IN THE MATTER OF

BELTONE HEARING AID COMPANY

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

Docket 5825. Complaint, Nov. 2, 1950—Decision, Feb. 16, 1956

Order requiring one of the largest manufacturers of hearing aid instruments in the United States—in 1953 having written exclusive-dealing franchise agreements with 167 of its 187 independent distributors and exclusive-dealing understandings with the remainder—to cease selling its hearing aids to dealer distributors on condition that they not handle similar products of its competitors.

Mr. Andrew C. Goodhope for the Commission.
Crowell & Leibman, of Chicago, Ill., for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned Hearing Examiner for final consideration upon the complaint, amended and supplemental answer thereto, testimony and other evidence, proposed findings as to the facts and conclusion presented by counsel and oral argument thereon.

The complaint in this proceeding was issued November 2, 1950, charging respondent Beltone Hearing Aid Company, a corporation, with having violated the provisions of Section 3 of the Clayton Act by reason of respondent's practice of selling its hearing aids to certain of its customers on condition, agreement or understanding that such customers shall not use or deal in hearing aids sold and distributed by competitors of respondent.

The respondent filed its answer to the complaint on November 30, 1950, but later on January 11, 1951, the respondent withdrew said answer by filing an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. Subsequent thereto Webster Ballinger, a duly designated Hearing Examiner of the Commission, issued his initial decision in this proceeding. Thereafter, on motion of the respondent, the Commission on February 18, 1954, issued its order setting aside the initial decision of the Hearing Examiner, granting leave to respondent to file an amended and supplemental answer, and remanding this proceeding to the Hearing

Examiner for further proceeding in due course. On March 3, 1954, prior to the taking of any testimony in this proceeding, the Commission issued its order appointing the undersigned, Earl J. Kolb, as Hearing Examiner in the place and stead of Hearing Examiner Webster Ballinger. Thereafter, testimony and other evidence in support of, and in opposition to, the allegations of the complaint were introduced before the undersigned Hearing Examiner and said testimony and other evidence were duly recorded and filed in the office of the Commission.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Beltone Hearing Aid Company is a corporation organized under the laws of the State of Illinois with its principal office and place of business located at 2900 West 36th Street, Chicago, Illinois.

PAR. 2. Since 1941, the respondent has been engaged in the manufacture and in the sale and distribution of hearing aid instruments, under the trade name "Beltone," and parts and accessories therefor, in interstate commerce in competition with other concerns who were also engaged in the sale and distribution of similar products in interstate commerce.

PAR. 3. In 1944, respondent introduced an innovation into the hearing aid industry in the form of a hearing aid which combined the batteries and transmitter into one unit, reducing the bulk and weight of the unit. This hearing aid was sold under the descriptive name of "Beltone Monopac" and was primarily responsible for respondent becoming one of the leading manufacturers of hearing aids in the United States.

PAR. 4. The method of distribution used by respondent is to sell its hearing aids and parts and accessories therefor to independently owned and operated distributors located throughout the United States who are not agents, servants or employees of respondent, but independent contractors in the purchase of respondent's products. This method of distribution is generally followed by manufacturers and distributors of hearing aids and parts and accessories therefor, except for a few who sell to dealers for over-the-counter sales and one substantial manufacturer who sells through dealers acting as agents of the company.

PAR. 5. In the course and conduct of its business, respondent has consistently followed a policy of making sales and contracts of sale of its hearing aid instruments on the condition, agreement or understanding that the purchaser thereof shall not use or deal in hearing aid instruments sold and distributed by competitors of respondent.

PAR. 6. In January 1948, respondent put into use its first formal franchise agreement in contracting to sell hearing aids to its distributors, which provided among other things as follows:

> *Article 3.* DISTRIBUTOR agrees to represent and sell only those hearing aids manufactured and sold by BELTONE, and not to sell any other new hearing aids. (CX 1)

In March 1952, this form of contract was revised for use thereafter in contracting with distributors. The new form of contract provides, among other things, as follows:

> *Article 4.* DISTRIBUTOR agrees to represent and sell only those new hearing aids manufactured and sold by BELTONE, and not to sell any other new hearing aids. (CX 2)

These contracts further provide that each Beltone instrument sold shall be registered by the distributor with Beltone on registration forms supplied by Beltone, giving name and address of purchaser, date of purchase, and serial number of instrument. It was also provided that said contract may be cancelled at any time by either party upon thirty days written notice by registered mail.

PAR. 7. In 1953, the respondent sold its Beltone hearing aids and accessories to 187 independent distributors located in the United States, who in turn maintained approximately 50 subdealer outlets. Of this number, 167 had executed formal written franchise agreements, as hereinabove described. The remaining 20 distributors were not operating under a formal franchise agreement, but had exclusive dealing understandings with respondent, in fact, 8 of these distributors had typed contracts with respondent, one of which, dated April 25, 1947, provided, among other things, as follows:

> *Article 4.* Elbaum [Distributor] agrees to terminate his franchise or distribution rights with any and all other hearing aid companies within thirty days of this agreement, and thereafter will purchase only service supplies and accessories from said firm or firms, but thereafter will not purchase transmitters for resale.
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> *Article 5.* Elbaum agrees thereafter to represent and sell only those hearing aids manufactured and sold by BELTONE and not to sell any other hearing aids.

