IN THE MATTER OF

VULCANIZED RUBBER AND PLASTICS COMPANY

Docket 6222. Order and opinion, Nov. 29, 1955

Interlocutory order denying respondent's appeal from hearing examiner's denial of its motion to dismiss complaint, etc., since the record contains evidence which, if not overcome by rebuttal, would support a desist order.

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

Mr. Charles S. Cox for the Commission.

Chapman, Walsh & O'Connell, of Washington, D. C., and *Mr. Joseph Sawyer*, of New York City, for respondent.

Mr. I. Louis Wolk, of Los Angeles, Calif., for Dayton Rubber Co., *amicus curiae.*

Arthur, Dry & Dole, of New York City, for United States Rubber Co., *amicus curiae.*

ORDER DENYING RESPONDENT'S INTERLOCUTORY APPEAL

This matter having been heard by the Commission upon respondent's appeal from the hearing examiner's ruling denying respondent's motion to dismiss the complaint and respondent's request that the Commission order that further hearings herein be suspended until the Commission has acted on the appeal; and

The Commission, for the reasons stated in the accompanying opinion, having concluded that the appeal and request for oral argument thereon, as well as the request that further hearings herein be suspended until the Commission has acted on the appeal, should be denied:

It is ordered, That respondent's appeal, and request for oral argument thereon, from the hearing examiner's ruling denying respondent's motion to dismiss the complaint, and respondent's request that further hearings herein be suspended until the Commission has acted on the appeal, be, and they hereby are, denied.

OPINION OF THE COMMISSION

Per Curiam:

This is an interlocutory appeal by the respondent from the hearing examiner's denial of the respondent's motion to dismiss the complaint.

The complaint charges that the respondent has falsely, deceptively, and misleadingly represented its combs as "rubber" and "hard rubber" products. Extensive hearings have been held and considerable testimony and other evidence in support of the allegations of the com-

plaint have been introduced. After counsel supporting the complaint rested his case, the respondent filed a motion to dismiss the complaint, alleging that counsel in support of the complaint had failed to establish a prima facie case and to prove the existence of any public interest in the proceedings. The hearing examiner denied the motion to dismiss and ordered that further hearing shall commence on November 28, 1955. The respondent has filed an appeal from the examiner's ruling denying the motion to dismiss and has requested the Commission to order that further hearings be suspended pending disposition of the appeal. Respondent has also requested oral argument on the appeal.

Under the Commission's Rules of Practice, Section 3.20, an interlocutory appeal from a ruling of a hearing examiner may be granted only upon a finding that the ruling appealed from involves substantial rights and will materially affect the final decision of the case, and further that a determination of its correctness before conclusion of the trial would better serve the interests of justice. Thus, for the respondent to succeed in this appeal it must have demonstrated to the satisfaction of the Commission not only that the examiner's ruling in some way touches the respondent's substantial rights, but also that the ruling will have some material effect on the final decision of the case and that the interests of justice would be better served by a determination of the correctness of the ruling now rather than at the conclusion of the trial.

The ruling of a hearing examiner denying a motion to dismiss a complaint for failure of proof, made at the conclusion of the case in chief, obviously is not a decision on the merits of the case. Such a ruling is merely a determination that there is in the record reliable evidence which, when considered in connection with reasonable inferences which may be drawn therefrom, and if not overcome by the respondent's evidence, would support an order to cease and desist. The ultimate decision of whether an order to cease and desist will be issued, even in the absence of further evidence, is not reached; and it could well be that a hearing officer, upon full consideration of a proceeding submitted for final decision, after making appropriate determinations concerning the credibility of witnesses, the weight to be given conflicting evidence, and other pertinent questions involved, would dismiss the complaint even though he had theretofore denied a motion to dismiss for failure of the record to establish a prima facie case.

A hearing examiner in ruling on a motion to dismiss for failure of proof, made at the close of the case in chief, like a Federal district court in ruling on a similar motion in a non-jury trial, views the

evidence and inferences reasonably to be drawn therefrom in the light most favorable to the complaint. Thus, an appeal from a ruling denying such a motion should be granted only when it is apparent that there is in the record no substantial evidence in support of the complaint and the ruling was obviously erroneous. The instant appeal does not present this situation. The record in this case contains considerable respectable evidence which, if not overcome by rebutting evidence, would support an order to cease and desist. Moreover, the ruling appealed from, involving as it does only a determination, under the circumstances stated, that a prima facie case has been established, will have no material effect on the final decision of the case. It is also clear that for the Commission to entertain appeals of this nature would be but to encourage the submission of cases for decision piecemeal, with resulting unjustifiable delays; and that, in the opinion of the Commission, would not "better serve the interests of justice." It follows that the respondent's appeal is not one to be granted under § 3.20 of the Commission's Rules of Practice.

In scheduling further hearings in this matter and in stating that he would not defer further hearings during the pendency of the respondent's appeal, the hearing examiner was acting well within the scope of his authority. No sufficient reason appears as to why we should disturb that action.

In the view we take of the respondent's appeal, oral argument in support thereof is not necessary and would serve no useful purpose.

The respondent's appeal and its request for oral argument thereon, as well as its request that further hearings herein be suspended, are denied and an appropriate order will be entered.

IN THE MATTER OF

STANLEY MARTIN AND STEPHEN BALUT TRADING AS MARTIN-BALUT FUR FACTORY

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

Docket 6379. Complaint, June 29, 1955—Decision, Dec. 1, 1955

Consent order requiring furriers in Wilkes-Barre, Pa., to cease violating the Fur Products Labeling Act by failing to comply with labeling requirements; and disseminating advertising in newspapers, etc., which failed to disclose the names of animals producing certain fur and other required information, misrepresented prices as reduced, savings possible to purchasers, and fur products as being from the stock of a liquidating business.

Before *Mr. John Lewis*, hearing examiner.

Mr. John T. Walker for the Commission.

Mr. Donald S. Mills, of Wilkes-Barre, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Stanley Martin and Stephen Balut, as individuals and as copartners trading as Martin-Balut Fur Factory, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Stanley Martin and Stephen Balut are individuals and copartners, trading as Martin-Balut Fur Factory, with their office and principal place of business located at 685 Carey Avenue, Wilkes-Barre, Pennsylvania.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been, and are now, engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce of fur products, and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped

and received in commerce, as "commerce," "fur," and "fur products" 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, in that they were not labeled in accordance with the rules and regulations promulgated thereunder in the following respects:

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

(*b*) Required information was mingled with non-required information on labels, in violation of Rule 29 (a) of the aforesaid Rules and Regulations.

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

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

PAR. 6. Among and including the advertisements, as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the "Times Leader," Wilkes-Barre, Pennsylvania, a newspaper having wide circulation in the State of Pennsylvania and other States of the United States.

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

(*a*) Failed 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 in violation of Section 5 (a) (1) of the Fur Products Labeling Act.

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

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

(*d*) Misrepresented, by means of comparative prices and other statements as to "value" not based on current market values, the amount of savings to be effectuated by purchasers of said fur products, in violation of Rule 44 (b) and (c) of the aforesaid Rules and Regulations.

(*e*) Misrepresented, in violation of Rule 44 (g) of said Rules and Regulations, fur products as being from the stock of a business in the state of liquidation.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act, and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

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 Fur Products Labeling Act and the rules and regulations issued thereunder, and the Federal Trade Commission Act. After being served with said complaint, respondents appeared by counsel and entered into an agreement, dated October 11, 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 disposition 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. Respondents Stanley Martin, and Stephen Balut, are individuals and copartners, trading as Martin-Balut Fur Factory, with their office and principal place of business located at 685 Carey Avenue, Wilkes-Barre, Pennsylvania.

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 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 respondents Stanley Martin, and Stephen Balut, individuals and as copartners, trading as Martin-Balut Fur Factory, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of fur products, 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 products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

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

2. Failing to affix labels to fur products showing:

(*a*) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Prod-

ucts Name Guide and as prescribed under the rules and regulations;

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

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

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

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

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

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

4. Setting forth on labels attached to fur products:

(*a*) Non-required information mingled with required information:

(*b*) Required information in handwriting.

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

1. Fails to disclose:

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

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

2. Represents directly or by implication:

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

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

(*c*) The value of fur products when such claims or representations are not true in fact;

(*d*) That any such products are from the stock of a business in a state of liquidation contrary to 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 1st day of December, 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.

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IN THE MATTER OF

MAYFLOWER TELEVISION COMPANY, INC., ET AL.

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

Docket 6404. Complaint, Aug. 24, 1955—Decision, Dec. 1, 1955

Consent order requiring a firm in Washington, D. C., to cease misrepresenting, in television and newspaper advertising, their service charge for servicing and repairing a television set, and representing falsely that their service men were experts and that nine times out of ten a television set could be repaired in the home.

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. Michael J. Vitale for the Commission.
Mr. Charles H. Day, of Arlington, Va., 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 Mayflower Television Company, Inc., a corporation, and Raymond H. Bente, Lowell Ewing, and Lillian Turner, 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 Mayflower Television Company, Inc., is a corporation, organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 1529 17th Street, N. W., Washington, D. C. Respondents Raymond H. Bente, Lowell Ewing, and Lillian Turner are President-Treasurer, Vice-President, and Secretary, respectively, of this corporate respondent.

All of the aforesaid respondents cooperate and act together in performing the acts and engaging in the practices hereinafter set forth.

PAR. 2. Respondents, for more than several years last past, have been engaged in the sale and distribution of television and radio replacement parts. An essential and integral part of respondents' said business is the furnishing of television repair services. In connection with their television repair service respondents remove tele-

vision sets from the homes of owners located in the District of Columbia and in the States of Maryland and Virginia, and transport said television sets to their repair shop, which is located in the District of Columbia, for servicing and replacement of parts, said parts being furnished and sold by respondents.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said business in commerce in the District of Columbia and between the District of Columbia and other States. Their volume of business in said commerce has been and is substantial.

PAR. 3. At all times mentioned herein respondents have been, and are now, in direct and substantial competition in commerce with other corporations, firms and individuals engaged in a similar business.

PAR. 4. In the course and conduct of their aforesaid business, respondents have made and are making certain statements and representations concerning said business by means of advertisements on television, in newspapers and other advertising media. Among and typical of the statements and representations made in such advertising are the following:

* * * We offer this terrific T-V special! $1.50 service charge to all who call for Mayflower T-V service now at STerling 3-3800 * * *

* * * Each a specialist for a different make set! * * *

* * * For today's great special! A Mayflower serviceman will come to your home to fix your T-V set for only $1.50 service charge. If parts are needed, there is no service charge at all! * * *

* * * A Mayflower expert will come to your home to fix your television set—for the low service fee of just $1.00. And that's not all. For if your set happens to need new parts in this home repair—Mayflower will foot the service charge. You pay nothing for the service. This offer is in effect for a limited time only—so we urge you to call now. * * *

* * * One of the finest engineers in the business will come out to your home . . . if you want him to fix your television set, the charge is only $1.50.

* * * Nine out of ten, it's some small thing that can be fixed in a jiffy, right there in your own home, and if you want us to fix it, the service charge is only $1.00.

* * * We'll have one of our experts out to your home today, free. He'll examine your set, find out what's wrong with it, inform you of it. Nine times out of ten, we can repair the set right there in your own home. Usually it's a small adjustment that has to be made. Maybe a tiny part replaced, maybe a connection tightened. * * *

* * * Mayflower will repair your set for a service charge of $1.00, plus parts if any are necessary, and your set will be working perfectly again.

* * * He'll examine that set, find out what's wrong with it FREE OF CHARGE, repair it for a Service charge of $1.00 IF you want him to.

* * * If you want us to repair the set after you know what's wrong with it, we do 9 out of 10 repairs in the home. The Service charge is only $1.00, regardless of what's wrong with your set. * * *

PAR. 5. By and through the use of the said statements and representations, and others of similar import, but not specifically set out herein, respondents represent, directly or by implication:

1. That the service charge for servicing and repairing a television set is $1.00 or $1.50.

2. That only those parts which are needed will be replaced and if any new parts are replaced in a television set there will not be a service charge.

3. That a television expert or specialist will come to your home to examine and repair your television set.

4. That nine times out of ten a television set can be repaired in the home.

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

1. The service charge for repairing a television set, in most instances, is far in excess of the represented amounts of $1.00 or $1.50. A service charge of $1.00 or $1.50 is made only when the television sets are serviced and repaired in the customer's home. However, in many instances, the television sets are removed to respondents' place of business for repairs and at that time the service charge is automatically increased to an amount far in excess of that which is represented. The advertisement of a low service charge was made to obtain leads and information as to persons interested in having their television sets repaired. After obtaining such leads, respondents increase the service charge to a larger amount without disclosing it to customers.

2. Respondents have adopted the practice of replacing parts which were not needed and have also included a service charge in those instances.

3. The persons who examine the television sets are not experts or specialists in the servicing or repairing of television sets, but are persons possessing a limited knowledge in the field of television repairs. In fact, at the time the so-called experts or specialists come to the homes of customers, the only testing equipment they have with them is that which is used for testing tubes.

4. In most instances the television sets are removed from the homes of their owners and transported to respondents' place of business for service and repair. In fact, the servicemen, as an inducement to discourage the repair of television sets in homes, receive a commission for each set brought into the workshop for repairs.

PAR. 7. The use by the respondents of the aforesaid false, deceptive, and misleading statements, representations, and practices, had the

tendency and capacity to mislead and deceive a substantial portion of persons owning television sets into the erroneous and mistaken belief that such statements and representations were and are true, and to induce said persons to have respondents service and repair their television sets because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

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

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 24, 1955, charging them with having made certain false, deceptive and misleading statements and representations regarding television and radio services and replacement parts in violation of the Federal Trade Commission Act. In lieu of submitting answer to said complaint, respondents Mayflower Television Company, Inc., a corporation, and Raymond H. Bente, an individual, entered into an agreement for consent order with counsel supporting the complaint, disposing of all the issues in this proceeding, which agreement has been duly approved by the Director of the Bureau of Litigation.

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

said agreement shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

While the other respondents in the proceeding, Lowell Ewing and Lillian Turner, were formerly officers of corporate respondent Mayflower Television Company, Inc., it appears from affidavits executed by such respondents that they are no longer connected with said corporation; that said individual respondents did not participate in the management or operation of respondent corporation, and have had no part in determining its policies; and that any of the acts alleged in the complaint were without the knowledge, consent, cooperation or condonement of said individual respondents. It is therefore provided in the agreement that the complaint should be dismissed as to these individuals.

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

1. Respondent Mayflower Television Company, Inc., 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 1529 - 17th Street, N. W., Washington, D. C. Respondent Raymond H. Bente is an individual and officer of said corporation, with his office and principal place of business the same as that of corporate respondent.

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

ORDER

It is ordered, That respondent Mayflower Television Company, Inc., a corporation, and its officers, and Raymond H. Bente, 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 offering for sale, sale and

distribution of replacement parts for television sets and other merchandise, or repair services in connection therewith, 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 the charge for servicing or repairing is $1.00 or $1.50 or any amount which is not in accordance with the facts.

2. That only parts which are needed will be replaced unless such is the fact.

3. That in case parts are replaced no service charge will be made.

4. That their servicemen are experts in servicing and repairing.

5. That repairs can or will be made in the home in any specific number of cases which is contrary to the fact.

It is further ordered, That the complaint be, and the same hereby is, dismissed without prejudice as to respondents Lowell Ewing and Lillian Turner as 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 1st day of December, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Mayflower Television Company, Inc., a corporation, and Raymond H. Bente, individually and as an officer of said corporation, shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

JAY GEE FABRICS, INC., ET AL.

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

Docket 6422. Complaint, Sept. 27, 1955—Decision, Dec. 1, 1955

Consent order requiring a manufacturer in New York City to cease falsely labeling and invoicing, as "70% Guanaco Fur, 30% Virgin Wool" and "50% Cashmere, 50% Guanaco," bolts of fabric which contained substantial amounts of miscellaneous fur fibers other than guanaco, and to conform in other respects to the labeling requirements of the Wool Products Labeling Act.

