th day of October, 1955, 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.

IN THE MATTER OF

RICE'S FASHION CORNER, INC., ET AL.

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

Docket 6385. Complaint, June 30, 1955—Decision, Oct. 12, 1955

Consent order requiring a dealer in Norfolk, Va., to cease misbranding and falsely advertising ladies' weskit and skirt combinations, in violation of the Wool Products Labeling Act and the Federal Trade Commission Act.

Before *Mr. William L. Pack*, hearing examiner.
Mr. R. D. Young, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Rice's Fashion Corner, Inc., a corporation; and Irving G. Rice and Maurice Nordlinger, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Rice's Fashion Corner, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Virginia. Respondent Irving G. Rice is President and respondent Maurice Nordlinger is Secretary-Treasurer and General Manager of said corporation respondent. These individual respondents formulate, direct and control the acts, policies and practices of the corporate respondent. The office and principal place of business of each and all of said corporate and individual respondents is located at 400 Granby Street, Norfolk 10, Virginia.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January, 1954, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce as "commerce" is defined in said Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded by respondents within the intent and meaning of Section 4 (a) (1) of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products were two piece ladies' weskit and skirt combinations labeled or tagged by respondents as consisting of "50% Wool, 50% Orlon," whereas, in truth and in fact said ladies' weskit and skirt combinations did not contain 50% wool, 50% orlon, as tagged and labeled by respondents.

PAR. 4. Certain of said 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 of 1939 and of the Rules and Regulations promulgated thereunder.

Among such misbranded wool products were two piece ladies' weskit and skirt combinations misbranded by respondents in that they were not stamped, tagged, or labeled as to describe the name or the registered identification number of the manufacturer thereof, or of one or more persons subject to Section 3 of said Act with respect to said wool products.

PAR. 5. Said wool products described as ladies' weskit and skirt combinations were further misbranded by respondents in that the skirts of said combinations were not separately stamped, tagged, or labeled as required by Rule 12 of the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939.

PAR. 6. The respondents were, at all times mentioned herein, in competition, in commerce, with other individuals and with firms and corporations likewise engaged in the sale of ladies' weskit and skirt combinations.

PAR. 7. The acts and practices of respondents, as set forth in Paragraphs 2, 3, 4, 5 and 6 hereof constitute misbranding of wool products and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder; and all of the aforesaid acts and practices, as alleged herein, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 8. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of said wool products described herein as ladies' weskit and skirt combinations, respondents

have published advertisements in nationally circulated fashion magazines containing various statements concerning their products. Among and typical, but not all inclusive, of such statements are the following:

Reversible Weskit and Permanently
Pleated Skirt in Washable
ORLON & WOOL * * *
60% ORLON, 40% WOOL

PAR. 9. Through the use of the aforesaid statements to describe said reversible weskit and pleated skirt, respondents represented that said product was composed of 60% orlon, 40% wool.

PAR. 10. The aforesaid statements were false, misleading and deceptive, since in truth and in fact said ladies' weskit and skirt combinations were composed of substantially more than 60% non-woolen fibers and substantially less than 40% woolen fibers.

PAR. 11. The use by respondents of the statements herein set forth, in the course of selling and offering for sale their products, in commerce, as above described, had 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 said products on account of such beliefs induced as aforesaid. As a consequence thereof substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 12. The respondents were, at all times mentioned herein, in competition, in commerce, with other individuals and with firms and corporations likewise engaged in the sale of ladies' weskit and skirt combinations.

PAR. 13. The acts and practices of respondents, as set forth in Paragraphs 8, 9, 10, 11 and 12 herein, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges respondents with the mislabeling of certain wool products in violation of the Wool Products Labeling Act and the Federal Trade Commission Act. An agreement 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 the

complaint and agreement shall constitute the entire record in the proceeding; 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 to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of 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 made after a full hearing, respondents specifically waiving any and all right, power and privilege to challenge or contest the validity of such order; that the order may be altered, modified or set aside in the manner provided by statute for other orders of the Commission; and that the signing of 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 appropriate basis for settlement and disposition of the proceeding, the agreement is hereby accepted and made a part of the record, the following jurisdictional findings made, and the following order issued:

1. Respondent Rice's Fashion Corner, Inc., is a corporation existing and doing business under the laws of the State of Virginia, with its office and principal place of business at 400 Granby Street, Norfolk, Virginia.