PAR. 8. In the general course and conduct of respondent's business relationships with its distributors, respondent has required strict compliance with, and its distributors have strictly adhered to, the exclusive dealing requirements of its contracts. While there is some vague testimony by competitors of respondent that they were able to sell some of respondent's dealers, closer inspection of this testimony shows that for the most part sales were made to former Beltone dealers or dealers who were in the process of giving up Beltone. While various manufacturers solicited all dealers, including those having exclusive dealing contracts with Beltone, they were not successful in inducing such dealers to handle their hearing aids in conjunction with Beltone. Not one Beltone dealer called as a witness admitted to selling any competitive hearing aid, and, in fact, the record shows that in those instances where a competitive aid had been handled by a dealer it was for the purpose of having the customer switch to Beltone. For example, in a letter dated April 1, 1948, to Mrs. Elsie S. Floren of Northwest Hearing Aid Company, David H. Barnow, General Manager of Sales Department of respondent stated:

> You stated that somebody was in your office who covered the entire country and states that many Beltone distributors are carrying more than one line. If this is so, they have certainly been successful in keeping it under cover because not only have we been assured by practically every one in the company that they are handling Beltone exclusively (there are only about 5% who are not), but Pete gets around the country and certainly could smell out any situation that wasn't 100% Beltone. There are a few cases, of course, who were formerly Western or Acousticon or Telex, etc., who are not selling those products but are still servicing the users in order to continue the traffic with a view towards ultimately selling them a Beltone. (CX 11-F)

PAR. 9. The provisions of the contract permitting cancellation on thirty day notice and the requirement that names and addresses of all purchasers be forwarded to respondent further enhanced respondent's ability to enforce the exclusive dealing features of its contract. A distributor knew full well that if the cancellation clause were exercised he would be immediately out of business, and that respondent would immediately notify all his customers of his discontinuance and advise such customers that they should contact the new dealer for service and genuine parts. That the respondent did, in fact, require strict compliance with the exclusive dealing features of its contracts is shown by the following:

1. On January 7, 1947, David H. Barnow, Vice President, of respondent wrote A. G. Hoffman, Houston, Texas, in part as follows:

> You will recall on my visit to Houston early last year, we made quite a point of the fact that we were interested in *exclusive* representation. At that

time it was our understanding that you were going to devote your full time to BELTONE distribution. I find, however, that in the December, 1946 Houston telephone directory that you are still listing Western Electric, DeForest, and almost any other hearing aid the prospect may desire.

We are now laying our plans for 1947 and would like to have an expression from you as to your intentions regarding BELTONE distribution. (CX 24)

2. On March 7, 1947, David H. Barnow wrote Roy Carpenter, Beaumont, Texas, in part as follows:

I think we've reached the point, Roy, where you should be able to give us a clear cut decision on whether or not you want to continue with BELTONE on the following terms:

1. Handle BELTONE exclusively to the exclusion of all other hearing aids. (CX 28-A-B)

3. On November 2, 1948, David H. Barnow wrote Mrs. Ida M. Penn, Chattanooga, Tennessee, in part as follows:

Ida, I've always been personally fond of you. You know I've always gone out of my way to do little extras for my "Mammy". More than that I've always been proud of our association, and of having you in our organization. During that association I've never waivered in my loyalty to you. I can, however, remember one period when you came close to waivering when you were flirting with the idea of adding Western Electric to the Beltone line. I resisted it then. I think you're now in a mental frame of mind to waiver again. I think that would be a serious mistake for you. Not only would it pain me personally, but I would consider it an expression that you're no longer interested in your Beltone franchise. (CX 12-A)

4. On February 9, 1949, David H. Barnow again wrote Mrs. Ida M. Penn of Chattanooga, Tennessee, in part as follows:

You ask for a two month trial with Microtone. I'm sorry but we just cannot grant any exception to our basic policy of exclusive representation. We think we've earned it and we know that it can't work out satisfactorily for the distributor or the company any other way. If at the end of this week, you call me and tell me that you have decided to take on Microtone, we'll have no alternative but to assume that you have in effect decided to cancel Beltone and we shall forthwith issue our cancellation of your existing franchise. (CX 19-A-D)

5. On September 30, 1948, David H. Barnow wrote Mrs. Elsie Floren of Minneapolis, Minnesota, in part as follows:

* * * We are committed to a program of exclusive representation wherever we can get it. We're not kidding ourselves into thinking that we have 100% exclusive representation everywhere, but we have reached about the 95% mark now. We intend to continue until we get it 100% if at all possible. Wherever we don't have exclusive representation we'll keep seeking until we find the individual or firm who is willing to give it to us. (CX 8-F)

PAR. 10. The best market for the manufacturers of hearing aids is the independently established retail distributor whose business is devoted entirely to the fitting and sale of hearing aids to the hard-of-hearing public. Such distributors also serve as the best markets for parts and accessories for hearing aid instruments since the purchaser thereof generally returns to the distributor from whom he purchased the hearing aid for any other parts or batteries or for any repairs or replacement parts in the hearing aid instrument. The hard-of-hearing person generally tries to hide his deafness and does not want to buy a hearing aid; consequently, the dealer, in order to make a sale, has to overcome this reluctance and by continued effort create a personal relationship between himself and the prospect. The value of the independent hearing aid dealer, as compared with the drug store type of outlet, is shown by the testimony of Robert Lubin that at the time that he had 15 dealers and 500 drug store and similar outlets that the sales of the 15 dealers accounted for 50 percent of the gross sales of Cleartone hearing aids.