Before *Mr. Abner E. Lipscomb*, hearing examiner.
Mr. R. D. Young, Jr. for the Commission.
Mr. Irving Markowitz, 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 Jay Gee Fabrics, Inc., a corporation, and Jack Grodowitz, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under said Wool 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, Jay Gee Fabrics, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 230 West 41st Street, New York, New York.

The individual respondent, Jack Grodowitz, is Secretary-Treasurer of the corporate respondent, Jay Gee Fabrics, Inc., and he formulates, directs and controls the acts, policies and practices of said corporate respondent. Said individual respondent has his office and principal place of business at the same address as the corporate respondent.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1953, re-

spondents 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 pieces or bolts of fabric labeled or tagged by respondents as consisting of "70% Guanaco Fur, 30% Virgin Wool," whereas, in truth and in fact, said products were not composed of 70% guanaco fur and 30% virgin wool, as tagged or labeled by said respondents, but contained substantial amounts of miscellaneous fur fibers other than guanaco, the term "Guanaco" referring to the fur or fleece of the South American animal known as the guanaco, or "Llama Guanicoe."

Respondents further misbranded said pieces or bolts of fabric by stamping, tagging or labeling them as consisting of "50% Cashmere, 50% Guanaco," whereas in truth and in fact said products were not composed of 50% cashmere, 50% guanaco, as tagged or labeled by said respondents, the term "Cashmere" referring to the hair or fleece of the Cashmere goat.

PAR. 4. 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 said Wool Products Labeling Act of 1939, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. Respondents, in the course and conduct of their business as aforesaid are and were in competition with other corporations and with firms and individuals, likewise engaged in the sale of pieces or bolts of fabric, in commerce.

PAR. 6. The acts and practices of respondents, as set forth in Paragraphs 2, 3, 4 and 5 constitute misbranding of wool products and 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 and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. In the course and conduct of their business in connection with the sale of their products, in commerce, respondents have made

various statements concerning their products in sales invoices. Among and typical, but not all inclusive, of such statements are the following:

50% CASHMERE
50% GUANACO

PAR. 8. Through the use of such statements and representations to describe said pieces or bolts of fabric, respondents represented, directly or by implication, that said products were composed of 50% cashmere and 50% guanaco.

PAR. 9. The aforesaid statements and representations are false, misleading and deceptive, since, in truth and in fact, respondents' products described as pieces or bolts of fabric and represented by respondents as 50% cashmere and 50% guanaco were composed of substantially less than 50% cashmere and substantially less than 50% guanaco.

PAR. 10. Respondents, in the course and conduct of their business as aforesaid are and were in competition with other corporations and with firms and individuals, likewise engaged in the sale of pieces or bolts of fabric, in commerce.

PAR. 11. The use by respondents of statements herein set forth, in the course of selling and offering for sale their products in commerce as above described, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were and are true, and to induce the purchase of such products on account of such beliefs induced as aforesaid. As a result thereof substantial trade in commerce has been diverted to respondents from their competitors, and substantial injury has thereby been done to competition in commerce.

PAR. 12. The acts and practices of the respondents as set forth in Paragraphs 7, 8, 9, 10, and 11 herein were all to the prejudice and injury of the public and of respondents' competitors and constituted unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On September 27, 1955, the Federal Trade Commission issued its complaint in this proceeding, charging the Respondents with misbranding their wool products in commerce, in violation of the Federal Trade Commission Act, and Sections 4 (a) (1) and 4 (a) (2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.

Thereafter, on October 13, 1955, respondents entered into an agreement with counsel supporting the complaint, and, pursuant thereto,

submitted to the Hearing Examiner an Agreement Containing Consent Order To Cease And Desist, disposing of all the issues involved in this proceeding.

Respondent Jay Gee Fabrics, Inc., is identified in the agreement as a New York corporation, with its office and principal place of business located at 230 West 41st Street, New York, New York, and respondent Jack Grodowitz as an individual and Secretary-Treasurer of the corporate respondent, and having his office and principal place of business at the same address as the corporate respondent.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record herein may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement, and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The agreement sets forth that the order to cease and desist contained therein shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; and that the complaint herein may be used in construing the terms of the order.

After consideration of the charges set forth in the complaint and the provisions of the proposed order contained in the agreement, it appears that such order 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 agreement. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order to Cease and Desist and finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint, and that this proceeding is in the public interest. Accordingly,

It is ordered, That the respondent, Jay Gee Fabrics, Inc., a corporation, and its officers, and respondent Jack Grodowitz, individually and as an officer of said corporation, and respondents' respective representatives, agents and employees, directly or through any cor-

porate 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 pieces or bolts of wool fabric 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 product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

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

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

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

Provided, That the foregoing provision 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 Jay Gee Fabrics, Inc., a corporation, and its officers, and respondent Jack Grodowitz, 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 offering for sale, sale or distribution of pieces or bolts of wool fabric or any other wool products

in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Misrepresenting the constituent fibers of which their wool products are composed, or the percentages or amounts thereof, in sales invoices 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 1st day of December, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That Respondents Jay Gee Fabrics, Inc., a corporation, and Jack Grodowitz, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

ADMIRAL CORPORATION

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

Docket 6319. Complaint, Mar. 23, 1955—Decision, Dec. 3, 1955

Consent order requiring a manufacturer in Chicago to cease representing falsely by radio and television broadcasts, advertisements in magazines, newspapers, etc., and advertising material furnished to its distributors, that the screen area of its television sets which were equipped with its Giant 21" picture tube was 20% larger than that of its competitors' television sets likewise equipped.

Before *Mr. Earl J. Kolb*, hearing examiner.
Mr. Edward F. Downs for the Commission.
Pope & Ballard, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Admiral Corporation, 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 respect thereof as follows:

PARAGRAPH 1. Respondent Admiral Corporation is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, having its principal office and place of business at 3800 Cortland Street, Chicago, Illinois.

PAR. 2. Respondent is now and for several years last past has been, engaged, among other things, in the manufacture, distribution and sale of television sets.

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

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

PAR. 4. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its television sets in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondent has made and is now making certain statements and representations by radio and television commercial announcements, by advertisements in newspapers and magazines, and by circulars, pamphlets, and other advertising media. Said statements and representations are also contained in various advertising material furnished by respondent to its distributors who use it to advertise respondent's television sets. Among and typical, but not all inclusive, of such statements and representations are the following:

Admiral announces a brand new Giant 21" picture tube, accurately described as "The World's Largest" * * * with 270 square-inch screen * * * 20% bigger than other 21" TV * * *

270 square inch screen * * * 20% bigger than ordinary 21".

PAR. 5. By means of the aforesaid statements and representations and others of similar import not herein specifically set out, respondent has represented directly or by implication that the screen area of its television sets, which are equipped with its Giant 21" picture tube, is 20% larger than the screen area of its competitors' television sets which are likewise equipped with 21" picture tubes.

PAR. 6. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact the screen area of respondent's television sets, which are equipped with its Giant 21" picture tube, is not 20% larger than the screen area of respondent's competitors' television sets which are also equipped with 21" picture tubes.

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

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's 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 EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding, issued March 23, 1955, charges the respondent Admiral Corporation, a Delaware corporation located at 3800 Cortland Street, Chicago, Illinois, with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act, in connection with the sale and distribution of television sets.

After the issuance of said complaint and the filing of its answer thereto, the respondent entered into an agreement with counsel for complaint containing consent order to cease and desist disposing of all the issues in this proceeding, which agreement was duly approved by the Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

By the terms of said agreement, the said respondent 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.

By said agreement, the answer heretofore filed by respondent was withdrawn and the parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, and all further and other procedure before the hearing examiner and the Commission to which the respondent may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said agreement, respondent further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein, that the com-

plaint herein may be used in construing the terms of the order issued pursuant to said agreement, and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

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

ORDER

It is ordered, That respondent, Admiral Corporation, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of television sets in commerce, do forthwith cease and desist from:

Misrepresenting directly or by implication the screen area of its television sets as compared with the screen area of its competitors' television sets.

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 3rd day of December 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

OKLAHOMA COLLEGE OF AUDIOMETRY ET AL.

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

Docket 6410. Complaint, Aug. 30, 1955—Decision, Dec. 7, 1955

Consent order requiring a seller in Oklahoma City, Okla., of a correspondence course in audiometry or the fitting of hearing aids, to cease representing falsely in circulars mailed to prospective students and in advertisements in magazines that the school was an accredited college, was non-profit, and gave the latest scientific methods of fitting and rehabilitating the deaf; that its president held a number of degrees pertaining to audiometry; and that students making a passing grade would receive a diploma of Doctor of Audiometry, indicated by the letters "D.A."

Before *Mr. William L. Pack*, hearing examiner.
Mr. Morton Nesmith for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the Oklahoma College of Audiometry, a corporation, and John W. Bridges, individually and as President 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 Oklahoma College of Audiometry is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma. Respondent John W. Bridges is the president of said corporate respondent and formulates, controls, and directs the policies and practices of said corporate respondent and is responsible for the operation and management thereof. The office and principal place of business of both respondents is located at 904 Northwest 19th Street, Oklahoma City, Oklahoma.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution in commerce between and among the various States of the United States of a course of study and instruction in audiometry or the art of fitting hearing aids,

which is pursued by correspondence through the medium of the United States mails.

During the time aforesaid respondents have caused and do now cause their said course of study and instruction to be transported from their said place of business in the State of Oklahoma to purchasers thereof located in various States of the United States other than the State of Oklahoma. The conduct of said business contemplates and results in, and has resulted in the transportation of lesson sheets and other documents, money orders, checks and other forms of money, from respondents' place of business in the State of Oklahoma, through and into other States and from respondents' customers located in various States into the State of Oklahoma. There is now and has been at all times mentioned herein, a course of trade in said course of instruction so sold and distributed by said respondents in commerce between and among the various States of the United States.

PAR. 3. A college, as that term is understood in the educational field, and by the general public, is an institution of higher learning, including subjects in the arts, sciences and professions, such as law, medicine and theology, with adequate equipment in the form of buildings, laboratories, libraries and dormitories for resident students, and sufficient financial sources to operate and maintain such institution; with an adequate and competent faculty of learned persons qualified and trained to teach the respective subjects offered by such institution and possessing degrees from recognized universities and colleges.

A degree is an academic rank recognized by colleges and universities having a reputable character as institutions of higher learning and which are so recognized and accredited by standard accrediting organizations, and which degree conveys to the ordinary mind the idea of some collegiate, university or scholastic distinction.

PAR. 4. Respondents, in soliciting the sale of and in selling said course of study and instruction in audiometry, have made and are making use of printed advertising matter, including circulars mailed and distributed to prospective students located in the various States of the United States, and of advertisements inserted in various magazines devoted to the healing arts and having a national circulation, in and by which numerous representations have been and are made in regard to said course of study and matters and things connected therewith. Typical of such representations are the following:

A NON-PROFIT INSTITUTION

OKLAHOMA COLLEGE OF AUDIOMETRY

CHARTERED UNDER THE LAWS OF THE STATE OF OKLAHOMA

P. O. Box 3611
Oklahoma City, Oklahoma

HOME STUDY COURSE—AUDIOMETRY
OKLAHOMA COLLEGE OF AUDIOMETRY

A Non-Profit Institution
P. O. Box 3611

S. D. Burgess, Registrar
Oklahoma City, Oklahoma
John W. Bridges, M.S. :D.A.

Audiometry is the Science and Art of measuring hearing impairment, and prescribing and fitting hearing aids * * * (The science of hearing).

* * * It is the purpose of our college to give the latest Scientific Methods of testing, treating, fitting, and rehabilitating those suffering hearing loss.

Our college is a non-profit institution, and because of this fact we are able to bring to you at this time, knowledge that has taken the leaders in this particular field many years to assemble. Now we can offer this information quickly and conveniently, through our Home Study Course, at a minimum of expense. * * *

We are very proud of our Home Study Course, and receive many letters of commendation. There is a final examination which is quite easy for the drugless physician, and those making a grade of 75 or better will be issued a Diploma of Doctor of Audiometry. This Diploma is ready for framing and will give you a great deal of prestige. (See Green File—Home Study Course Audiometry, October 13, 1954.)

HEARING AID CONSULTANTS NEEDED

Train to be a doctor of Audiometry. New income added to your practice. Certificate of graduation upon completion of Home Study Course.

For information, write:
Oklahoma College of Audiometry
Desk C—P. O. Box 3611, Oklahoma City, Okla.

(See Buff File, p. 6.)

PAR. 5. By means of the foregoing representations and others of similar import and effect not herein specifically set out, respondents have represented and implied and do represent and imply that the corporate respondent is a recognized and accredited college or institution of higher learning in which is taught the science of Audiometry; that the President, John W. Bridges, is the holder of a number of degrees pertaining to the subject of Audiometry; that corporate respondent gives the latest scientific methods of testing, treating, fitting, and rehabilitating those suffering hearing loss; that students who make a passing grade of 75 will receive a diploma of Doctor of Audiometry, the latter indicated by the letters D.A.; and that said corporation is a non-profit educational institution.

PAR. 6. All of the foregoing statements and representations, and others similar thereto, are false, deceptive and misleading. In truth and in fact the corporate respondent is not a college in the accepted sense of that term and is not a recognized, accredited and accepted institution of higher learning. It has none of the facilities, equipment or faculty described in Paragraph 3 hereof, but on the contrary, is operated by respondent, John W. Bridges, who also constitutes the faculty. Respondent John W. Bridges is not a licensed M.D., and the letters M.S.:D.A., used by him signify that he has a master of science degree and is a Doctor of Audiometry. The degree "Doctor of Audiometry" is not known, accepted, or recognized by reputable schools and colleges, and is of no validity whatever, and moreover, insofar as respondent is concerned was conferred by him upon himself.

Said corporate respondent does not have the facilities, equipment or faculty, nor is said respondent John W. Bridges qualified by training or experience adequately to give the latest scientific methods of testing, treating, fitting, and rehabilitating those suffering hearing loss. While it is necessary to receive certain practical training in connection with the fitting of hearing aids, it is not necessary to have extensive training in medical science, nor is it necessary to acquire any academic degrees in order to fit hearing aids properly to persons in need of such equipment. Moreover, the corporate respondent is not a non-profit educational institution, even though it may have been incorporated under the laws of the State of Oklahoma as such, but is one organized for private gain.

PAR. 7. Academic degrees as defined in Paragraph Three hereof are conferred by duly authorized, accredited and recognized educational institutions of higher learning as evidence and in recognition of prescribed, scholastic attendance by students of such institutions and unless so earned and conferred, do not constitute degrees in the accepted meaning of said terms; moreover, "degrees" granted solely for work done by correspondence are not accredited and recognized by colleges and universities or by examining boards of the different professions.

PAR. 8. The use by respondents of the aforesaid statements and representations has had and now has the tendency and capacity to confuse, mislead and deceive members of the public into the erroneous and mistaken belief that such statements and representations are true, and to induce them to purchase respondents' course of study and instruction in said commerce on account thereof.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and

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

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter, issued August 30, 1955, charges respondents with violation of the Federal Trade Commission Act through the use of certain misrepresentations in soliciting the sale of and in selling their course of study and instruction in audiometry. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission disposing of this matter shall be based shall consist solely of the complaint and the agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission 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 rights 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 the orders of the Commission; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

1. Respondent Oklahoma College of Audiometry is a corporation organized, existing and doing business under the laws of the State of Oklahoma, with its office and principal place of business located at 904 - 19th Street, N. W., Oklahoma City, Oklahoma. Respondent John W. Bridges is president of the corporation with his office and principal place of business located at the same address.

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

ORDER

It is ordered, That respondent Oklahoma College of Audiometry, a corporation, and its officers, and respondent John W. Bridges, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction, do forthwith cease and desist from:

1. Using the word "college," or any word of similar import, as a part of said corporation's corporate or trade name, or otherwise representing, directly or by implication, that respondents' enterprise is a college or institution of higher learning.

2. Representing, directly or by implication, that respondents' school is recognized by any standard or accepted accrediting organization or is an accredited educational institution.

3. Representing, directly or by implication, that respondent John W. Bridges is the holder of any accredited and recognized academic degrees pertaining to the subject of audiometry.

4. Representing, directly or by implication, that respondents' school gives the latest scientific methods of testing, treating, fitting or rehabilitating those suffering hearing loss.