While respondent Irwin G. Rice (referred to in the complaint as Irving G. Rice) was president of the corporate respondent at all times mentioned in the complaint, he severed all relationship with the corporation on June 30, 1955. His present post-office address is 225 West 34th Street, New York, New York.

Respondent Maurice Nordlinger was secretary-treasurer and general manager of the corporate respondent at all times mentioned in the complaint. However, on June 30, 1955, he terminated these relationships with the corporation. He is now secretary of the corporation and has his office at the same address as that of the corporation.

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

ORDER

It is ordered, That the respondent, Rice's Fashion Corner, Inc., a corporation, and its officers and respondent Maurice Nordlinger,

individually and as an officer of said corporation, and respondent Irwin G. Rice, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of ladies' weskit and skirt combinations or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products by:

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

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

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

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

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

3. Failing to securely affix to or place on each separate piece of such products a stamp, tag, label or other means of identification as required by Rule 12 of the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939.

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

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

It is further ordered, That respondent Rice's Fashion Corner, Inc., a corporation, and its officers, and respondent Maurice Nordlinger, individually and as an officer of said corporation, and respondent Irwin G. Rice, individually, 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 ladies' weskit and skirt combinations or other products, do forthwith cease and desist from:

Misrepresenting the constituent fibers of which their products are composed or the percentages or amounts thereof, in advertisements or in any other manner.

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 October, 1955, 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

THE UNION MALLEABLE MANUFACTURING COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (c) OF THE CLAYTON ACT

Docket 6366. Complaint, June 20, 1955—Decision, Oct. 13, 1955

Consent order requiring a corporation in Ashland, Ohio, to cease granting Sears, Roebuck & Co., large mail order house, on direct purchases of "U-Brand" plumbing products, an allowance amounting to brokerage in addition to the discounts allotted other customers, all of whom purchased through brokers, thus charging Sears, Roebuck prices lower than it charged other buyers by an amount reflecting brokerage fees, in violation of Sec. 2 (c) of the amended Clayton Act.

Before *Mr. Frank Hier*, hearing examiner.
Mr. Donald K. King for the Commission.
Mr. Samuel K. Walzer, of Cleveland, Ohio, for respondent.

COMPLAINT

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

PARAGRAPH 1. The Union Malleable Manufacturing Company, hereinafter referred to as respondent, is a corporation organized, existing and doing business under the laws of the State of Ohio. Its executive offices and principal place of business are located at Cork Street, Ashland, Ohio. Respondent, in connection with its business, operates two wholly owned corporate subsidiaries which are also located in Ashland, Ohio, and maintains sales offices in all principal cities throughout the world.

PAR. 2. Respondent corporation as aforesaid is now and has been since 1936 engaged in the business of manufacturing, selling, and distributing malleable iron pipe fittings, steel pipe nipples, wrought steel couplings, cast brass solder joint fittings, floor flanges, bushings, and other items of like character used in the plumbing trade. Such products are hereinafter referred to as plumbing products. Respondent corporation sells and distributes its products under its own brand, namely, "U-Brand."

PAR. 3. Respondent corporation in the course and conduct of its business since June 19, 1936, and more particularly since January 1, 1950, has sold and distributed and now sells and distributes its plumbing products to buyers located in the several cities of the United States other than the State of Ohio, and causes such products when sold to be transported from its place of business in Ohio to buyers thereof located in the several States of the United States other than the State of Ohio, and there has been since June 19, 1936, and more particularly since January 1, 1950, a constant current of trade and commerce conducted by said respondent corporation in such plumbing products between and among the various States of the United States.

PAR. 4. Respondent corporation now sells and distributes and since June 19, 1936, and more particularly since January 1, 1950, has sold and distributed its plumbing products through two separate and distinct methods.

The first method is by selling to wholesale buyers through brokers who usually designate themselves as manufacturers' representatives. Such brokers negotiate the sale of respondent corporation's plumbing products for and on account of the respondent as principal. Their only compensation for this service is the commission or brokerage fee paid to them by the respondent. Such commission or brokerage fee is customarily based on the percentage of the invoice as well as the price of the plumbing products sold. Such brokers act as respondent corporation's sales agents, soliciting and obtaining orders for respondent corporation's plumbing products at respondent corporation's prices and on its terms. This phase of respondent's business is not involved in the present proceeding.