PAR. 11. The total volume of business done by respondent with its distributors has been substantial. During the years 1948 through 1953, inclusive, sales of hearing aids and parts and accessories therefor by respondent to its distributors were as follows:

Fiscal period	Gross sales to franchise dealers	Total sales new hearing aids to dealers
11/1/47 to 10/31/48	3, 010, 262. 54	1, 982, 715. 00
11/1/48 to 10/31/49	3, 850, 145. 78	2, 403, 897. 00
11/1/49 to 10/31/50	3, 621, 236. 90	2, 090, 983. 00
11/1/50 to 10/31/51	3, 635, 046. 67	2, 178, 822. 00
11/1/51 to 10/31/52	3, 491, 502. 07	2, 177, 250. 00
11/1/52 to 10/31/53	3, 433, 252. 80	2, 164, 581. 00

The total industry figures are shown by the report of the Bureau of Census for sales of hearing aid instruments are as follows:

1947	$16, 868, 000
1950	23, 073, 000
1951	22, 316, 000
1952	22, 103, 000

PAR. 12. There are approximately a total of 35 manufacturers of wearable hearing aids in the United States. Respondent is one of the largest of such manufacturers, its total volume of sales of hearing aids ranking fourth in total dollar volume of hearing aids sold in 1951, with its total sales remaining substantially the same in subsequent years. The five largest of these manufacturers are Sonotone, Zenith, Dictograph, Beltone, and Maico. Sonotone sells through employees direct to the user and does not sell to independent distributors. Zenith sells to drug stores, optical stores and similar outlets as distinguished from the independent distributor. Dictograph, Maico, and respondent employ exclusive dealing arrangements with their distributors and together control approximately 600 independent dealers. The total

sales of hearing aids of these five companies in 1951 amounted to $16,248,764.00, which is 72.81 percent of the total industry sale of hearing aids in that year. The sales volume for these five hearing aid companies as shown by the record are as follows:

	Beltone	Dictograph	Maico	Zenith [1]
1950	$2,090,938	$3,561,234	$1,139,362	$1,980,297
1951	2,178,822	2,974,385	1,162,941	2,786,273
1952	2,177,250	3,126,282	1,165,463	3,535,426
1953	2,164,581	3,035,670	1,275,152	3,708,098

Sonotone sales of hearing aids for the year 1951 were $7,146,343.00.[1]

Par. 13. On a percentage basis, the percentage of sales of hearing aids by the various leading companies, as reflected by comparison of the individual company sales to the Bureau of Census figures, are as follows:

	Sonotone	Zenith	Dictograph	Beltone	Maico
1950	----------	8.58	15.43	9.06	4.93
1951	[1] 16.01	12.48	13.32	9.76	5.21
1952	----------	15.32	14.8	10.3	5.52

[1] Sonotone figures represent sales by means of its employees direct to the user. The figures for the other companies are total sales to distributors for resale to users. For purposes of comparison, the Sonotone figures should be reduced by 50 percent to make them comparable with the sale price to distributors shown for the other companies. Zenith figures are taken from Respondent's Exhibits 17 and 18.

The companies listed above, who make use of exclusive dealing contracts with their distributors; namely, Dictograph, Beltone and Maico, represent approximately 30 percent of the entire sales of the whole industry.

Par. 14. The exact number of independent hearing aid dealers in the United States is rather confused in this record. Witness Grover Cleveland Coil, estimated that there would be 2,000 to 3,000 qualified dealers. As this witness testified that a drug store with a hearing aid department would be a qualified dealer, it is impossible from his testimony to determine the number of independent hearing aid dealers as distinguished from drug stores, optical shops and department stores. Witness David H. Barnow, General Sales Manager and Vice President of respondent, testified that there were approximately 3,000 hearing aid dealers, exclusive of outlets such as drug stores, optical shops, etc. Although the record shows that Sonotone, Beltone, Dictograph and Maico sold to approximately 1,000 dealers, Barnow testified that these four companies would account for approximately 1,150 of the estimated dealers, leaving a balance of approximately 1,900 dealers distributed among the remaining 30 manufacturers of hearing aids. As he arrived at this latter figure by estimating the number of dealers sold by these 30 hearing aid companies, which for the most part were multiple line dealers, this would result in a considerable amount of duplication, and would prohibit an exact estimate being made because of such duplication. If consideration is given to the fact that Beltone, Dictograph, Maico. Sonotone and Zenith do 72.81 percent of total industry sales and that the remaining manufacturers of hearing aids sell principally to drug stores, optical shops and similar outlets, it readily becomes apparent that the estimate of 1,900 dealers is greatly exaggerated and would serve no basis for a finding as to the number of dealers.