5. Representing, directly or by implication, that the degree of "Doctor of Audiometry" is an accepted and recognized degree.

6. Representing, directly or indirectly, that respondents' school is a non-profit educational institution.

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 December, 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

CALLAWAY MILLS COMPANY ET AL.

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

Docket 6352. Complaint, May 16, 1955—Decision, Dec. 8, 1955

Consent order requiring the nation's largest manufacturer of industrial wiping cloths and its corporate sales subsidiary, which had sales in 1953 approximating $8,000,000, to cease violating Sec. 3 of the Clayton Act through selling their products, including the trade-marked cloth "Kex", to some 110 large industrial laundries, which rented them to industrial concerns for wiping grease, dirt, etc., from machinery and tools, on condition that they not deal in competitive products.

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

Mr. Andrew C. Goodhope for the Commission.

Cann, Lamb, Long & Kittelle, of Washington, D. C., 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 Callaway Mills Company, a corporation, and Callaway Mills, Inc., a corporation (hereinafter called respondents) have violated the provisions of Section 3 of the Clayton Act (15 U.S.C.A. sec. 14), the Commission hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Callaway Mills Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, having its principal office and place of business located at LaGrange, Georgia, with thirteen cotton milling factories located in the State of Georgia.

Respondent Callaway Mills, Inc., is a corporation 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 at 295 Fifth Avenue, New York, New York. Respondent Callaway Mills, Inc., is a wholly owned subsidiary of respondent Callaway Mills Company and has branch offices located at Akron, Ohio; Boston, Massachusetts; Atlanta, Georgia; Detroit, Michigan; Seattle, Washington; St. Louis, Missouri; Baltimore, Maryland; and Los Angeles, California.

PAR. 2. Respondent Callaway Mills Company is now and for many years has been engaged in the manufacturing, milling, processing,

sale and distribution of a large number of cotton products. Included among such products is a product, made from cotton, commonly called industrial wiping cloths. These cloths are made from woven or knitted cloth and are intended for wiping purposes by industrial, commercial or service users, and are cut to uniform size or sizes and have bound edges or selvage edges. The majority of respondents' industrial wiping cloths are sold under the trade name of "Kex" and are nationally advertised and enjoy wide sales throughout the various States of the United States and the respondents are the dominant manufacturer and seller of such industrial wiping cloths in the United States; respondents' sales of such industrial wiping cloths for the year 1953 were approximately $8,000,000.00

Respondent Callaway Mills, Inc., is the sales agent selling all of respondent Callaway Mills Company's products, including industrial wiping cloths, throughout the United States and in the District of Columbia and has directly participated in all of the acts and practices mentioned herein.

PAR. 3. Respondents now sell and distribute and for many years have been selling and distributing their industrial wiping cloths to approximately 110 large industrial laundries located throughout the States of the United States and in the District of Columbia. The respondents cause such products, when sold by them, to be transported from the place of manufacture in the State of Georgia to purchasers thereof located in States other than the place of manufacture or sale. There is now and has been for many years a constant current of trade in commerce in respondents' said products between and among the various States of the United States and in the District of Columbia.

PAR. 4. The large industrial laundries to whom the respondents sell their industrial wiping cloths are independent business operations which in turn rent such industrial wiping cloths to a variety of industrial concerns for use by them. Among such uses are the wiping of grease, dirt, ink, dust, or other filth from all types of machinery and tools. The industrial laundries collect such industrial wiping cloths after they have become soiled by use, launder and re-rent such cloths during their useful life. The industrial laundries do not resell such cloths but rent such cloths to users.

PAR. 5. In the course and conduct of their business, as herein described, respondents have been in competition in the manufacture, sale and distribution of industrial wiping cloths in commerce between and among the various States of the United States and the District of Columbia with other corporations, persons, firms and partnerships.

PAR. 6. In the course and conduct of their business in commerce, above described, the respondents have made sales and contracts for

sale of their industrial wiping cloths and are still making such sales and contracts for sale on the condition, agreement or understanding that the purchasers thereof shall not use or deal in the industrial wiping cloths or other similar supplies or commodities of a competitor or competitors of the respondents.

The respondents have entered into such contracts for sale with approximately 110 industrial laundries located throughout the United States. Typical of such contract provisions are those contained, among others, in the respondents' "Kex License Agreement" pursuant to the terms of which the respondents have contracted to sell their products to such industrial laundries, as follows:

2. Licensee will furnish, promote, develop and expand said rental service in said territory, and will use and publish said name and label on and in connection with, and only on and in connection with, industrial wiping cloths manufactured or supplied by the Company and rented to customers of Licensee located within said territory. Licensee shall not without prior written consent of the Company, within the said territory and during the term of this agreement, rent industrial wiping cloths other than "Kex" cloths. Nothing in this agreement shall prevent Licensee from purchasing industrial wiping cloths from a source other than the Company at any time the Company is unable to make deliveries in the quantities and at the times required nor to prevent Licensee from purchasing a special type or types of industrial wiping cloth(s) from a source other than the company if such special type or types are not made available by the Company after reasonable notice to the Company of such Licensee's need for such special type(s).

3. Licensee will purchase from the Company, at the prevailing prices and terms fixed by the Company from time to time, the industrial wiping cloths required by Licensee to furnish said rental service.

4. Licensee shall not sell any serviceable cloth so long as said name or label appears thereon or is attached thereto, except to the Company or except in connection with a sale of Licensee's business hereinafter provided.

PAR. 7. The industrial laundries with whom respondents have entered into the contracts of sale described in Paragraph Six are a large and substantial market for such industrial wiping cloths. Sales by respondents to such customers pursuant to the contract terms described above in Paragraph Six for the year 1953 were approximately $8,000,000.00. Competitors of respondents have been, and are now, unable to make sales of similar products to those sold by respondents to respondents' customers which could have been made but for conditions, agreements and understandings with such customers described above in Paragraph Five.

PAR. 8. The effect of such sales and contracts of sales upon such conditions, agreements and 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 and

purchasers of respondents are engaged; and may be to tend to create a monopoly in the respondents in the line of commerce in which the respondents have been and are now engaged.

PAR. 9. The aforesaid acts and practices of respondents constitute a violation of the provisions of Section 3 of the Clayton Act.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 16, 1955, charging them with having violated Section 3 of the Clayton Act. In lieu of submitting answer to said complaint, respondents entered into an agreement for consent order with counsel supporting the complaint, disposing of all the issues in this proceeding, which agreement has been duly approved by the Director of the Bureau of Litigation.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Respondents in the agreement waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that said agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The agreement further provided that the order contained therein may be entered in this proceeding by the Commission without further notice to respondents and, when so entered, it shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

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

agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Callaway Mills Company is a corporation existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at LaGrange, Georgia.

Respondent Callaway Mills, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 295 Fifth Avenue, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, which is in the public interest, and of the respondents hereinabove named; the complaint herein states a cause of action against said respondents under Section 3 of the Clayton Act.

ORDER

It is ordered, That the respondents, Callaway Mills Company, a corporation, and Callaway Mills, Inc., a corporation, and their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of industrial wiping cloths and other similar or related products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

(1) Selling or making any contract or agreement for the sale of any such products on the condition, agreement or understanding that the purchaser thereof shall not use or deal in industrial wiping cloths or other similar or related products supplied by 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 contract of sale, which condition, agreement, or understanding is to the effect that the purchasers of said products shall not use or deal in industrial wiping cloths or other similar or related products supplied by any competitor or competitors of 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 8th day of December, 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

WEINSTEIN FUR COMPANY ET AL.

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

Docket 6415. Complaint, Sept. 20, 1955—Decision, Dec. 8, 1955

Consent order requiring a furrier in Union City, N. J., to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to disclose the names of animals producing certain furs, the country of origin of imported furs, and the fact that fur products were composed of bleached, dyed, or otherwise artificially colored fur; and which misrepresented geographical origin of furs, prices, and value of fur products, and products as being from the stock of a liquidating business, among other things.

Before *Mr. Frank Hier*, hearing examiner.
Mr. John J. McNally for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Weinstein Fur Company, a corporation, and Stanley W. Weinstein, individually and as Secretary and Manager of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Weinstein Fur Company is a corporation organized under the laws of the State of New Jersey, with its office and principal place of business located at 4522 Bergenline Avenue, Union City, New Jersey. Individual respondent Stanley W. Weinstein is Secretary and Manager of said corporate respondent and formulates, directs and controls the acts and practices of said corporate respondent. Said individual respondent has the same office and principal place of business as corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, the respondents have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and

received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

PAR. 4. Among and including the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in various issues of the "Jersey Journal," the "Palisadian," and the "Hudson Dispatch"; publications having a wide circulation in the State of New Jersey.

PAR. 5. Certain of the aforesaid 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.

(*c*) The name of the country of origin of imported furs contained in fur products, in violation of Section 5 (a) (6) of the Fur Products Labeling Act.

Certain of the aforesaid advertisements were in violation of the Fur Products Labeling Act and of the Rules and Regulations promulgated thereunder in that they falsely and deceptively:

(*d*) Set forth certain of the required information in abbreviated form, in violation of Rule 4 of the said Rules and Regulations.

(*e*) Used words or terms connoting a false geographical origin of furs contained in fur products, in violation of Rule 7 of the said Rules and Regulations.

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

(*g*) Misrepresented, by means of comparative prices and percentage savings claims not based on 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.

(*h*) Misrepresented the aggregate value of the fur products being offered for sale by respondents, in violation of Rules 44 (C) and 49 of the said Rules and Regulations.

(*i*) Misrepresented fur products as being from the stock of a business in a state of liquidation, in violation of Rule 44 (G) of the said Rules and Regulations.

PAR. 6. Respondents, in making the claims and representations as to value referred to in subparagraphs (f) through (h) inclusive of Paragraph 5 hereof, have 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 of Rule 44 (E) of the Rules and Regulations promulgated thereunder.

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

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, 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 FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, the Federal Trade Commission on September 20, 1955, issued and subsequently served its complaint in this proceeding against respondents Weinstein Fur Company, a New Jersey corporation with its office and principal place of business located at 4522 Bergenline Avenue, Union City, New Jersey, and Stanley W. Weinstein, individually and as Secretary and Manager of said corporation, whose office and principal place of business is the same as that of said corporate respondent and who formulates, directs and controls the acts and practices of the corporate respondent.

On October 24, 1955, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be

taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact or conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this 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; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents 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; and that the complaint may be used in construing the terms of the order.

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 this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Weinstein Fur Company is a corporation organized, existing and doing business under the laws of New Jersey, with its office and principal place of business located at 4522 Bergenline Avenue, Union City, New Jersey. Respondent Stanley W. Weinstein is Secretary and Manager of said corporation with his office and principal place of business located at the same address.

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

ORDER

It is ordered, That respondents, Weinstein Fur Company, a corporation, and Stanley W. Weinstein, 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 sale, advertising, offer for sale, transportation or distribution of fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce,"

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

(1) Misbranding fur products by 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 the 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 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) Falsely or deceptively advertising fur products through the use of any advertisements, 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:

(*a*) 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;

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

(*c*) Fails to disclose the name of the country of origin of imported furs contained in fur products;

(*d*) Sets forth required information in abbreviated form;

(*e*) Uses words or terms connoting a false geographical origin of furs contained in fur products;

(*f*) Represents, directly or by implication:

(1) That the regular or usual price of any fur product is any amount which is in excess of the price at which such product had been offered for sale in good faith or sold by respondents in the recent regular course of their business.

(2) That a sale price enables purchasers of fur products to effectuate any savings in excess of the difference between the said price

and the price at which comparable products were sold during the time specified or, if no time is specified, in excess of the difference between said price and the current price at which comparable products are sold;

(3) That the aggregate value of fur products offered for sale is greater than is the fact;

(4) That any of such products were from the stock of a business in a state of liquidation, contrary to the fact.

(3) Makes the pricing claims or representations referred to in Paragraph (f), (1), (2) and (3), inclusive, above, unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based, as required by Rule 44 (e) of the Rules and Regulations.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Sec. 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of December, 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

D. STACK HUBBARD TRADING AS HALL-MARK STUDIOS

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

Docket 6395. Complaint, Aug. 23, 1955—Decision, Dec. 21, 1955

Consent order requiring a photographer in New York City to cease advertising on post cards a sham "Cutest Child Contest," with prizes, free portraits, etc., sponsored by "Mother and Child Magazine," in order to sell photographs to the children's parents.

Before *Mr. J. Earl Cox*, hearing examiner.
Mr. William R. Tincher for the Commission.
Mr. Charles Gold, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, The Federal Trade Commission, having reason to believe that D. Stack Hubbard, an individual trading as Hall-Mark Studios, 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 D. Stack Hubbard, is an individual trading as Hall-Mark Studios. Respondent is now, and for more than one year last past has been, engaged in the promotion, sale and distribution of photographs. Respondent's office and principal place of business is located at 1947 Broadway, New York, New York. Said photographs are sold directly to purchasers by the respondent and by his agents in various States of the United States.

PAR. 2. In the course and conduct of his business, respondent causes and has caused said photographs, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in commerce in said photographs.

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

PAR. 4. Respondent's method of interesting members of the public in the purchase of his photographs is by the mailing of permit postcards to patrons of certain local post offices in various States of the United States. A typical card used for this purpose is as follows:

Dear Mother, * * * *56 Valuable Prizes* * * *

You are cordially invited to bring your Child to HOTEL HAMILTON, in HAGERSTOWN, Md. on THURSDAY, or FRIDAY, Oct. 15th. & 16th. 10:AM till 7:PM. To be photographed in TRUE-COLOR. For our "CUTEST CHILD CONTEST." $1,275.00 in Prizes Sponsored by MOTHER & CHILD MAGAZINE. There is no charge for this service. Each entrant will receive a beautiful Transparency PORTRAIT FREE. Courtesy of HALL-MARK STUDIOS. OUR COLOR CAMERA takes pictures in NATURAL COLOR. Photographing every cute smile and expression. All Children are eligible 2 months to 12 years. Tell your Friends to come. IT'S FREE. Come early.

IMPORTANT: These are taken in TRUE-COLOR If possible dress children in BRIGHT COLORS.

PAR. 5. By means of the statements appearing on said postcards respondent represented, directly or by implication, that:

(1) Respondent is and has been conducting a photographic contest, the sole and exclusive purpose of which is to select winners for a contest sponsored by a magazine published under the name of "Mother and Child Magazine"; that the designated winning children will receive valuable prizes.

(2) Parents allowing their children to pose for respondent or "entrant" will receive a free portrait.

(3) Parents may enter their children in the contest free of charge.

(4) Mother and Child Magazine is a recognized and established magazine, independent of respondent, which is sponsoring the contest.

(5) Pictures taken will be in true and natural colors.

PAR. 6. The foregoing representations and implications are grossly exaggerated, false and misleading. In truth and in fact:

(1) Respondent has not been and is not now conducting a photographic contest to select winners for a contest sponsored by the "Mother and Child Magazine." Respondent's only objective in preparing and disseminating the postcards aforementioned, and subsequently as a direct result of that literature in having children pose for him, was and is to sell photographs to the parents. Such children as may be designated by respondent as a "winner" do not receive valuable prizes but, on the contrary, receive trivial toys of little or no value.

(2) No parent whose child posed for respondent or "entrant" receives or has received a free portrait. Some of said parents received a small free film slide or transparency, but not a portrait.

(3) Parents may not enter their children in the alleged contest free of charge. As a condition precedent to entering their children in the

alleged contest, parents must first pay for a year's subscription to the Mother and Child Magazine.

(4) Mother and Child Magazine is not a recognized or established magazine. On the contrary, it is a one page circular, folded over twice, containing information of little or no value and it was not established until 1950 when respondent commenced selling photographs. The magazine is owned and published solely by respondent.

(5) Pictures taken by respondent are not in true and natural color but are faded and of unnatural and inferior color.

PAR. 7. When parents, in response to the aforementioned postal cards, bring their children to the location respondent has designated, and at subsequent times thereafter, they have been told in certain instances, or it has been implied in other instances, by respondent or his agents that:

(1) Hall-Mark Studios is an affiliate of the Hall-Mark Greeting Card Company.

(2) Respondent will refund the purchase price of photographs to dissatisfied purchasers.