The second method, which is challenged by this complaint, is by direct selling to Sears, Roebuck & Company. The respondent does not use brokers or other intermediaries in connection with the sale of its plumbing products to this company but rather sells its products directly to said buyer. Such direct buyer of respondent's products may be described as a large mail order house with numerous retail stores located in many cities and towns in the various sections of the United States. Such buyer transmits its orders for plumbing products direct and respondent corporation on receipt of said orders ships its plumbing products, as requested, either to said buyer's warehouses or to one or more of its retail stores.

Respondent corporation grants and allows said direct buyer an additional discount on such purchases, which additional discount is not allowed to buyers who purchase through respondent's brokers. This procedure permits said buyer to purchase said plumbing products at prices lower than the prices at which said products are purchased

by other buyers who purchase through respondent's brokers. The lower price which respondent charges said direct buyer is an amount which reflects all or a portion of the commission or brokerage currently being paid by respondent to its respective brokers for effecting sales.

For the calendar year 1953 respondent's gross sales were $5,283,051, of which $633,220 represented gross sales to Sears, Roebuck, & Company.

PAR. 5. An illustration of respondent's pricing practices may be given through a comparison of respondent's Invoices No. 13254 and No. 13312, both of which are dated July 29, 1954. Invoice No. 13254 lists as an item sold to Sears, Roebuck & Company 500 ½" galvanized malleable "L" iron fittings at a price of $130.00 less a discount of 62–5–5–5–5–5% (or 70.6%), resulting in a total discount of $91.78 and a net price of $38.22. Invoice No. 13312, on the other hand, lists the same quantity of the same item as sold to Frederick L. Markee of Grand Rapids, Michigan, at a price of $130.00 less a discount of 62–5–5–5–5% (or 69.05%), resulting in a total discount of $89.77 and a net price of $40.23.

PAR. 6. Respondent corporation since June 19, 1936, and more particularly since January 1, 1950, in connection with the interstate sale of its plumbing products by the second method set forth in Paragraph 4 herein, has paid and granted and is now paying and granting, directly or indirectly, commissions, brokerage, or other compensation or discounts in lieu thereof to Sears, Roebuck, & Company, a direct buyer of its plumbing products, who purchases said products for its own account. Respondent's acts and practices as set forth above are in violation of Subsection (c) of Section 2 of the Clayton Act, as amended.

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

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of Subsection (c) of Section 2 of the Clayton Act (15 U.S.C. 13), as amended by the Robinson-Patman Act, the Federal Trade Commission on June 20, 1955 issued and subsequently served its complaint in this proceeding against the respondent which is an Ohio corporation with its office and principal place of business located at Cook Street in the city of Ashland, Ohio.

On August 26, 1955, there was submitted to the undersigned hearing examiner an agreement between counsel in support of the complaint, respondent and its counsel providing for the entry of a consent order. By the terms of said agreement, respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations; waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of facts or conclusions of law; and waives all the rights it may have to challenge or contest the validity of the order to cease and desist agreed upon. Such agreement further provides that it disposes of all of this proceeding as to both parties; that the record on which any decision shall be based shall consist solely of the complaint and the agreement; that the latter shall not become a part of the official record until and unless it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint; and that the hereinafter set forth order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent and when so entered it 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. The complaint may be used in construing the terms of the order.

On the basis of the foregoing, the undersigned hearing examiner concludes that such agreement is an appropriate disposition of the proceeding and in accordance with the action contemplated and agreed upon makes the following order:

ORDER

It is ordered, That the respondent, The Union Malleable Manufacturing Company, a corporation, and its officers, directors, associates, or employees, directly or through any corporate or any other device, in connection with the sale of plumbing products or any other merchandise in interstate commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Granting or giving, directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of any buyer, anything of value as a commission, brokerage, or other compensation or any discount or allowance in lieu thereof, upon or in connection with any sale of plumbing products, or other commodities, made for the buyer's own account.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Sec. 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of October, 1955, 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.