PAR. 15. Considering the record as a whole, including the percentage of industry sales made by respondent and its three competitors—Sonotone, Dictograph and Maico—which, together, comprised 60 percent of the total industry sales in 1951, the Hearing Examiner is of the opinion, and so finds, that respondent's distributors constitute a substantial segment of the outlets for the sale of hearing aids and supply coverage for the more important trade areas of the United States. In such segment, the respondent has effectively established a monopoly. Competing manufacturers of hearing aids have suffered substantial injury in the form of loss of sales and inadequate distribution of their competing products as the result of respondent's requirements that its distributors and dealers handle only the products manufactured and sold by the respondent, and such competing manufacturers have been forced to sell less desirable outlets for their products such as drug stores, optical stores and similar outlets. Furthermore, the tendency and capacity of these practices to create a monopoly in the respondent and a limited number of its competitors is demonstrated by the following chart showing the hearing aid outlets in 74 cities throughout the United States, in each one of which there is located a Beltone distributor.

City	Population	Total outlets	Exclusive dealers	Other dealers	Other outlets
Abilene, Tex	45,570	3	2	----------	1
Albany, N. Y	134,995	8	4	2	2
Albuquerque, N. Mex	96,815	5	3	2	----------
Allentown, Pa	106,756	8	4	4	----------
Altoona, Pa	77,177	7	4	3	----------
Amarillo, Tex	74,246	5	3	1	1
Anderson, Ind	46,820	3	2	1	----------
Annapolis, Md	10,047	1	1	----------	----------
Asheville, N. C	53,000	5	2	2	1
Atlanta, Ga	331,314	8	4	4	----------
Augusta, Ga	71,508	4	3	1	----------
Austin, Tex	132,459	7	4	3	----------
Beaumont, Tex	94,014	6	4	1	1
Billings, Mont	31,834	4	3	1	----------

City	Population	Total outlets	Exclusive dealers	Other dealers	Other outlets
Birmingham, Ala	326, 037	7	3	3	1
Boise, Idaho	34, 393	7	3	3	1
Cedar Rapids, Iowa	72, 296	6	4	2	---------
Champaign-Urbana, Ill	39, 563 22, 834	5	3	---------	2
Charleston, S. C	70, 174	4	2	2	---------
Charleston, W. Va	73, 501	7	3	1	3
Charlotte, N. C	134, 042	8	4	2	2
Chattanooga, Tenn	131, 041	7	3	3	1
Columbus, Ga	79, 611	2	2	---------	---------
Corpus Christi, Tex	108, 287	7	4	2	1
Davenport, Iowa	74, 549	8	4	4	---------
Duluth, Minn	104, 511	8	4	2	2
Easton, Pa	35, 632	5	3	1	1
Eau Claire, Wis	36, 058	6	3	2	1
El Paso, Tex	130, 485	6	3	3	---------
Erie, Pa	130, 803	7	4	2	1
Everett, Wash	33, 849	6	3	2	1
Flint, Mich	163, 143	6	4	2	---------
Fresno, Calif	91, 669	9	4	4	1
Grand Rapids, Mich	176, 515	8	4	3	1
Greensboro, N. C	74, 389	4	2	---------	2
Jacksonville, Fla	204, 517	7	4	2	1
Johnstown, Pa	63, 232	6	4	2	---------
Joplin, Mo	38, 711	6	4	1	1
Knoxville, Tenn	124, 769	7	4	2	1
Lansing, Mich	92, 129	8	4	4	---------
Little Rock, Ark	102, 213	7	4	3	---------
Lubbock, Tex	71, 747	5	3	2	---------
Macon, Ga	70, 252	3	2	1	---------
Mobile, Ala	129, 009	6	4	2	---------
Muskegon, Mich	48, 429	2	1	1	---------
Nashville, Tenn	174, 307	8	3	5	---------
New London, Conn	30, 551	4	2	---------	2
Norfolk, Va	213, 513	8	4	3	1
Orlando, Fla	52, 367	7	4	3	---------
Portland, Maine	77, 634	5	3	2	---------
Raleigh, N. C	65, 679	6	4	---------	2
Rapid City, S. Dak	25, 310	3	2	1	---------
Reading, Pa	109, 320	7	4	3	---------
Reno, Nev	32, 497	2	1	---------	1
Richmond, Calif	99, 545	4	2	---------	2
Richmond, Va	230, 310	10	4	5	1
Rochester, Minn	29, 885	7	4	3	---------
Rockford, Ill	92, 927	8	4	4	---------
Saginaw, Mich	92, 918	4	2	2	---------
Schenectady, N. Y	91, 785	7	4	2	1
Scranton, Pa	125, 536	5	3	1	1
Shreveport, La	127, 206	8	4	3	1
Sioux City, Iowa	83, 991	7	4	2	1
Springfield, Ill	81, 628	7	3	4	---------
Springfield, Mass	162, 399	9	4	5	---------
Syracuse, N. Y	220, 583	9	4	4	1
Tampa, Fla	124, 681	6	4	1	1
Tulsa, Okla	182, 740	6	4	2	---------
Utica, N. Y	101, 531	7	4	2	1
Waco, Tex	84, 706	6	4	1	1
Watertown, N. Y	34, 350	5	3	2	---------
Wichita, Kans	168, 279	5	3	2	---------
Wilkes-Barre, Pa	76, 826	8	4	3	1
Winston-Salem, N. C	87, 811	6	3	2	1

The Acousticon dealer in Wichita, Kans., carries one additional make.