(3) Photographs purchased by the parents will be in true and natural color, and will be similar in quality to photographs exhibited to the parents.

(4) Photographs purchased by parents will be delivered promptly and according to the specifications and agreements contained on the purchase order.

(5) Mother and Child Magazine is a recognized and established magazine similar to Look Magazine and is published monthly and the subscriber will receive the new issue each month during his subscription period.

PAR. 8. The foregoing representations and implications are grossly exaggerated, false and misleading. In truth and in fact:

(1) Hall-Mark Studios is not an affiliate of or otherwise connected with the Hall-Mark Greeting Card Company.

(2) Respondent does not refund the purchase price of photographs to dissatisfied purchasers.

(3) Photographs sold by respondent are not in true and natural color but are faded and of unnatural and inferior color. Said photographs are greatly inferior in quality to the photographs which are exhibited to the parents at the time they place their orders.

(4) In some instances photographs ordered by parents are never delivered. In other instances the photographs are delivered only after extended delays and repeated requests for delivery. In many instances said photographs are not as specified in the order blank signed by

the parents in that blemishes, defects and objectionable backgrounds have not been eliminated or retouched as promised; the number and size of the photographs have not been as promised; and the poses selected by the parents have not been sent to them.

(5) Mother and Child Magazine is not similar to Look Magazine in form, composition or appearance. It is a one page circular, folded over twice, and contains little or no information of interest or value to parents. Said alleged magazine is not published monthly but is published quarterly. In most instances the subscribing parent does not receive any issues of the alleged magazine and many parents who do receive issues receive a copy of the same issue several times.

PAR. 9. The use by the respondent and his agents of the foregoing false, deceptive and misleading statements, representations and practices in connection with the sale and distribution in commerce of his photographs has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasers and prospective purchasers of said photographs into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of substantial quantities of photographs. As a result thereof trade in commerce has been unfairly diverted to respondent from his competitors and injury has been done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's 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 J. EARL COX, HEARING EXAMINER

The complaint charges that respondent D. Stack Hubbard, an individual trading as Hall-Mark Studios, with his office and principal place of business located at 1947 Broadway, New York, New York, is now, and for more than one year last past has been, competitively engaged with other persons, corporations, firms and partnerships, in the promotion, sale and distribution of photographs in commerce; and that he and his agents have falsely and deceptively misrepresented his photographs and business methods, to the prejudice and injury of the public and of respondent's competitors, in violation of the Federal Trade Commission Act. After the issuance of the complaint, to which no answer was filed, respondent, his counsel, and counsel supporting the complaint, on October 28, 1955, entered into an Agreement Containing Consent Order To Cease And Desist, which

was approved by the Director, Bureau of Litigation of the Commission, and thereafter transmitted to the hearing examiner for consideration.

The agreement provides, among other things, that respondent admits all the jurisdictional facts alleged 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 record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified, or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully covers all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest and accepts the Agreement Containing Consent Order To Cease And Desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondent, D. Stack Hubbard, an individual trading as Hall-Mark Studios, or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographs, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

(1) Respondent is conducting a photographic contest the purpose of which is to select winners for a contest sponsored by a magazine, or for any other purpose; or that designated winners will receive valuable prizes;

(2) Respondent will give free portraits to parents of children who pose for respondent;

(3) Parents may enter their children in the contest free of charge;

(4) *Mother and Child Magazine*, or any other publication owned by respondent, is a recognized or established magazine; or is independent of respondent; or is similar to *Look Magazine* or any other nationally known magazine; or is published monthly; or that the subscriber to said magazine will receive a new issue each month during his subscription period;

(5) Pictures taken by respondent or his agents will be in true or natural color;

(6) Hall-Mark Studios is an affiliate of, or is otherwise connected with, the Hall-Mark Greeting Card Company;

(7) Respondent will refund the purchase price of photographs to dissatisfied customers;

(8) Photographs purchased from respondent will be similar in quality to demonstration photographs;

(9) Photographs purchased from respondent will be delivered promptly or according to the specifications and agreements contained on the purchase order, unless such 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 21st day of December, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondent D. Stack Hubbard, an individual trading as Hall-Mark Studios, 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

TROPIC INDUSTRIES, INC., ET AL.

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

Docket 6397. Complaint, Aug. 23, 1955—Decision, Dec. 21, 1955

Consent order requiring two associated firms in Chicago and their two common officers to cease falsely advertising in newspapers for employees when actually seeking customers to buy their food vending machines, heating and cooking equipment and supplies, including such representations as that a purchaser of their products would service established food distribution accounts owned by respondents; must have a car and good references; and would not have to engage in canvassing or selling; would earn each month 20% of the amount invested and from $6,000 to $12,000 annually; would receive from respondents liberal financial assistance if he desired to expand, and would be given exclusive territory.

Before *Mr. J. Earl Cox*, hearing examiner.
Mr. William R. Tincher for the Commission.
Mr. Cecil W. Weiss, 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 Tropic Industries, Inc., a corporation, and Tropical Trading Company, a corporation, and Gilbert Courshon, G. C. Burd and Cecil Weiss, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Tropic Industries, Inc., and Tropical Trading Company are corporations duly organized, existing and doing business under the laws of the State of Illinois, with their principal office and place of business at 5 South Wabash, Chicago, Illinois. Gilbert Courshon, G. C. Burd and Cecil Weiss are President, Vice President and Secretary-Treasurer, respectively, of said corporate respondents and these individuals formulate, control and manage the policies of said corporate respondents. Their principal office and place of business is the same as that of the said corporate respondents. Respondents are now, and for more than one year last

past have been, engaged in the promotion, sale and distribution of vending machines, vending machine supplies and heating and cooking equipment and supplies.

PAR. 2. In the course and conduct of their business respondents now cause and have caused said products, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade, in commerce, in said products.

PAR. 3. Respondents at all times mentioned herein have been in substantial competition, in commerce, with other persons and with corporations, firms and partnerships engaged in the sale of similar products.

PAR. 4. In the course and conduct of said business and for the purpose of inducing the purchase of said products, respondents have made various statements and representations concerning their said products and business methods through their salesmen and through advertisements inserted in newspapers, periodicals, letters, and other advertising literature circulated generally among the purchasing public. Typical newspaper advertisements, but not all inclusive, are as follows:

MANAGER WANTED
MALE OR FEMALE

Spare time or full time. Not Vending machines. Excellent income, national concern with reference from bank and Chamber of Commerce will hire 1 man or woman to supervise this sensational business. There is no selling or experience necessary. Income to start immediately. Qualifications as follows:

1. Good character.
2. Spare a minimum of 14 hours a week.
3. $1990.00 investment fully secured.

This is a food route. If you can meet these qualifications and desire an interview with Factory Representative, then answer this ad immediately. Please do not answer this advertisement unless you have the necessary capital available, and are a person who can make a definite decision after you know the facts, as those selected will be hired immediately * * *

WANTED

Distributor of nationally advertised products has immediate opening for man and wife or individuals who would be interested in entering the wholesale distributing field in a small way. Pre-established accounts. Part or full time to start.

Possible to earn $1,000 monthly. No sales work, not Vending.

Applicants must have car, good references and $2,175 to cover inventory, equipment, etc. Our plan is new and growing by leaps and bounds. We help finance you after you start. No high pressure people wanted as no selling required. If you can qualify, please write to District Manager, giving history, phone and address so that personal interview may be arranged * * *

OPPORTUNITY THIS AREA

National company has immediate openings for ambitious man to manage local business; can be handled in spare hours at start if desired; honesty and dependability more important than past experience. Our liberal financial assistance enables rigid expansion. This is a business operated on a very high plane for high type men of character only.

APPLICANT MUST HAVE $1200.00

(which is secured); good references and car. This opening will pay you exceptionally high weekly income immediately, and rapidly increase as business expands. Prefer applicant aspiring earnings from $6,000 to $11,000 yearly. No high pressure men wanted as no selling required. If you can qualify and have necessary cash, please write today * * *

RESIDENT MANAGERS

NATIONALLY ADVERTISED PRODUCTS

Persons who would be interested entering the wholesale distributing field in a small way. No sales work or solicitation. Pre-established accounts. Need local parties to act as resident managers. Opportunity for excellent returns for time involved. Requires about $2,250.00 to cover inventory, display units, etc. * * *

Only part time, but owner can expand to full time. Requires no selling. Should net $500 a month. Will assist. $2175.00 investment required.

ASSOCIATE INVESTORS

Finance equipment for chain of restaurants and other eating places. Should earn around 20% monthly with small amount of personal attention. No risk. Solid Business. $2200 to $6600.00 required * * *

PAR. 5. Through the use of the statements set forth in Paragraph 4 and others similar thereto but not specifically set out therein, respondents have represented and do now represent, directly or by implication, to a substantial portion of the purchasing public, that:

1. Respondents offer employment to certain selected persons.
2. Persons selected will service established and existing food distribution accounts owned by respondents.
3. Persons selected must have a car, good references, and a specified sum of money.
4. Persons selected will invest a stated amount and said amount will be secured by an inventory of merchandise worth the amount invested and there will be no risk involved to the investor.
5. Persons selected will not be required to engage in any selling.
6. Persons selected will earn each month 20% of the amount they invested.
7. Persons selected will earn from $6,000 to $12,000 annually.
8. If the persons selected desire to expand, respondents will give them liberal financial assistance.

9. The persons selected will be given an exclusive territory in which to operate.

PAR. 6. The foregoing representations and implications are grossly exaggerated, false, and misleading. In truth and in fact:

1. Respondents are not offering employment to persons reading their advertisements.

2. Respondents are not seeking employees to service established and existing food distribution accounts owned by respondents. Respondents are seeking purchasers of said food distribution equipment. The food distribution accounts are not established and existing at the time the advertisement is placed or at the time the food distribution equipment is sold to the persons who have previously read and answered the advertisement.

3. The only qualification necessary to participate in respondents' proposals is to possess the amount of cash stated in the advertisement the purchaser reads. Respondents do not require that the purchaser possess a car and good references.

4. The amount of cash required is a purchase price for said machines or food distribution equipment and is not secured by an inventory of merchandise worth a major or reasonable portion of that amount. The purchaser undertakes a considerable risk as his success or failure is determined by factors many of which are not subject to his control. His risk is further increased by the fact that the merchandise he purchases from respondents has little or no resale value if the purchaser finds it necessary to, or is forced to, terminate the venture.

5. Purchasers of respondents' products are required to engage in extensive canvassing and selling.

6. Purchasers of respondents' products do not earn 20% of their purchase price each month or even a major or reasonable portion of that amount. Said purchasers' earnings are very small, and, in many cases, non-existent.

7. Purchasers of respondents' products do not earn $6,000 to $12,000 a year. The quoted figures are a theoretical possibility under perfect conditions. Even these theoretical amounts could be earned only if the purchasers invested sums considerably larger than the advertisements specify.

8. Respondents do not give financial assistance to purchasers of their products desiring to expand their operations. Such persons can expand only by purchasing more merchandise from respondents.

9. Respondents do not give purchasers of their products an exclusive territory in which to operate.

PAR. 7. In the course and conduct of their said business, respondents employ salesmen who conduct and solicit business for respondents in various States of the United States other than Illinois. Respondents supply these salesmen with sales aids and literature and direct them to call upon those members of the general public who request an interview as a result of reading respondents' aforesaid advertisements. When making such calls, respondents' salesmen orally make many statements, among and typical of which are the following:

1. No selling will be required of purchasers of respondents' products.

2. Persons purchasing respondents' products may earn 20% of their purchase price in one month or will earn $6,000 to $12,000 annually.

3. Respondents have established or will establish locations for vending machines or accounts for food distribution equipment sold to their purchasers. Said locations will be in first-class cafes and restaurants, department stores or other desirable commercial establishments. A list of said locations containing the signature of the owners or operators of the locations authorizing the location shall be furnished to the purchasers. Said locations shall be subject to approval by the purchaser and, if the purchaser does not approve of the locations, replacement locations which do meet the purchaser's approval will be obtained by respondents' representatives.

4. Respondents or their representatives will dispose of or assist in the disposal of, or refund the purchase price of, products purchased from respondents in the event the venture is not profitable or if the purchaser is otherwise dissatisfied.

5. Purchasers of respondents' products will be given an exclusive territory in which to operate.

6. Purchasers of respondents' products will be able to repair said products at a local repair service through arrangements made by respondents.

7. Purchasers of respondents' food distribution equipment will be able to purchase food supplies for said equipment directly from a local food broker through arrangements made by respondents.

8. Respondents are endorsed by the Chicago Better Business Bureau.

PAR. 8. The statements set out in Paragraph Seven are false, misleading, and deceptive. In truth and in fact:

1. Extensive selling is required to conduct the intended business.

2. Purchasers of respondents' products do not earn 20% of their purchase price in one month or $6,000 to $12,000 a year. Said purchasers' earnings are very small and, in many cases, nonexistent. The

quoted figures are a theoretical possibility under perfect conditions and even these figures, in the case of the $6,000 to $12,000 profit, would be possible only if the purchaser invested a sum considerably larger than the advertisements specify.

3. Respondents have not established locations or accounts for purchasers of their products prior to the sale thereof. Said locations or accounts, if obtained by respondents at all, are obtained only after the purchasers pay respondents for the products. In most instances, locations or accounts furnished the purchasers are in undesirable, unprofitable and otherwise inferior establishments. In many instances, the list of locations or accounts given to the purchasers contains fictitious or residential addresses. In many instances, the signatures appearing on the lists, and represented by respondents' representatives as being the signatures of the owners or operators of said establishments, are forgeries or signatures of an employee without authority to grant said location or account. In most instances, the purchaser is not given the opportunity to inspect or to approve the locations or accounts as respondents' representatives will not allow him to have the list until he has signed a statement that the locations or accounts are acceptable. If the purchaser refuses to sign the statement or if he does sign and subsequently finds the locations or accounts unsatisfactory, respondents do not, in most instances, obtain satisfactory replacement locations or accounts.

4. Respondents, or their representatives, do not dispose of or aid the purchaser in the disposal of or refund the purchase price of products purchased from respondents if the venture is not profitable or the purchaser is otherwise dissatisfied.

5. Respondents do not grant to purchasers an exclusive territory in which to operate.

6. Respondents do not arrange for local repair services to repair products purchased from them. The purchasers must locate their own local repair service or send the products back to the factory when they need to be repaired.

7. Respondents do not arrange for local food brokers to sell food supplies to be used by purchasers of respondents' products. Said purchasers must make their own local arrangements, if possible, or purchase their food supplies from Illinois sources recommended by respondents.