The Beltone dealer in Portland, Maine, carries one additional make.

The Maico dealer in Birmingham and Charleston each carries two additional makes, and the Maico dealer in Nashville carries one additional make.

Corpus Christi, Tex., has one exclusive Maico dealer, and one other dealer who carries Maico as one of two makes.

Reference to the above table would indicate that should two other manufacturers follow respondent's example and tie up two additional jobbers in each of these cities by exclusive dealing contracts it would create a monopoly and result in the exclusion of all other hearing aid manufacturers from approximately two-thirds of the cities listed.

PAR. 16. The respondent has based its defense on a number of economic factors and public interest as a justification of the continued use of its exclusive dealing contract—

(1) It was contended that respondent's written franchise agreements had no effect upon respondent's sales. In 1949 unit sales of respondent were the highest in its history, when only 50 percent of respondent's distributors had entered into written franchise agreements. The record shows, however, that respondent claimed as early as 1948 that 95 percent of its dealers were required to deal exclusively in Beltone hearing aids.[1] In view of this, unit sales have no relationship to franchise agreements. Furthermore, while respondent has shown some decrease in unit sales, it has not shown a corresponding decrease in dollar volume, and respondent has continued to maintain its position in the industry and, in fact, during the years 1950 to 1952 has increased its percentage of total industry sales.

(2) It was contended that respondent's exclusive dealing contracts had no effect on competition for the reason that the number of hearing aid manufacturers has increased from approximately 15 in 1943 to approximately 35 in 1953; that competitors were free to train their own distributors; and that respondent's distributors were free to cancel their contracts and take on other hearing aids. Such increase as has taken place has not affected either respondent's position in the market or its share of total industry sales, nor has there been any appreciable exodus of respondent's dealers, and competitors have been forced to sell their hearing aids in less desirable markets, such as drug stores, optical shops, etc. As stated by the Supreme Court in *Standard Oil* v. *United States;* 337 U.S. 293, pp. 311, 314—

> We are dealing here with a particular form of agreement specified by § 3 and not with different arrangements, by way of integration or otherwise, that may tend to lessen competition. To interpret that section as requiring proof that competition has actually diminished would make its very explicitness a means of conferring immunity upon the practices which it singles out. Congress has authoritatively determined that those practices are detrimental where their effect may be to lessen competition.
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> It cannot be gainsaid that observance by a dealer of his requirements contract with Standard does effectively foreclose whatever opportunity there might be for competing suppliers to attract his patronage, and it is clear that the affected proportion of retail sales of petroleum products is substantial. In view of the widespread adoption of such contracts by Standard's competitors and the availability of alternative ways of obtaining an assured market, evidence that competitive activity has not actually declined is inconclusive. Standard's use of the contracts creates just such a potential clog on competition as it was the purpose of § 3 to remove wherever, were it to become actual, it would impede a substantial amount of competitive activity.

[1] Commission's Exhibits 11-F and 8-F.

(3) It was further contended that respondent's hearing aids are highly complex electronic devices and that respondent has contributed to new advances and inventions in the electronic field, together with many technological improvements and has spent large sums of money in advertising its hearing aids and has built up a considerable amount of good will, which constitutes a strong business justification for a hearing aid manufacturer to restrict his dealers to handle only its line of hearing aids. While the hearing aids manufactured and sold by respondent cover a variety of responses and are adaptable to various degrees of hearing loss, there are also other competing manufacturers whose hearing aids cover a variety of responses and which are adaptable to various degrees of hearing loss. This identical defense was discussed by the United States Circuit Court of Appeals for the Second Circuit in *Dictograph Products, Inc.*, v. *Federal Trade Commission* decided December 15, 1954, 217 F. 2d 821.

Preliminarily, it should be noted that potential or even probable adverse effects upon petitioner's business alone is not a sufficient basis for withholding injunctive relief. Were we to hold otherwise, we would quite effectually draw the teeth of Section 3 and of the anti-trust laws generally. It appears self evident that any prohibition upon behavior which stifles competition will necessarily inure to the immediate economic disadvantage of the individual or business organization engaging in that behavior.

(4) It was further contended by the respondent that there was a justification in the use of the exclusive dealing contract as it permitted the rendering of better service to the dealer and a supplying to him of advertising assistance and leads without the necessity of a dealer carrying a large inventory. By so doing, respondent further contended that this enabled the dealer to give better service to the hard-of-hearing public. The relative merits of respondent's hearing aids or its fitting techniques does not constitute a defense to this proceeding. No matter how compelling the advantage of handling the respondent's products might be either to the distributor or his customer this does not justify the evasion or violation of the statutory provisions dealing with exclusive dealing contracts. While the distributor is engaged in an entirely private business and has a right to freely exercise his own independent discretion as to parties with whom he will deal or stop dealing for reasons sufficient unto himself, this right should be left to the dealer free of any contractual requirement to deal only in respondent's products.