8. Respondents have not been and are not now recommended or endorsed by the Chicago Better Business Bureau.

PAR. 9. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations and practices, dis-

seminated as aforesaid, in connection with the sale and distribution in commerce of said products has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasers and prospective purchasers of said products into the erroneous and mistaken belief that such statements and representations are true and to the purchase of substantial quantities of the products offered for sale in commerce by respondents.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint alleges that respondents Tropic Industries, Inc., and Tropical Trading Company, Illinois corporations with their principal office and place of business at 5 South Wabash, Chicago, Illinois, and Gilbert Courshon, G. C. Burd and Cecil Weiss, President, Vice President and Secretary-Treasurer, respectively, of said corporate respondents, who control and manage the policies of said corporate respondents and have the same address, are now, and for more than one year last past have been, competitively engaged with other persons, corporations, firms and partnerships, in commerce, in the promotion, sale and distribution of vending machines, vending machine supplies and heating and cooking equipment and supplies; and charges that they have falsely and deceptively advertised their said products and business methods, in violation of the Federal Trade Commission Act. After the issuance of the complaint, to which no answer was filed, respondents, their counsel, and counsel supporting the complaint, on October 5, 1955, entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director, Bureau of Litigation of the Commission, and thereafter transmitted to the hearing examiner for consideration.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged 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 record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified, or set

aside in the manner provided for other orders; 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; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully covers all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest and accepts the Agreement Containing Consent Order To Cease And Desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondents Tropic Industries, Inc., a corporation, Tropical Trading Company, a corporation, Gilbert Courshon, G. C. Burd, and Cecil Weiss, individually and as officers of said corporations, and their agents, representatives and employees directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of vending machines, vending machine supplies, heating and cooking equipment and supplies, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Respondents are seeking employees when in fact they are seeking purchasers for their products;

2. Persons purchasing respondents' products will service established and existing food distribution accounts owned by respondents;

3. Persons purchasing respondents' products must have good references or any other requirements other than the amounts respondents charge for their products;

4. The cash required to purchase respondents' products is secured, either by an inventory of merchandise or otherwise, or that there is no financial risk involved to the purchaser of respondents' products;

5. Purchasers of respondents' products will not be required to engage in selling;

6. Purchasers of respondents' products will earn or realize any amount in excess of that which has in fact been customarily and regularly earned by previous purchasers of respondents' products;

7. Respondents will give financial assistance to their purchasers for expansion purposes;

8. The territory allotted purchasers of respondents' products is exclusive, unless respondents do in fact refrain from selling said products to other purchasers for operation in such designated territory;

9. Respondents will obtain satisfactory locations in which their purchasers may sell respondents' products unless locations are in fact obtained by respondents which are acceptable and satisfactory to said purchasers;

10. Respondents will refund the purchase money to any dissatisfied purchaser of respondents' products, or will dispose of or assist in disposing of such products in the event the venture is not profitable;

11. Purchasers of respondents' products will be able to obtain repairs for, or purchase supplies for, such products at a local repair shop or a local supply house through arrangements made by respondents;

12. Respondents are or have been endorsed by the Chicago, Illinois, Better Business Bureau.

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 21st day of December, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Tropic Industries, Inc., a corporation, and Tropical Trading Company, a corporation, and Gilbert Courshon, G. C. Burd, and Cecil Weiss, individually and as officers of said corporations, 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.

451524—59——39

IN THE MATTER OF

THE SERVICE LIFE INSURANCE COMPANY

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

Docket 6278. Complaint, Dec. 28, 1954—Decision, Dec. 28, 1955

Consent order requiring an insurance company in Omaha, Nebr., to cease misrepresenting in advertising the duration and coverage of its accident and health policies.

Before *Mr. William L. Pack* and *Mr. J. Earl Cox*, hearing examiners.

Mr. Robert R. Sills and *Mr. William A. Somers* for the Commission.

Mr. H. P. Westering, of Omaha, Nebr., and *Mr. Wendell Berge*, of Washington, D. C., 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 Service 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, The Service Life Insurance Company, is a corporation duly 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 1904 Farnum Street, Omaha, Nebraska.

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 the various States of the United States other than the State of Nebraska, 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.

Respondent during the two years last past has issued a variety of policies providing indemnification for losses resulting from sickness and accident, including those designated by it as Policy Forms DM 36 1/53, DM 36A–5/53, DM 40–1/54, DM 37 7/54, FH Series 662A–Illinois–8/50, 673 11/51, FH Series 672A 8–30, FH Series 672B 10–53, SL–677A 2–54, OA Series 661B 9/49 and LP567–P–Ill.–9–49.

Respondent is licensed, as provided by the respective State laws, to conduct its insurance business in the States of Nebraska and Ohio. 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 solicits business by mail in the various States of the United States in addition to the States of Nebraska and Ohio. 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 those States as it is not subject to the jurisdiction of such States.

PAR. 3. In the course and conduct of its 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 of insurance, by means of circulars, folders, form letters, radio continuities, and other advertising material distributed throughout various States of the United States. Typical but not all inclusive of such statements and representations are the following:

1. This new policy covers everyone from infancy to age 70—
   You can buy a Service Life *Family Hospital Policy* that is truly family *Hospital Protection* because every one from infancy to age 70 may be covered.
   No Automatic Termination Age.
2. This policy pays $100.00 a week—That's $14.28 a day—$5200.00 for a full year—whether it is just one day, a week, a month, or even a year—for each sickness or accident while in the hospital.
   $100.00 a week. *Hospital Room, Board and General Care for Accident or sickness.*
3. *Pay Check Insurance*—Money to live on when not in the hospital due to accident or sickness when you're laid up and can't work.
   Money to Live On
   Under the Silver Cross Hospital Plan you get up to $300. a month for 60 months in income insurance, beginning with the 15th day of total disability at home or in the hospital, in addition to other benefits.

4. *Pays you $5 to $175 for ordinary Doctor fees. Pays you $7.50 to $300.00 for Surgical Operations.*

Choose any doctor of medicine or surgeon you want. Surgery may be at your home or doctor's office. Covers even minor operations ranging from $7.50 to $300, depending on the type of operation. (Amounts given are allowed for each different member of the family and for each different sickness or accident.) Pays from $5 to $175 for doctor fees for ordinary accident or sickness while in the hospital depending on the number of calls and where no surgical fee is payable.

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 indemnification provided in the respondent's said insurance policies can and will be continued, at the option of the insured, until the age of 70 by making premium payments within the time and in the amounts provided by the policy.

2. That said insurance policies provide indemnification in the form of cash benefits in the amount of $5200.00 a year to the insured for hospitalization expenses if confined in a hospital by any sickness or accident.

3. That said insurance policies provide for the payment of monthly indemnification to the insured up to 60 months in a specific amount to the insured for all loss of time from work resulting from any accident or sickness.

4. That said insurance policies provide indemnification for surgical operations to a maximum of $300.00 and for money expended for doctor's calls to a maximum of $175.00, when necessitated by any one sickness or accident.

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

1. The indemnification provided in said insurance policies cannot be continued until the age of 70, or any other age, at the option of the insured by the timely and required payment of premiums, but, on the contrary, said insurance policies can be terminated at any renewal time at the sole option of the respondent.

2. Said insurance policies do not provide indemnification in the form of cash benefits in the amount of $5200.00 a year to the insured for hospitalization expenses resulting from any sickness or accident. On the contrary, no indemnification is provided for loss resulting from a sickness the cause of which is traceable to a condition existing prior to or within thirty days of the effective date of the policy or in cases of accident unless bodily injury has been sustained and was effected directly and independently of all other causes from accidental means.

It is further provided by said insurance policies that no indemnification for hospitalization shall be paid to the insured for loss caused by tuberculosis, diseases of the heart, diseases of the arteries, cancer, hernia in any form, tonsils, adenoids, or diseases of the female generative organs, if the cause thereof originates prior to or within six months after the date of the policy.

Said insurance policies further provide no indemnification will be paid for loss caused by dental care, dental treatment or dental surgery, except a fractured jaw, syphilis, venereal disease, mental derangement, nervous disorders. Policy SL–677A–2–54 provides, pregnancy, miscarriage, abortion, childbirth or complications arising therefrom shall not be covered, except as provided in any Rider attached thereto. No insured shall be covered outside the continental limits of the United States, Hawaii, Canada or Alaska.

Said policies provide that no indemnification shall be paid the insured when confined in a hospital operated by the United States Government for the care of any member of the Armed Forces or his family or for the care of any veteran, nor while confined in tuberculosis hospitals, sanitariums, clinics or similar institutions.

Policy SL 677A 2–54 provides that if the insured is indemnified by another insurer for the same loss without giving written notice to the respondent the specific amount promised shall be reduced in proportion as the said indemnity bears to the total amount of like indemnity in all policies covering such loss.

3. Said insurance policies do not provide for the payment of monthly indemnification to the insured up to 60 months in a specific amount for all loss of time from work resulting from any sickness or accident. On the contrary, said insurance policies provide no indemnification shall be paid for loss due to any sickness traceable to a condition existing prior to or within thirty days of the effective date of the policy, or in case of accident, unless bodily injuries have been sustained which are effected directly and independently of all other cause from accidental means.

Said Policy DM40–1/54 provides that the insured shall be totally and continuously disabled by injuries within 60 days after the date of accident and such injuries shall necessitate the regular care and attendance of a physician with total loss of time to receive any monthly indemnification. The amount and length of time is a matter of negotiation between the respondent and the insured. In cases of loss of time because of sickness said Policy DM40–1/54 provides such sickness shall totally and continuously disable the insured causing total loss of time and necessitate the regular care and attendance of a physician. The amount of the monthly indemnification and the

length of time is a matter of negotiation between the respondent and the insured.

Said Policy OA Series 661B 9/49, in cases of accident, provides that "such injuries," within 90 days from date of accident, shall totally and continuously disable the insured and necessitate the regular care and attendance of a physician and thereby prevent the performance of every duty pertaining to the regular occupation of the insured but the monthly indemnities shall not exceed a total of 12 months. After twelve months, if the insured is continuously and totally disabled from engaging in any occupation or employment for wage or profit and still under the regular care and attendance of a physician, the monthly indemnification will be continued during such period of disability.

Policy OA Series 661B–9/49 provides indemnification for losses resulting in partial disability but then only 50% of the specific monthly benefit shall be paid for a period not to exceed three months.

No benefits are payable under the provisions of Policy OA Series 661B 9/49 for loss of time caused by sickness unless such sickness shall totally disable and necessarily and continuously confine within doors the insured during all of which time he is regularly visited and treated by a physician and is prevented from performing every duty of his occupation and then only are such benefits payable for a total period of twelve months. Thereafter, such monthly benefits are payable if the conditions existing during the first twelve month period continue to exist and the insured is prevented from engaging, not in every duty of his occupation, but is prevented from engaging in any occupation or employment for profit. Said Policy OA Series 661B 9/49 has therein a non-confining sickness provision providing for monthly indemnification but for only 50% of the specific amount for a period not to exceed three months.

Policy LP657–P–Ill–9–49, in cases of accident, provides if "such injuries," within ninety days from date of accident, totally and continuously disable the insured from performing every duty pertaining to his occupation and necessitates regular care and attendance of a physician the monthly indemnification will be paid for a period of fifty-two weeks. In the event the disability meets all of the above conditions and requirements and prevents the insured from engaging in any occupation or employment for wage or profit the indemnity will be continued during such period. If the disability is partial fifty percent of the specific amount will be paid for a period not to exceed a total of three months.

In cases of sickness, Policy LP657–P–Ill–9–49 provides that if by "such sickness" the insured shall be totally disabled, necessarily, con-

tinuously confined within doors and therein regularly visited and treated by a physician the monthly indemnification shall be paid for duration of the disability. Said policy has a non-confining disability provision which provides fifty percent of the specific amount of the monthly indemnification shall be paid for a period not to exceed three months.

Policy LP657–P–Ill–9–49 provides that the specific amount of the monthly indemnification shall be reduced fifty percent after the insured has attained the age of 60 years.

All of said insurance policies contain therein exclusion and limitation provisions which exclude the insured from receiving loss of time indemnification upon the suffering or contracting of certain accidents or sickness and providing certain territorial limits within which the accident must occur or the sickness contracted. Also, said policies set up limitations whereby the insured is precluded from receiving loss of time indemnification unless certain sicknesses are contracted and suffered more than six months after the effective date of the policy.

4. Said insurance policies do not provide indemnification for surgical operations or doctors' calls necessitated by sickness or accident, but, by negotiation with the respondent, the insured may obtain a rider of his selection to be attached to his policy by the payment of additional premium and which rider provides for surgical operations and doctors' calls.

Said riders do not provide indemnification for surgical operations to a maximum of $300.00 and for money expended for doctors' calls to a maximum of $175.00, when necessitated by any one sickness or accident. On the contrary, no indemnification is provided for loss caused by sickness traceable to conditions existing prior to or within thirty days after the effective date of the policy or accident unless bodily injury has been sustained and was effected directly and independently of all other causes from accidental means.

Said riders have a "Schedule of Operations" in which many operations are listed but only a very small minority of said listed operations provide for the maximum of $300.00. The great majority of the listed operations in all of said riders are from a maximum of $5.00 to $100.00. Said riders provide that only the indemnification for one operation performed because of any one sickness or accident shall be paid the insured. Certain of said riders provide that no indemnification for operation shall be paid when caused by sickness unless the rider has been in effect continuously for the preceding three months and if the insured be a female no indemnification shall be paid for any condition, sickness or disorder involving the generative

organs or appendages thereof, unless the rider has been in effect continuously for six months.

The insured shall not receive a maximum $175.00 for doctors' calls in the event the sickness or accident is not excluded by the terms of the riders for the reason that said riders limit the indemnification to $5.00, or some other pre-determined amount, for each call by the doctor and payment of indemnification for said doctors' calls are limited to three calls a week, up to the amount of $175.00. Certain of said riders provide that the indemnification for doctors' calls will be paid only when the insured is confined within a hospital and the call is made in such hospital.

All of said riders, by the terms thereof, are subject to exclusion and limitation provisions of the policy which excludes the insured from receiving the indemnification upon the suffering or contracting certain accidents or sickness and providing certain territorial limits within which the accident must occur or the sickness contracted. Also, limitations are set up whereby the insured is precluded from receiving the indemnification unless certain sickness originate and begin more than six months after the effective date of the attached policy.

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 the 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 the 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 BY J. EARL COX, HEARING EXAMINER

The charges contained in the complaint in this proceeding are that The Service Life Insurance Company, a Nebraska corporation with its office and principal place of business located at 1904 Farnum Street, Omaha, Nebraska, 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, Sections 1011 to 1015, inclusive), by falsely and deceptively advertis-

ing the indemnification for losses resulting from sickness and accident provided by insurance policies which it has offered for sale and sold in commerce.

Following issuance and service of the complaint and the filing of an Answer and Motions, and a Motion for Statement Limiting and Clarifying Issues which was thereafter denied by the hearing examiner, respondent, its counsel and counsel supporting the complaint entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and Assistant Director, Bureau of Litigation of the Commission, and thereafter transmitted to the hearing examiner for consideration.

The agreement 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 duly made in accordance with such allegations; that respondent's answer to the complaint shall be considered as having been withdrawn, 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 agreement; that the complaint may be used in construing the order agreed upon, which may be altered, modified, or set aside in the manner provided for other orders; 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 order contained in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondent waives any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon conforms to the order accompanying the complaint, except for the omission therefrom of the general provision "(B) misrepresenting in any other manner or by any other means the terms or provisions of said insurance policies," and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act as applicable to the business of insurance under the provisions of Public Law 15. Accordingly, the hearing examiner finds this proceeding to be in the public interest and accepts the Agreement Containing Consent Order To Cease And Desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondent, The Service 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:

A. Representing, directly or by implication:

1. That said insurance policies may be continued in effect to the age of 70 or for any period of time, when, in fact, said policies provide that it may be cancelled by respondent or terminated under any circumstances over which the insured has no control, during the period represented;

2. That said policies provide 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 a fact;

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

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

5. That said policies provide for cash benefits for living expenses or otherwise in cases of sickness or accident generally or in any or all cases of sickness or accident, when said policies do not provide for such benefits in all such cases.

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 28th day of December, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondent The Service 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

GEORGE'S RADIO AND TELEVISION COMPANY, INC., ET AL.

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

Docket 6411. Complaint, Sept. 13, 1955—Decision, Dec. 29, 1955

Consent order requiring a retailer in Washington, D.C., to cease advertising falsely in newspapers that used television sets were "floor samples"; that old models, used or repossessed sets, and floor samples were "new"; and that sets were fully guaranteed.

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

Mr. Michael J. Vitale for the Commission.

Grossberg, Yochelson & Brill, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that George's Radio and Television Company, Inc., a corporation, and George Wasserman, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. George's Radio and Television Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 2146 24th Place, N. E., Washington, D. C. Respondent George Wasserman is President and Treasurer of this corporate respondent. This individual formulates, directs and controls the policies of said corporation.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of television sets among other things. In the course and conduct of their business, respondents cause their television sets when sold to be transported from their place of business at the aforesaid address to purchasers thereof located in the District of Columbia and various States of the United States. They maintain, and at all times mentioned herein have maintained, a course of trade in said product in commerce in

the District of Columbia and various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. At all times mentioned herein respondents have been and are now, in direct and substantial competition with corporations, firms and other individuals engaged in the sale and distribution of television sets in commerce.

PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their television sets, the respondents made various statements with respect thereto in newspapers of general circulation. Among such statements made in various and different advertisements were the following:

1. That the television sets advertised were floor samples.
2. That they were 1954 models.
3. That certain sets were new.
4. That certain sets were fully guaranteed.

PAR. 5. Said statements were false, misleading and deceptive. In truth and in fact:

1. Many of the television sets represented as floor samples were not floor samples as that term is ordinarily understood, that is, sets that had been used only for demonstration purposes, but were in fact sets that had been previously sold to various persons and used by them.

2. Many of the sets advertised as 1954 models were models of previous years.

3. Many of the sets represented as new were in fact used, repossessed or floor samples.

4. The guarantee, if any, given with many of said sets was a limited one extending only to a guarantee that the sets would operate.

PAR. 6. The use by the respondents of the aforesaid false, deceptive, and misleading statements, representations, and practices had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and, because of such statements, representations, and practices, to purchase substantial quantities of respondents' television sets. As a result 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. 7. The aforesaid acts and practices as herein alleged, were all to the prejudice and injury of the public and of respondents' competitors and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On September 13, 1955, the Federal Trade Commission issued its complaint in this proceeding, charging the respondents with the use of false, deceptive, and misleading statements, representations, and practices in commerce in advertising their television sets, in violation of the provisions of the Federal Trade Commission Act.

Thereafter, on November 8, 1955, respondents entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the hearing examiner an Agreement Containing Consent Order To Cease And Desist, disposing of all the issues involved in this proceeding.

Respondent George's Radio and Television Company, Inc., is identified in the agreement as a District of Columbia corporation, with its office and principal place of business located at 2146 24th Place, N.E., Washington, D. C., and respondent George Wasserman as an individual and officer of the corporate respondent, having his office and principal place of business at the same address as the corporate respondent.

Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record herein may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement, and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The agreement sets forth that the order to cease and desist contained therein shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; and that the complaint herein may be used in construing the terms of the order.

After consideration of the charges set forth in the complaint and the provisions of the proposed order contained in the agreement, it appears that such order 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

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said agreement. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order To Cease And Desist and finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint, and that this proceeding is in the public interest. Therefore,

It is ordered, That respondents, George's Radio and Television Company, Inc., a corporation, and its officers, and George Wasserman, 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 offering for sale, sale, or distribution of television sets or other merchandise 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 television sets, or any other merchandise, are floor samples, unless said television sets and other merchandise have in fact been used only for demonstration purposes;

2. That television sets, or any other merchandise, are models of a certain year, unless such is the fact;

3. That television sets, or any other merchandise, are new when they have been used in any manner;

4. That any merchandise sold or offered for sale by respondents is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

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 December, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That Respondents George's Radio and Television Company, Inc., a corporation, and George Wasserman, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

HERZMAN SCARVES, INC., ET AL.

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

Docket 6373. Complaint, June 27, 1955—Decision, Jan. 5, 1956

Consent order requiring a New York City importer to cease violating the Flammable Fabrics Act through importing into the United States from Japan and selling silk scarves which were so highly inflammable as to be dangerous when worn.

Before *Mr. James A. Purcell*, hearing examiner.
Mr. Brockman Horne for the Commission.
Abrams & Cowan, of New York City, for respondents.

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 Herzman Scarves, Inc., a corporation, and Stanley Herzman, individually and as an officer 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 Herzman Scarves, Inc., is a New York corporation. Respondent Stanley Herzman is president and treasurer of said corporation and formulates, directs, and controls the policies of said corporation. The business address of all respondents is 10 East 38th Street, New York, N. Y.

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. 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 an unfair method 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 JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued on June 27, 1955, charges the respondents, Herzman Scarves, Inc., a corporation existing by virtue of the laws of the State of New York, and Stanley Herzman an individual and as President-Treasurer of the corporate respondent, with violation of the Federal Trade Commission Act and of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, in connection with the importation, sale, offering for sale and transporting in interstate commerce of articles of wearing apparel which articles were so highly flammable as to be dangerous when worn by individuals.

After the issuance of said complaint and the filing of their answer thereto, the respondents entered into an agreement for consent order with counsel in support of complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents 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. By said agreement, the answer heretofore filed by respondents was withdrawn and the parties expressly waived a hearing before the 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 the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said agreement, respondents further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

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

Said agreement recites that respondent Herzman Scarves, 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 No. 10 East 38th Street, New York, New York. Respondent Stanley Herzman is an individual and also President-Treasurer of said corporate respondent and formulates, directs and controls the policies of the respondent corporation. His office and principal place of business coincides with that of the corporate respondent.

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

ORDER

It is ordered, That the respondent Herzman Scarves, Inc., a corporation, and its officers, and respondent Stanley Herzman, individually and as an officer of 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 5th day of January, 1956, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

LEBLANC MEDICINE COMPANY, INC., ET AL.

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

Docket 6390. Complaint, June 30, 1955—Decision, Jan. 5, 1956

Consent order requiring sellers in Lafayette, La., to cease falsely advertising through radio and television broadcasts, including quotations from testimonial letters, that their medicinal vitamin and mineral product "Kary-On" was an effective treatment and cure for a great variety of ailments and diseases, and that persons having false teeth or gray hair were deficient in vitamins and minerals and needed "Kary-On."

Before *Mr. Abner E. Lipscomb*, hearing examiner.
Mr. Daniel J. Murphy for the Commission.
Mr. J. Minos Simon, Sr., of Lafayette, La., 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 LeBlanc Medicine Company, Inc., a corporation, and Dudley J. LeBlanc, Dudley J. LeBlanc, Jr., and Onesta Marie Martin (sometimes known as Lulu Martin), 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 LeBlanc Medicine Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 901 Stewart Street, Lafayette, Louisiana. Respondents Dudley J. LeBlanc, Dudley J. LeBlanc, Jr. and Onesta Marie Martin (sometimes known as Lulu Martin) are the President, Vice President and Secretary-Treasurer, respectively, of the corporate respondent. These individual respondents control the policies, activities and practices of the corporate respondent, including the acts and practices hereinafter alleged. The address of these individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been since October 1954, engaged in the sale and distribution of a preparation containing ingredients which come within the classification of drugs and food, as

the terms "drugs" and "food" are defined in the Federal Trade Commission Act.

The designation used by respondents for said preparation, the formula and directions for use thereof, as contained on the label are as follows:

Designation: "Kary-On"

A Tonic Source of Iron With Vitamins of The B-Complex Group Listed Below:

4 Tablespoonfuls Contain:

Iron (as Ferrous Lactate)	101 mg.
B–1 (Thiamine Hydrochloride)	12 mg.
B–2 (Riboflavin)	4 mg.
B–6 (Pyridoxine)	2 mg.
B–12 (Crystalline U.S.P.)	3.4 mcg.
Pentothenic Acid	12 mg.
Niacinamide	66 mg.
Para-Aminobenzoic Acid	33 mg.
Inositol	66 mg.
Choline Dihydrogen Citrate	100 mg.
Biotin	34 mcg.
Calcium (as glycerophosphates)	190 mg.
Phosphorus (as glycerophosphates)	188 mg.
Manganese (as glycerophosphates)	70 mg.
Zinc (as Zinc Acetate)	17 mg.

Alcohol 12% as a preservative. Diluted Acid Hydrochloric, 1 Minim per fluid ounce. Honey, 20 minims per fluid ounce. Potassium (as Potassium Chloride) 42 milligrams per fluid ounce.

For an adult or a child over 12, the dose of 1 tablespoon 4 times a day (60 cc.) supplies 10 times the minimum daily dietary requirement for Iron; 12 times that for Vitamin B–1; 2 times that for Vitamin B–2; 3.4 micrograms Vitamin B–12; 2 milligrams Vitamin B–6; 12 milligrams Pentothenic Acid; 66 milligrams Niacinamide; 33 milligrams Para-Aminobenzoic Acid; 66 milligrams Inosital; 100 milligrams Choline Dihydrogen Citrate; 34 micrograms Biotin; ¼ that for Calcium and Phosphorus; 70 milligrams Manganese; 17 milligrams Zinc. * * *

PAR. 3. Respondents cause the said preparation, when sold, to be transported from their place of business in the State of Louisiana to purchasers thereof located in various States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce, between and among the various States of the United States. The business of respondents in said preparation in commerce is substantial.

PAR. 4. In the course and conduct of their business, respondents have disseminated and caused the dissemination of certain advertisements concerning said preparation by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to radio and television broadcasts, said

broadcasts being of sufficient power to carry them across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation; and respondents have also disseminated and caused the dissemination of advertisements concerning said preparation by various means, including but not limited to the aforesaid radio and television broadcasts, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical, but not all inclusive, of the statements and representations disseminated and caused to be disseminated, as hereinabove set out, are the following:

Heartburns, Upset Stomach? * * * And while these symptoms may be the result of other causes, and you should consult your physician, they are surely and certainly the signs of lack of Vitamin B1–B2–Niacin and Iron, which Kary-On contains.

* * * Insomnia, lack of energy, chronic fatigue, aches and pains, digestive disturbances, heartburn, acid indigestion, for instance, may be due to other causes, but if your system lacks vitamins B1, B2, niacin and iron, you will not sleep well, you will feel tired, and worn out, you will probably suffer from nagging aches and pains—your food will not agree with you—you may not feel refreshed in the morning—and as you well know it is no fun to start the day all tired out—feeling haggard and worn * * * Kary-On is a modern and scientific formula that will build rich, powerful red blood, the kind that brings back strength and energy, gives you sound and restful sleep—brings color back to your cheeks again and will lead you to a more enjoyable and comfortable life * * * Remember Kary-On relieves the REAL CAUSE of these ailments when due to such deficiencies, so why continue to be miserable? Don't continue to suffer! Be fair to yourself—And—remember, delay may invite danger. So start taking Kary-On this very day!

Senator LeBlanc's new tonic KARY-ON relieves the REAL CAUSE of nagging aches and pains when due to deficiencies of vitamin B1, B2, niacin and iron and no one who has ever taken Kary-On for such ailments has failed to notice an improvement.

These people suffered from lack of Vitamin B1, B2, niacin and iron and read what they say after taking Kary-On * * * didn't rest well * * * had no energy * * * feeling fine * * * pains in legs and arms * * * was very nervous * * * nothing helped like Kary-On.

* * * Kary-On will start building rich, powerful, red blood * * * the kind that brings back strength and energy * * * fills you with old-time pep * * * brings healthy color back to your cheeks again and will lead you to a more enjoyable and more comfortable life.

Senator LeBlanc's new product Kary-On has brought relief in case after case of stomach distress, acid indigestion, heartburns, and general rundown condition when due to deficiencies of vitamin B1, B2, niacin and iron.

Of course insomnia may be due to other causes, but if your system lacks vitamin B1, B2, niacin and iron, you will not sleep well—and you should take Kary-On * * * if you suffer such deficiencies wouldn't you rather have Kary-On than sleeping pills?

Did you know that Kary-On is a modern scientific formula that brings real relief to sufferers of stomach distress, heartburns, acid indigestion, etc., when due to deficiencies of Vitamin B1, B2, niacin and iron * * *

Kary-On relieves the *real* and *underlying* cause of stomach distress when due to such deficiencies * * *.

* * * Well, you know digestion in the old seems to be impaired because the organism of older people utilizes food less well than adults, and therefore, the B vitamins and minerals are not absorbed so efficiently. So, to guard against such deficiencies, supplemental quantities of vitamins and minerals may be necessary—preferably in liquid form to facilitate absorption and that is how Kary-On is prepared * * *.

* * * "for years I suffered with pains in my legs and side. I couldn't work. After taking seven bottles of Kary-On, the pains left me. * * *"

* * * remember Kary-On does not give temporary relief, rather it treats the real cause of the illness when so often it is due to such deficiencies. * * *

* * * The past thirty years have seen greater advances in medical sciences than in all the preceding centuries put together. In the entire history of man! The light of these new sciences has also revealed important things about our troubles—common constipation due to the lack of Vitamin B. Constipation is a progressive disease that increases from occasional to common, to chronic. It gets worse as you get older. A most serious and great danger in constipation frequently comes from the use of drugs and laxatives which abuse the digestive system in many ways. Such laxatives inflict upon your digestive system a natural punishment which leaves a trail of digestive disorders. To avoid these dangers and to provide relief from common constipation, Kary-On provides a safe natural way because it contains Vitamin B.

* * * So give this remarkable Kary-On a chance to help you if you are suffering from stomach distress, nervousness, insomnia, constipation, aches and pains of neuritis or a general rundown condition and are sickly and ailing because of these vitamin or mineral deficiencies. * * *

* * * After you have taken Kary-On just a few days you will notice that it will make you want to sleep that restful relaxing sleep and that is what comes natural with Kary-On.

* * * The lack of only a small amount of B vitamins and certain minerals will cause digestive disturbances and your food will not agree with you. You will have an upset stomach. You will suffer from heartburn and gas pains and you will not be able to eat the things you like for fear of being in misery afterwards. Many people also suffer from constipation and while these symptoms may be the result of other causes, and you should consult your physician, they are surely and certainly the signs of a lack of B vitamins and minerals which Kary-On contains.

* * * Many people who had suffered, waited and hoped for as long as from 10 to 12 years, cases which seemed almost hopeless are now able to live happy, comfortable lives. Once again because Kary-On supplied the needed B vitamins and minerals, the lack of which caused the physical disorders.

* * * You will get a little older a little faster than you should. Your face will wrinkle; your skin will come to look such that you will look older, if you lack vitamins. Then you will notice that you will have stomach trouble, you will probably have heartburn, your food will not digest properly. You will notice that you will have pains in your legs and arms, and that you will notice that when you do a little work, you will get tired * * * become fatigued faster. So, naturally, if you want * * * and, then the longer that you continue to lack

these vitamins and minerals in your system, the more severe the illnesses which cause these things will become. The more you procrastinate, the more dangerous your illness will become.

* * * Kary-On is a medicine which I placed there myself; which I formulated after having studied books which were written by famous doctors and I put a formula along with ingredients that these doctors said would have cured many, many illnesses. * * * If your system does not have the vitamins and minerals necessary * * * then you will become run down * * * you will weaken and soon it will result into a serious illness. * * * If your illness has been caused by the lack of vitamins and minerals which I have in this medicine, ah, well, then my medicine can help you and you can't say, and the doctor's can't say, except if it is typhoid fever and things like that. But the indications of the illnesses caused by the lack of vitamins and minerals in your system are the same indications as those of more serious illnesses!

So, first of all, if you are ill you should go see your doctor! If he puts you on a diet, let's say * * * you have heart trouble * * * let's say you have diabetes * * * let's say you have ulcers * * * so you can't eat so much food as you would desire and you can't eat the kinds of food you would like, so the chances are that your system will not obtain because you will not be receiving them, the vitamins and minerals which are necessary to continue to give you good health. You will perhaps not obtain enough iron; you will lose your red blood corpuscles; you will perhaps not obtain enough B1, which will give you appetite, let's say. You will not obtain calcium, let's say, which will prevent your teeth from decaying. So all of those things put together are found in my new medicine. * * *

And you know that if your blood is weak, well then Kary-On will have a great deal more strength to your blood, when it will build up red blood corpuscles.

* * * There were years when that poor little boy was sick. He had no appetite. He was seated on a chair. He couldn't play, he couldn't eat. * * * She gave him five bottles of Kary-On and today the child has lots of pep—has gained at least ten to eleven lbs. * * * That shows that the child needed the vitamins and minerals in Kary-On.

* * * Three bottles of Kary-On. She had been in bed for seven weeks and * * * her children and husband had lots of hope for her. She began to drink Kary-On * * * she walks—she went visiting twice. * * *

Seven or eight, ten months ago he fell and his legs became infected and he could no longer walk. * * * He hasn't even slept one night in two years * * * now he moves his legs, he turns over in bed himself, he is beginning to stand and he sleeps like a Congo, just like a log. * * *

* * * those of you who have pains, those of you who have pains in the legs and things like that, well you see what Kary-On does. * * *

* * * Then I began to take this medicine, had been sick for five months with an erysipelas on my leg and then it had turned into cellulitis. There were doctors who wanted to amputate my leg. So when I began to take this new medicine * * * I soon saw that it was relieving me. * * *

* * * If you don't have any teeth, or if you have false teeth, or if you have gray hair, that means that in your system you have not had enough calcium, or enough vitamins to nourish your teeth. Soon your teeth decayed. * * * Well, if you have not had enough of one kind, you miss all of the others. * * * So if you have false teeth, you know that you need Kary-On. * * *

* * * if your blood doesn't have enough corpuscles, or if you don't feel well because of the lack of vitamins or minerals, well this new medicine will improve your blood and will give you more red corpuscles. After your blood is improved, it will take nourishment to all parts of your body * * * it doesn't matter if it's your heart, your lungs, your eyes, or your brain. Everywhere in your system, your blood, if you nourish it with this new medicine will help the different parts of your body.