CONCLUSIONS

1. The distributors' and dealers' contracts and agreements and methods of sale as hereinbefore described constitute sales or contracts for sale of respondent's hearing aids on the condition, agreement or understanding that the purchasers thereof shall not deal in similar products sold and distributed by competitors of respondent.

2. Distributors who have executed written contracts with respondent suffer substantial injury to their respective businesses, because of the fact that they are foreclosed from making any independent judgment or decision as to what products they shall handle and sell in their business enterprises and lose substantial sales because they are unable to carry and sell competitive hearing aids.

3. Distributors who refuse to abide by respondent's exclusive dealing policy and insist on carrying competitive hearing aids and who are, therefore, discontinued by respondent as such distributors for no other reason, are injured in their businesses because of the fact that they are unable to make the normal sales which they would ordinarily make of respondent's products, solely because they refuse to handle respondent's products exclusively.

4. The acts and practices and policy of the respondent, relative to exclusive dealing, adversely affects the ability of competitive manufacturers and suppliers to sell hearing aids to independent distributors under contract with respondent and deprives such manufacturers and suppliers of an equal opportunity to obtain the business of such distributors and such practices restrain, restrict and lessen the market for the sale of such products of such competing manufacturers and suppliers.

5. The dollar volume of such products annually sold by respondent to its distributors under restrictive conditions, understandings and agreements is substantial and has materially lessened competitive sales in each of the trade areas covered by respondent's distributors, and respondent, during all the times mentioned herein, would have been, and would now be, in free and open competition in the sale of similar merchandise in commerce in said trade areas were it not for the suppression of such competition by such restrictive policy and practices and conditions, understandings and agreements imposed upon its distributors as hereinbefore found.

6. The acts and practices of respondent as hereinbefore found are all to the injury and prejudice of the respondent's competitors

and of the public, and have the tendency to, and have, hindered and prevented competition in the sale of the products sold by the respondent, and has a tendency to, and has, obstructed and restrained such competition in commerce.

7. The effect of the sale and contracts for sale of hearing aids on the condition, agreement or understanding that the purchasers thereof shall not sell or deal in similar products of competitors may be, and has been, to substantially lessen competition and to tend to create a monopoly in respondent in the sale of such hearing aids.

8. The acts and practices of the respondent, as herein found, in selling and making contracts for the sale of hearing aids on the condition, agreement or understanding that the purchasers thereof shall not sell or deal in similar products of a competitor or competitors constitute a violation of Section 3 of the Clayton Act.

ORDER

It is ordered, That respondent Beltone Hearing Aid 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 or distribution of hearing aids or 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, or sell hearing aids or other similar or related products supplied by any competitor or competitors of respondent.

2. Enforcing or continuing in operation or effect any condition, agreement or understanding in, or in connection with, any existing contract of sale, which condition, agreement or understanding is to the effect that the purchaser of said products shall not use or deal in hearing aids or other similar or related products supplied by any competitor or competitors of respondent.

ON APPEAL FROM INITIAL DECISION

Per Curiam:

The Commission is of the opinion that the issues raised by this appeal are substantially the same as those decided in *Dictograph Products, Inc.* v. *Federal Trade Commission*, 217 F. 2d 821 (C.C.A. 2, 1954), certiorari denied, 349 U.S. 940, and in *Anchor Serum Company* v. *Federal Trade Commission*, 217 F. 2d 867 (C.C.A. 7, 1954).

Accordingly, upon the basis of our review of the whole record herein, respondent's appeal is denied and the initial decision is adopted as the decision of the Commission.

Commissioner Kern did not participate in the decision of this matter.

FINAL ORDER

Respondent Beltone Hearing Aid Company filed on May 23, 1955, its appeal from the initial decision of the hearing examiner in this proceeding; and the matter having been heard by the Commission on briefs and oral argument; and the Commission having rendered its decision denying the appeal and adopting the initial decision as the decision of the Commission:

It is ordered, That respondent Beltone Hearing Aid Company 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 contained in said initial decision.

Commissioner Kern not participating.

IN THE MATTER OF

CARL DRATH TRADING AS BROADWAY GIFT COMPANY

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

Docket 6185. Complaint, Feb. 24, 1954—Decision, Feb. 16, 1956

Order requiring an individual in New York City to cease furnishing to members of the public who were prospective representatives and operators, push and pull cards and instructions for the sale of his watches, cameras, novelties, household articles, and other merchandise to the public by means of a lottery scheme.

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

Mr. Horace J. Donnelly, Jr., of Washington, D. C., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this matter charges respondent with violation of the Federal Trade Commission Act through the use of lottery schemes or games of chance in the sale and distribution of his merchandise. After the filing of respondent's answer to the complaint, hearings were held at which testimony and other evidence were offered in support of the complaint (no evidence being offered by respondent), and such testimony and other evidence were duly recorded and filed in the office of the Commission. The matter is now before the hearing examiner for final consideration on the complaint, answer, evidence, oral argument of counsel and proposed findings and conclusions submitted by counsel. Having duly considered the matter, the examiner finds that the proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order.