* * * Due to the fact that many of our foods today, because of the methods of processing, as well as cooking, certain portions of the vitamins and minerals may be lost, so then all of us need vitamins and minerals, particularly iron, as well as Vitamin B1 and if you will take a few bottles of Kary-On for your deficiency in these ailments, you will notice how quickly you will feel better. * * *

* * * Kary-On * * * is a formula of vitamins and minerals any doctor will tell you is a commendable one * * * then get some of this rich red blood that Kary-On will bring to you. * * *

* * * Kary-On is now recognized by doctors or by people who are supposed to be in the known, people who have made studies of nutrition, as one of the outstanding vitamin and mineral tonics on the American market. * * *

* * * Kary-On contains 10 of the most important B vitamins and six of the most important minerals needed by the system. * * *

* * * Vitamins and minerals, either natural or in concentrated form, such as is contained in Kary-On, are not fattening. They contain no calories and an adequate intake of vitamins and minerals is essential, for that matter, in any reducing diet. * * * Kary-On might add(?) increase your appetite and you might eat a little bit more, but, after all, it is not the ingredients in Kary-On that make you fat, it is the food that you consume or what you eat * * * when the system doesn't receive enough iron or when the body reserves are depleted, a specific anemia results. The product which gives the blood its red color contains iron. It has the ability to form a loose chemical combination with oxygen from the spired air in the lungs and, thus, it is carried to all the tissues by the circulation. * * * After taking Kary-On for two or three days, let's say, your blood may have as much as several million more red blood corpuscles and this new nourished blood is able to carry the nutritional elements to every organ and to every tissue of the system * * * that * * * is what the new vitamin and mineral tonic called Kary-On will do for you. * * *

* * * The lack of only a small amount of B vitamins and minerals will cause certain discomforts, such as indigestive disturbances, your food will not agree with you, you will have an upset stomach, you will suffer from heartburn, gas pains, your food will sour on your stomach and you will not be able to eat the things you like for fear of being in misery afterwards. Many people also suffer from other minor ailments and while these symptoms might be the result of other causes and you should consult your physician, they are surely and certainly the signs of the lack of the B vitamins and minerals, which Kary-On contains. * * * Many persons who have suffered a period of 10 to 12 years, or even longer, are able now to live happy, comfortable lives because Kary-On supplied the vitamins and minerals which their system needed. * * *

So, it makes no difference if you have faith in any medicine under the sun, if you suffer from such deficiencies, you should take this new and wonderful KARY-ON today. Bear in mind that KARY-ON relieves the real cause of lack of energy, aches and pains, chronic fatigue, weakness and dizziness when due to such deficiencies.

For the past 6 or 7 months I suffered with pains and rheumatism in my legs and I was so weak that I couldn't clean my house without stopping to rest. My food would not digest well. In fact I couldn't eat heavy food.

I started to take your KARY-ON and within a few days I began to notice an improvement and now I feel a lots better. I'll never be able to praise KARY-ON enough.

Announcer: If you have difficulty getting your child to eat, if his stomach gets easily upset and he is in a nervous run down condition when due to lack of vitamins B1, B2, iron and niacin, start giving Kary-On at once. Listen to what Mrs. Sylvester Billiot of Montegut, Louisiana has to say—"I would like to thank you for your bottle of Kary-On which I received for my little boy. He had a headache almost every day and didn't have any appetite and now he eats, I think a little too much. He was unable to go to school and now he goes to school and plays with all the other children."

Lopez: Well, I suffered with cramps in the stomach and legs. My knees swelled, and I tried Uncle Dud's Kary-On. Before that, my wife had taken it * * * she had stopped taking it and she began again lately. It is certain that it does her a lot of good.

Dudley: And, Mr. Lopez, what is it that you had? you say you had cramps, and * * * you could not sleep at night?

Lopez: I could not rest at night because of cramps and pain and pain in the legs. I started taking Kary-On and these pains are gone. And look at the little boy who had convulsions, and he said to me—his father said to me, "Look at that! My son had convulsions every now and then. I gave him four bottles of your Kary-On and today he is better."

Well, he had trouble breathing for one year and I stayed up with him every night, all night, and then he took five bottles of Kary-On and it helped him very much. He wouldn't eat, and now he is beginning to eat well and he plays with the children everywhere at school and he goes until (sic) the park, he returns, and he is not tired.

Every Sunday at this time, over a network, I will give you the news of the week in French and in English and will discuss the merits of my new preparation Kary-On. And, as I just stated in French, now that you know how meritorious the formula and the preparation really is, don't you think it is about time to give it a try. You'll probably say "Where can I buy it?." Well, it is not for sale in the stores as yet, but I want to send you a bottle without cost or obligation on your part. We will wrap it up, send it to you postpaid, if only you will write a letter or a post-card to the radio station to which you are listening and merely say that you would like to have a free bottle of Senator LeBlanc's product, Kary-On. The only thing that I ask you to do is that you mention on the card or on the letter the disease or the ailment from which you are suffering. If you suffer from diabetes, then say it * * * "I have diabetes." If you suffer from ulcers of the stomach, heart trouble, epilepsy, lack of appetite or asthma, or any ailment that you might have, state the ailment.

Now, don't misunderstand me. I am not saying that Kary-On will cure you of these various diseases. That is not the point, but I ask you to mention the disease for two reasons. First, I don't want to be sending the sample bottle to children or to people who don't need the medicine. And another thing is this — if you suffer from any of the ailments, you may not be able to eat the

type and kind of food that furnishes you with the vitamins and minerals that Kary-On contains. And certainly you know that you need these vitamins and minerals for good health.

PAR. 6. Through the use of the statements and representations contained in the advertisements hereinbefore set forth, and others of similar import and meaning, but not specifically set out herein, respondents have represented, directly and by implication:

That Kary-On, taken as directed, is a competent and effective treatment for and will cure indigestion, acid indigestion, heartburn, upset stomach, stomach trouble, digestive disturbances, gas pain, constipation, loss of appetite, lack of energy, weakness, general run down condition, chronic fatigue, loss of strength to walk, insomnia, aches and pains in various parts of the body, rheumatism, neuritis, nervousness, headache, dizziness, swollen knees, breathing difficulties, accelerated aging process, anemia, convulsions, erysipelas, cellulitis, typhoid fever, heart trouble, diabetes, ulcers, epilepsy, asthma and other ailments.

That everyone having false teeth or gray hair is deficient in vitamins and minerals and needs Kary-On.

PAR. 7. The aforesaid representations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, Kary-On, however taken, is of no value in the treatment of convulsions, rheumatism, erysipelas, cellulitis, typhoid fever, heart trouble, diabetes, ulcers, epilepsy and asthma.

Kary-On is of no value in the treatment of indigestion, (acid indigestion), heartburn, upset stomach, stomach trouble, digestive disturbances, gas pain, constipation, loss of appetite, lack of energy, weakness, general run down condition, chronic fatigue, loss of strength to walk, insomnia, aches and pains in various parts of the body, neuritis, nervousness, headache, dizziness, swollen knees, breathing difficulties, accelerated aging process, iron deficiency anemia, except in cases where such symptoms or conditions are caused by Vitamin B1, B2, niacin or iron deficiencies. Each of these conditions and symptoms may result from any one of a number of causes that have no connection with deficiencies of Vitamin B1, B2, niacin or iron.

Not everyone having false teeth or gray hair is deficient in vitamins and minerals and in the absence of such deficiencies Kary-On would be of no value.

PAR. 8. The said advertisements are false and misleading in that they fail to disclose facts material in the light of the representations therein contained; that is, that the causes of the symptoms and con-

ditions, enumerated in Paragraph Six, are so numerous that their mere existence is such an uncertain indication of a deficiency of Vitamin B1, B2, niacin or iron that there is no reasonable likelihood that in any individual case said symptoms and conditions will be benefited by the use of respondents' said preparation.

PAR. 9. Deficiencies in Vitamin B1, B2, niacin and iron can only be detected by diagnostic tests conducted by skilled medical experts. When symptoms are due to a deficiency of these vitamins and minerals, Kary-On taken as directed, has some therapeutic value and may in time relieve such symptoms by correcting the deficiencies that cause them. Said preparation, however taken, is of no value as a treatment for any symptoms or conditions not caused by deficiencies of such vitamins and minerals.

Some of respondents' advertising, disseminated as aforesaid, contained a qualifying statement such as:

These people suffered from lack of Vitamin B1, B2, niacin and iron.

The above, or a similar statement in various advertisements, has been followed by quotations taken from testimonial letters. These quotations describe certain symptoms and conditions of the writers and claimed directly and by implication that they had been relieved or cured by Kary-On. Such quotations, even when so prefaced, were deceptive for the reason that the quotations themselves did not relate the symptoms and conditions described to a deficiency of Vitamin B1, B2, niacin or iron. Furthermore, neither the writers of these testimonial letters nor the respondents were competent to judge whether such symptoms and conditions as were described, were the result of Vitamin B1, Vitamin B2, niacin or iron deficiencies, or if so, whether Kary-On relieved or cured such symptoms and conditions.

PAR. 10. The use by the respondents of the foregoing false advertisements and the false, misleading and deceptive statements and representations contained therein has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained in said advertisements are true and into the purchase of substantial quantities of said preparation because of such erroneous and mistaken belief.

PAR. 11. 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, 1955, the Federal Trade Commission issued its complaint in this proceeding, charging the respondents with the use of false, deceptive, and misleading statements, representations, and practices in commerce in advertising their preparation "Kary-On," in violation of the provisions of the Federal Trade Commission Act. "Kary-On" contains ingredients coming within the classification of drugs and food, as those terms are defined in said Act.

Thereafter, on November 10, 1955, respondents entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the hearing examiner an Agreement Containing Consent Order To Cease And Desist, disposing of all the issues involved in this proceeding with the exception of those raised by the allegations contained in Paragraphs Eight and Nine of the complaint, which, counsel supporting the complaint states, are "* * * deemed appropriate to waive * * * for the purpose of this consent agreement."

Respondent LeBlanc Medicine Company, Inc. is identified in the agreement as a Louisiana corporation, with its office and principal place of business located at 901 Stewart Street, Lafayette, Louisiana, and Respondents Dudley J. LeBlanc, Dudley J. LeBlanc, Jr., and Onesta Marie Martin (sometimes known as Lulu Martin) are identified therein as individuals and as President, Vice President, and Secretary-Treasurer, respectively, of the corporate respondent. The individual respondents control the policies, activities and practices of the corporate respondent, and their address is the same as that of the corporate respondent.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record herein may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement, and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The agreement sets forth that the order to cease and desist contained therein shall have the same force and effect as if entered

after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; and that the complaint herein may be used in construing the terms of the order.

The order contained in this agreement covers all the allegations of the complaint except those waived by counsel supporting the complaint, and it appears that such order provides a reasonably satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order To Cease And Desist and finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint, and that this proceeding is in the public interest. Therefore,

It is ordered, That the Respondents, LeBlanc Medicine Company, Inc., a corporation, and its officers and Dudley J. LeBlanc, Dudley J. LeBlanc, Jr., and Onesta Marie Martin (sometimes known as Lulu Martin), individually and as officers of said corporation, and the respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the preparation designated as Kary-On, or any preparation of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisements which, by the use of testimonial letters or otherwise, represent directly or by implication:

(*a*) That such preparation is of any value in the treatment of convulsions, rheumatism, erysipelas, cellulitis, typhoid fever, heart trouble, diabetes, ulcers, epilepsy and asthma;

(*b*) That such preparation is of any value as a treatment for any symptom or condition not caused by a deficiency of Vitamin B_1, B_2, niacin or iron;

(*c*) That such preparation is of any value in the treatment of indigestion, (acid indigestion), heartburn, upset stomach, stomach trouble, digestive disturbances, gas pain, constipation, loss of appetite, lack of energy, weakness, general run down condition, chronic fatigue, loss of strength to walk, insomnia, aches and pains in various parts of the body, neuritis, nervousness, headache, dizziness, swollen knees, breathing difficulties, accelerated aging process, iron deficiency anemia, except when such symptoms or conditions are caused by Vitamin B_1, B_2, niacin or iron deficiencies;

(*d*) That gray hair or loss of teeth is any indication of a deficiency in Vitamin B_1, B_2, niacin or iron.

2. Disseminating or causing the dissemination of any advertisements by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisements contain any of the representations prohibited in Paragraph 1 hereof.

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 5th day of January, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondents LeBlanc Medicine Company, Inc., a corporation, and Dudley J. LeBlanc, Dudley J. LeBlanc, Jr., and Onesta Marie Martin (sometimes known as Lulu Martin), individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

JOSEPH CARMEL, INC., ET AL.

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

Docket 6406. Complaint, Aug. 24, 1955—Decision, Jan. 5, 1956

Order requiring a manufacturer in New York City to cease violating the Wool Products Labeling Act by labeling ladies' coats falsely as "70% Guanaco, 30% Wool," and failing to label certain coats as required.

Mr. R. D. Young, Jr. for the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misbranding ladies' coats in violation of the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act. The complaint was issued on August 24, 1955, and in due course served on respondents, service on the individual respondent being effected on August 30, 1955, and on the corporate respondent on August 31, 1955. No answer to the complaint was filed by either respondent. The complaint set the initial hearing for October 26, 1955, at the Office of the Commission in the United States Court House, Foley Square, New York, New York. However, by consent of respondents and of counsel supporting the complaint, the place of hearing was changed from New York City to Washington, D. C., and the hearing was held at 10:00 A.M., on October 26, 1955, in Room 692, in the Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue, N. W., Washington, D. C., all in conformity with an order issued by the hearing examiner on October 10, 1955, and duly served on respondents. There was no appearance by either of respondents at the hearing. Counsel supporting the complaint was present at the hearing and submitted a proposed order for consideration by the hearing examiner. Respondents being in default both as to answering the complaint and as to appearance at the hearing, the hearing examiner, proceeding under Rule 3.7 of the Commission's Rules of Practice, now issues his initial decision, finding the facts to be as alleged in the complaint and issuing an order considered by him to be warranted by such facts, the order being essentially the same as that submitted at the hearing by counsel supporting the complaint.

1. Respondent Joseph Carmel, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York,

with its office and principal place of business located at 512 Seventh Avenue, New York, New York. The individual respondent, Joseph Carmel, is President and Treasurer of the corporate respondent, Joseph Carmel, Inc., and formulates, directs and controls its acts, policies and practices.

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 that Act, wool products, as "wool products" are defined therein.

3. Certain of such wool products were misbranded within the intent and meaning of Section 4(a) (1) of the 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 by respondents as consisting of "70% Guanaco, 30% Wool," whereas, actually, the products were not composed of 70 percent guanaco, 30 percent wool.

4. Certain of such wool products (ladies' coats) were also 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 in the manner and form prescribed by the Rules and Regulations promulgated under the Act.

5. Certain of such wool products (ladies' coats) were further misbranded by respondents in that the character and amount of the constituent fibers contained in the interlinings thereof were not separately set forth on the stamp, tag or label as required by said Act and Rule 24 of the Rules and Regulations promulgated thereunder.

6. Respondents, in the course and conduct of their business, are in direct and substantial competition with other corporations, firms and individuals engaged in the sale, in commerce, of wool products, including ladies' coats.

CONCLUSIONS

The proceeding is in the public interest. The acts and practices of respondents constitute misbranding of wool products and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, are to the prejudice of the public and of respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Joseph Carmel, Inc., a corporation, and its officers, and respondent Joseph Carmel, individually and as an officer of said corporation, and respondents' respective representatives, agents and employees, directly or through any corporate or other device, in connection with the 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' wool coats or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products by:

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

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

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

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

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

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

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 5th day of January 1956, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

MAGNESIUM COMPANY OF AMERICA, INC.

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

Docket 6370. Complaint, June 27, 1955—Decision, Jan. 6, 1956

Consent order requiring one of the largest manufacturers of dockboards in the country, with annual gross sales approximating $4,000,000 for all its material handling equipment, including magnesium dockboards, loading ramps, hand trucks, barrel skids, etc., to cease violating Sec. 2 (a) of the Clayton Act as amended by discriminating in price between different purchasers through use of a system of quantity and dollar volume discounts, both noncumulative and cumulative, under which the discount was determined, respectively, by the number of dockboards purchased, regardless of price, or by a customer's total purchase during a 12-month period, and permitted customers to pool orders from several branches under either plan.

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

Mr. Edward S. Ragsdale and *Mr. Cecil G. Miles* for the Commission.

Bell, Boyd, Marshall & Lloyd, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption herein, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 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. Respondent Magnesium Company of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office, place of business, and plant located at 5222 Indianapolis Boulevard, East Chicago, Indiana. Respondent also has a branch office and branch plant located at 1017 Elsegundo Boulevard, Los Angeles, California, and deliveries are made out of either the East Chicago or the Los Angeles plants. Respondent has other branch offices located at:

30 Rockefeller Plaza,
New York, New York.
8001 S. Hampton Avenue,
Philadelphia, Pennsylvania.
734 15th Street NW.,
Washington, D. C.
7657 Moline Street,
Houston, Texas.
Russ Building,
San Francisco, California.

PAR. 2. Respondent Magnesium Company of America, Inc., was originally organized in Illinois on December 31, 1944, as a subsidiary of the Christiansen Corporation, a Delaware corporation, but in July 1951 it was acquired by and consolidated with the Bates Expanded Steel Corporation, an Indiana corporation, which was also a subsidiary of the Christiansen Corporation, and assumed the name of Magnesium Company of America, Inc., hereinafter sometimes referred to as "MAGCOA."

PAR. 3. Respondent is engaged in the manufacture, sale and distribution of material handling equipment such as magnesium dockboards, loading ramps, hand trucks and barrel skids. It is also engaged in the general fabrication of magnesium alloys. In addition, it has an aluminum foundry in connection with which it manufactures automotive pistons and a line of aluminum 4-wheel hand trucks. Respondent is one of the largest manufacturers of dockboards in the industry, with gross sales of all its products approximating $4,000,000 annually.

The price of respondent's dockboards ranges from $100 to $1000, and higher, but the average price is approximately $225. Respondent's dockboards and other equipment are sold for the use of the buyer rather than for resale. It sells its products both through its own salesmen and through independent sales representatives to what might be classified as "regular" and "national account" customers. Respondent classifies a "national account" customer as any company or corporation in the United States to which it has sold dockboards, which operates six or more branches, plants, or warehouses.

PAR. 4. In the course and conduct of its business as aforesaid, respondent is now engaged, and for the past several years has been engaged, in commerce, as "commerce" is defined in the Clayton Act, having sold its products manufactured by it at its plants located in Indiana and California and transported, or caused the same to be transported, from its places of business in said States to purchasers

located in other States of the United States, and in other places under the jurisdiction of the United States. At least one of the sales involved in each of the discriminations in price hereinafter alleged was in interstate commerce.

PAR. 5. In 1949 respondent inaugurated and put into effect a system of quantity and dollar volume discounts. Such discounts are both noncumulative and cumulative, and, in a number of instances, are retroactive. These discounts are set out as follows:

	Discount
(*a*) On a single order of 4 dockboards	0%
(*b*) On a single order of 5 through 9 dockboards	3%
(*c*) On a contract, blanket order, or letter of intent to purchase 10 or more dockboards within one year	5%

The price of dockboards is not a determining factor as to whether the above discounts will be allowed—it is the number of dockboards, regardless of price, which determines whether a discount will be given and the amount thereof.

In addition to the above dockboard discounts which are given on each invoice at the time the customer is billed, respondent also gives an annual dollar volume cumulative discount based on the customer's purchases of all its products during a 12-month period as follows:

	Discount
(*a*) Up to, but not including, $10,000	0%
(*b*) $10,000 to, but not including, $20,000	5%
(*c*) $20,000 and over	10%

On or about July 1, 1954, respondent offered a number of its national account customers a 5% discount on their purchases of its "Tobey industrial trucks," a 4-wheel hand truck. This line of trucks is also included in respondent's cumulative annual volume discount offered to such customers.

Respondent has no standard form of agreement covering the above discount schedule. On the 3% discount on the purchase of 5 to 9 dockboards, inclusive, no agreement is required, except that it must be a "single order" purchase. On the above 5% discount on dockboards, respondent has three different types of agreements. They are:

(*a*) A formal contract to purchase 10 or more dockboards within one year.

(*b*) A blanket order by a customer to purchase 10 or more dockboards within one year.

(*c*) A letter of intent by a customer to purchase 10 or more dockboards within one year.

A substantial majority of these agreements also include therein a provision for the allowance of the above-described annual dollar volume cumulative discount.

Respondent allows its national account customer who has one of these agreements, and who has several branches, plants, or warehouses, to pool the purchases of all such branches, plants, and warehouses in order to qualify for both the noncumulative discount and the annual dollar volume cumulative discount, even though none of the branches individual purchases would be sufficient to entitle the purchaser to any discount at all. Respondent does not require this type of customer to order more than one dockboard at a time to entitle it to the 5% noncumulative discount, which discount is allowed at the time of purchase. In many instances, these national account customers, who have signed these agreements or letters of intent, have failed to purchase the required minimum number of ten dockboards during the twelve month period to entitle them to this 5% discount. In none of these instances, however, has respondent collected or attempted to collect from the customer, or to have the customer refund this 5% discount previously allowed. In fact, in one of its letters and bulletins, dated June 18, 1953, to all MAGCOA representatives, it instructed its representatives to inform these national account customers, who have a policy against entering into binding contracts, that the contracts with MAGCOA are not binding, and that if they do not buy the minimum of ten dockboards, MAGCOA will not force the issue.

This bulletin further states to its representatives with regard to these national accounts that:

> The general overriding thought to keep in mind in dealing with National Accounts is that blanket orders pay off no matter how we get them. We should always try to get the most from a blanket order which is to have the main office recommend our dockboards to all plants and refuse to purchase any competitive items. It is very important to have our dockboards placed in a company's standard equipment catalog (Western Electric warehouse division). Although U. S. Rubber Company has decentralized purchasing, MAGCOA dockboards must be purchased or a reason given why our dockboards will not work. Obviously, it is impossible to have all companies with MAGCOA contracts purchase only MAGCOA dockboards, but after this possibility has been entirely eliminated, try the next best method.

According to a tabulation submitted by respondent showing approximate figures, it had a total number of 1536 dockboard purchasers during the calendar year 1953. Of this number, 1390 received no discount at all, while the remaining 146 received either a 3%, 5%, 10% or 15% discount. These are broken down into the various discount brackets as follows:

Calendar Year of 1953

Volume brackets	Discount rate	Number of purchasers	Percent of purchasers	Dollar volume of purchases	Percent
5 to 9 dockboards	3 percent	28	1.82	34,900.87	2.5
10 dockboards	5 percent	96 (440 different locations).	6.25	250,963.61	17.9
$10,000.00 to $19,999.99.	Additional 5 percent.	14 (306 different locations).	.91	156,181.02	11.1
$20,000.00 or over	Additional 10 percent.	8 (205 different locations).	.52	188,307.42	13.4
Others	0 percent	1,390	90.50	769,647.08	55.1
		1,536	100.0	1,400,000.00	100.0

PAR. 6. Respondent, in the allowance and payment of these discounts by means of its quantity discount system, both noncumulative and cumulative, as hereinbefore outlined and described, has been for the past several years and is now discriminating in price between its said different purchasers, in commerce, of its products of like grade and quality by charging some of said purchasers higher prices than respondent charged or charges to others.

PAR. 7. There are other manufacturers of material handling equipment, including Magnesium dockboards, hand trucks, barrel skids, and 4-wheel hand trucks, in the United States who have been for the past several years and are now in competition with respondent in the manufacture, sale and distribution of similar material handling equipment to purchasers. Respondent's discrimination in price as described above in many instances in the past have been sufficient to divert, and have diverted, substantial business from respondent's competitors to respondent, and are sufficient to divert substantial business from respondent's competitors to respondent in the future.

It is therefore alleged that there is a reasonable probability that the effect of respondent's said discriminations in price may be substantially to lessen competition in the lines of commerce in which respondent is engaged. Said practices of respondent also have a dangerous tendency unduly to hinder competition and to create a monopoly respecting the effects not only as to respondent's existing competitors but also as to respondent's potential competitors.

PAR. 8. The aforesaid discriminations in price made by respondent Magnesium Company of America, Inc., as hereinbefore alleged and described, constitute violations of subsection (a) of Section 2 of the aforesaid Clayton Act, as amended.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The Federal Trade Commission issued its complaint in this proceeding on June 27, 1955, charging the respondent, Magnesium Com-

pany of America, Inc., with violation of subsection (a) of Section 2 of the Clayton Act, (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, in the granting to its customers of discriminatory discounts on sales of material handling equipment such as magnesium dockboards, loading ramps, hand trucks and barrel skids.

After the issuance of said complaint the respondent entered into an agreement for consent order with counsel in support of complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

By the terms of said agreement, the respondent 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. By said agreement the parties expressly waived a hearing before the 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 the respondent may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said agreement, respondent further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

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

Said agreement recites that the correct corporate name of the respondent is Magnesium Company of America (Incorporated), and in this behalf the caption of this proceeding should be so amended. Accordingly the caption is hereby ordered to conform and the order hereinafter passed will be issued against respondent by its correct

corporate designation; that respondent is a corporation existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at No. 5222 Indianapolis Boulevard, in the City of East Chicago, State of Indiana.

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

ORDER

It is ordered, That the respondent, Magnesium Company of America (Incorporated), a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or distribution of material handling equipment in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Discriminating in price, directly or indirectly, in the sale of its material handling equipment of like grade and quality, including dockboards, loading ramps, hand trucks, or any other product, by the use of a cumulative discount or rebate or other allowance or device granted to one purchaser or group over that granted to any other purchaser where respondent, in the sale of such material handling equipment, is in competition with any other seller.

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 January, 1956, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

SOL BARNETT TRADING AS AMERICAN ANTIMONY COMPANY

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

Docket 6387. Complaint, June 30, 1955—Decision, Jan. 6, 1956

Consent order requiring a seller of household paints in Los Angeles, Calif., to cease advertising falsely in newspapers, etc., that he was forced to sell a limited amount of high-grade paint at a special reduced price.

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

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

Mr. Louis Licht and *Mr. Bernard Kriegel*, of Los Angeles, Calif., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Sol Barnett, an individual, trading as American Antimony Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sol Barnett is an individual trading as American Antimony Company. Respondent is now, and for more than one year last past has been, engaged in the promotion, sale and distribution of interior and exterior household paints. Respondent's office and principal place of business is located at 1417 South Robertson Boulevard, Los Angeles, California. Said paints are sold directly to purchasers by the respondent from his Los Angeles office.

PAR. 2. In the course and conduct of his business, respondent now causes and has caused said products, when sold, to be transported from his place of business in the State of California and from public warehouses in States other than California to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade, in commerce, in said products.

PAR. 3. Respondent at all times mentioned herein has been in substantial competition, in commerce, with other persons and with

corporations, firms and partnerships engaged in the sale of paints.

PAR. 4. In the course and conduct of said business and for the purpose of inducing the purchase of said paints, respondent has made various statements and representations concerning his said paints and business methods through advertisements inserted in newspapers, circular letters and other advertising literature circulated generally among the purchasing public. Typical representations made by respondent in the aforesaid advertisements, circular letters and other advertising literature, but not all inclusive, are as follows:

We have 148 gallons exterior white paint and 44 gallons interior white paint in a public warehouse that must be moved immediately. Inasmuch as this paint is so near you, we will accept $2.75 per gallon for the exterior and $3.00 per gallon for the interior delivered to your door. You may take all or any part of this lot.

In a public warehouse near you we have 104 gallons of our high quality Genuine outside White Paint." * * * This paint must be moved immediately. Special price $2.75 per gallon, delivered. You may take all or any part of this lot.

An expensively formulated pure Linseed Oil and Titanium Base Paint for exceptional durability, protection and beauty.

A scientifically balanced combination of only the best titanium pigment and Pure linseed oil is used in Amanco brand.

Because this paint is identical to nationally sold brands at twice this price, we suggest you order the maximum quantity you can use.

Amanco Brand: Must dispose of 48 gals. white high grade house paint, located in local warehouse. Sells for $4.75, sacrifice for $2.75 per gal. Minimum order 4 gals.

PAR. 5. Through the use of the statements set forth in Paragraph 4 and others similar thereto but not specifically set out therein, respondent has represented and does now represent, directly or by implication, that:

1. Respondent has only a limited and specified amount of paint in a public warehouse located near the address of the recipient of respondent's literature and that he is forced to sell such paint immediately.

2. That the paint offered for sale is an expensive, superior and high grade paint and that the base consists of the best grade of titanium and that there is sufficient linseed oil in the vehicle to justify the paint being designated as a linseed oil paint.

3. That the paint is offered for sale at a special and reduced price from respondent's usual and customary retail price.

4. That respondent's paint is identical to nationally sold brands selling at twice the price at which respondent offered his paint for sale.

PAR. 6. The foregoing representations and implications are grossly exaggerated, false and misleading. In truth and in fact:

1. Respondent did, in some cases but not in all, have the specified amount of paint stored in a public warehouse at the time he disseminated his circular letter and placed his advertisements. However, respondent accepted and will accept unlimited orders for his paint from any and all persons who forward an order to him irrespective of the total amounts of such orders. Said amounts far exceed the limited and specified amount respondent represented as being offered for sale. Respondent is not forced to sell his paint at any time.

2. The paint offered for sale is not an expensive or superior or high-grade paint. The base does not consist of the best grade of titanium and there is not sufficient linseed oil in the vehicle to justify the designation of said paint as a linseed oil paint.

3. The price at which respondent offered his paint for sale is not a special or reduced price but such price is his usual and customary retail price.

4. Respondent's paint is not identical to nationally sold brands selling at twice the price at which respondent offered his paint for sale.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations and practices, in connection with the offering for sale and the sale and distribution in commerce of said paints, has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of said paint because of such erroneous and mistaken belief. As a result thereof, trade in commerce has been unfairly diverted to respondent from his competitors and substantial injury has been done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's 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 J. EARL COX, HEARING EXAMINER

The complaint charges that respondent Sol Barnett, an individual trading as American Antimony Company, with his office and principal place of business located at 1417 South Robertson Boulevard, Los Angeles, California, is now, and for more than one year last past has been, competitively engaged with other persons, corporations, firms and partnerships, in the promotion, sale and distribution

of interior and exterior household paints in commerce; and that he has falsely and deceptively misrepresented his paints and business methods, to the prejudice and injury of the public and of respondent's competitors, in violation of the Federal Trade Commission Act. After the issuance of the complaint and the filing of answer thereto, respondent, his counsel, and counsel supporting the complaint, on October 24, 1955, entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director, Bureau of Litigation of the Commission, and thereafter transmitted to the hearing examiner for consideration.

The agreement provides, among other things, that respondent admits all the jurisdictional facts alleged 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 respondent's answer to the complaint shall be considered as having been withdrawn, and that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified, or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondent waives any further procedure before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully covers all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest and accepts the Agreement Containing Consent Order To Cease And Desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondent, Sol Barnett, an individual trading as American Antimony Company, or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for

sale, sale or distribution of interior or exterior paint, 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 respondent has only a limited amount of paint available for sale;

2. That respondent is forced to sell his paint;

3. That the paint offered for sale is expensive, superior, or high grade paint or is identical to nationally sold paints selling at a higher price than that charged by respondent;

4. That the base of respondent's paint consists of the best grade of titanium;

5. That respondent's paint is a linseed oil paint, unless and until the major constituent in the vehicle of said paint consists of linseed oil;

6. That the price at which respondent's paint is offered for sale is a special or reduced price unless such price is substantially lower than his customary and usual price for the same paint.

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 January, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Sol Barnett, an individual trading as American Antimony Company, 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.