2. Respondent Carl Drath is an individual trading as Broadway Gift Company, with his office and principal place of business at 121 East 24th Street, New York, New York. He is engaged in the sale and distribution in commerce, as that term is defined in the Federal Trade Commission Act, of numerous and varied items of merchandise including, among others, cameras, watches, jewelry, safety razors, and various household and toilet articles.

3. Most of respondent's sales are made through members of the public. Upon obtaining the names and addresses of individuals, members of the public, who are regarded by him as prospective distributors of his merchandise, respondent mails to such persons

certain advertising and sales material. One of the pieces of material employed by respondent is a circular describing and depicting certain articles of merchandise and containing a device commonly known as a pull card. This card contains a number of partially perforated tabs under each of which is a feminine or masculine name, together with the name of one of the articles described in the circular, and the price of the article. Persons pulling the tabs pay to the individual circulating the pull card the amount specified, and their names are noted on the circular in a place provided for that purpose. The information under the pull tabs is concealed from view, and persons pulling the tabs have no information as to the article they are to receive or the price to be paid therefor until the tab has been pulled or separated from the card.

4. The pull card also contains a master seal which conceals a name corresponding to one of the names beneath the tabs. The person who happens to pull the tab containing this name receives, in addition to the first article, a watch as a special prize.

5. After all of the tabs on the card have been pulled and the respective amounts paid by the several persons pulling the tabs, the individual circulating the card remits the total amount to respondent and receives from him the merchandise, including the watch. The respective articles are distributed by this individual to the persons entitled thereto, the master seal on the pull card is removed to ascertain which of the persons receives the watch, and the watch delivered to such person. For his compensation the individual circulating the pull card receives an article of merchandise selected by him from a designated group.

6. In addition to the circular and pull card just described, respondent has used a device known as a push card. This card contains 36 partially perforated discs, each of which bears a feminine name. Concealed within each disc is a number which is not revealed until the disc has been pushed or separated from the card. Legends on the card read: "No. 1 pays 1¢, No. 9 pays 9¢, No. 28 pays 28¢, all others pay 29¢—None Higher" and "No. 1 and No. 9 receive a handsome fountain pen." Persons pushing the discs pay in accordance with the first of these legends. The card also contains a master seal, concealed beneath which is the name corresponding to one of the names appearing on the discs. The master seal is not broken nor the name beneath it revealed until all of the discs have been pushed. The person who pushes the disc bearing the same name as that under the master seal receives a camera. The other persons pushing discs on the card receive nothing except the persons who push numbers 1 and 9, each of whom receives a

fountain pen. As in the case of the circular and pull card described above, these push cards are mailed by respondent to members of the public. If a recipient elects to do so, he sells the pushes on the card to other members of the public, collects the money therefor, remits it to respondent, receives the camera and fountain pens and delivers them to the persons who pushed the lucky discs. For his compensation the individual circulating the card also receives a camera.

CONCLUSIONS

It is clear that each of these sales plans contemplates and involves the use of a lottery or game of chance, and that respondent supplies to and places in the hands of others lottery devices for use in the sale of his merchandise. The use by respondent of such sales plans or methods and the sale and distribution of his merchandise to the public through the use thereof is a practice which is violative of an established public policy of the Government of the United States, is to the prejudice of the public, and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent, Carl Drath, individually and trading as Broadway Gift 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 any merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others pull cards, push cards or any other devices which are designed or intended to be used in the sale or distribution of respondent's merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.
2. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise or lottery scheme.

OPINION OF THE COMMISSION

By KERN, Commissioner:

This matter is before the Commission on consideration of an appeal from the initial decision of the hearing examiner, who has found that respondent has violated Section 5 of the Federal Trade Commission Act by supplying to others, through the channels of interstate commerce, lottery devices for use in the sale of his merchandise, and has issued an appropriate order to cease and desist.

Respondent distributes two types of lottery device, "pull cards" and "push cards." Their construction and method of operation is fully described in the initial decision, and it will here suffice to say that each type is designed to be used in the sale of merchandise by paid chance. Commission orders condemning the interstate distribution of such devices have been universally sustained on judicial review. *Seymour Sales Co.* v. *FTC*, 216 F. 2d 633 (D.C. Cir. 1954) and cases cited, *cert. denied*, 348 U.S. 928 (1955); *Wolf* v. *FTC*, 135 F. 2d 564 (7th Cir. 1943); *Colon* v. *FTC*, 193 F. 2d 179 (2d Cir. 1952). It is thus well-settled that the practices in which respondent was found to have engaged violate the Federal Trade Commission Act. *United States* v. *Halseth*, 342 U.S. 277 (1952), which respondent insists holds that the Commission is without jurisdiction in these premises, arose under the postal statutes and did not purport to construe the Federal Trade Commission Act. This is clear from the decisions of those courts which have considered and rejected this same contention. *Seymour Sales Co.* v. *FTC*, 216 F. 2d 633, 635, footnote 2 (D.C. Cir. 1954), *cert. denied*, 348 U.S. 928 (1955); *U. S. Printing & Novelty Co., Inc.* v. *FTC*, 204 F. 2d 737 (D.C. Cir. 1953), *cert. denied*, 346 U.S. 830 (1953); *Halseth* v. *FTC*, not reported, No. 11022, 7th Cir., Sept. 15, 1954, *cert. denied*, 348 U.S. 928 (1955); *Maltz* v. *FTC*, not reported, No. 11399, 7th Cir., October 12, 1954. There is thus no basis for respondent's contention that the Commission is without jurisdiction over his practices.

Respondent points to Section 9 of the Federal Trade Commission Act which, *inter alia*, provides that—

> no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, before the Commission in obedience to a subpoena issued by it * * *.

He argues that since he testified in response to a Commission subpoena concerning the matters which underlie this proceeding, the quoted statute saves him immune from the proposed order.

A Federal Trade Commission order to cease and desist is injunctive only, forbidding future violations of law but imposing no sanctions for past misconduct. Injunctive relief is not a "penalty" or a "forfeiture." *Bowles* v. *Misle*, 64 F. Supp. 835, 838 (Neb. 1946). Proceedings to collect civil penalties for the disobedience of Commission orders are brought in United States District Courts and must be based on independent evidence of misconduct occurring subsequently to issuance of the order to cease and desist. The immunity clause is therefore inapplicable to respondent. *Standard Distributors, Inc.* v. *FTC*, 211 F. 2d 7, 14 (2d Cir. 1954). *Lee* v. *CAB*, 225 F. 2d 950 (D.C. Cir. 1955), relied on by respondent in this regard, is not in point.

Upon consideration of the entire record herein we hold that the hearing examiner's findings are supported by substantial evidence and fully warrant the order that he has proposed. Accordingly, respondent's appeal is denied and the initial decision of the hearing examiner is affirmed. Appropriate order will be entered.

Commissioners Mason and Secrest did not participate in the decision of this matter.

FINAL ORDER

This matter having been heard by the Commission upon respondent's appeal from the hearing examiner's initial decision, and briefs and oral argument of counsel in support thereof and in opposition thereto; and

The Commission having rendered its decision denying respondent's appeal and affirming the initial decision:

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.

Commissioners Mason and Secrest not participating.

IN THE MATTER OF

WILLIAM E. BROWN ET AL. DOING BUSINESS AS THE DIOPTRON COMPANY ET AL.

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

Docket 6349. Complaint, May 6, 1955—Decision, Feb. 18, 1956

Order—consented to by respondent distributors—requiring two individual manufacturers located in Milwaukee and the corporate seller which was their exclusive distributor in the New England area, to cease representing falsely in advertising matter of general circulation that their fly trap and baiting fluid designated respectively as "Big Stinky Fly Trap" would eliminate flies, prevent any possibility of disease caused by flies, and prevent polio; and

Dismissing the allegation that respondent manufacturers advertised falsely that the fly trap "was nationally approved for use for the Boy Scouts", since the representation was substantially true.

Mr. Michael J. Vitale for the Commission.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

PRELIMINARY STATEMENT

The Federal Trade Commission issued its complaint against the above-named respondents on May 6, 1955, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act. Said complaint charges that respondents William E. Brown and John R. Seeger, copartners, doing business as The Dioptron Company, in Milwaukee, Wisconsin, for several years have been engaged in the manufacture and sale of a fly trap and baiting fluid designated respectively as "Big Stinky Fly Trap" and "Big Stinky Control Fluid" to distributors located throughout the several states, one of such distributors being the respondent Joseph Breck & Sons Corporation which had the exclusive distributorship for said products in the New England area. It is further alleged that in the course and conduct of its business, the respondent Joseph Breck & Sons Corporation made certain statements and claims in advertising matter which were alleged to be false, deceptive and misleading and that respondents William E. Brown and John R. Seeger furnished the material to said Joseph Breck & Sons Corporation which was used by said corporation in the preparation of the allegedly false and misleading advertisements and participated with said corporation in the payment of the cost of such advertisements. It was further charged that the use by the respondents of the false, misleading and deceptive statements had the capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were and are true and to induce a substantial portion of the purchasing public because of such mistaken and erroneous belief to purchase the fly trap and baiting fluid sold by respondents and that, as a result thereof, substantial trade has been unfairly diverted to respondents from their competitors and substantial injury is being done and has been done by respondents to competition in commerce.

Respondents William E. Brown and John R. Seeger, copartners, doing business as The Dioptron Company, filed an answer on June 6, 1955, denying that they had furnished advertising material to respondent Joseph Breck & Sons Corporation containing the language appearing in the complaint and denying that they had participated in payment of the cost of the advertisements. They admitted, however, that the use of the statements contained in the complaint would, to a degree, be false, deceptive and misleading.

One of the allegations of the complaint was that the respondents had used in their advertising matter a statement that the "BIG STINKY FLY TRAP is the Fly Trap that was nationally approved for use for the Boy Scouts." With respect to this allegation, these respondents denied the allegation, asserting that the National Supply Service Division of the Boy Scouts of America had approved their product.

On July 29, 1955, there was transmitted to the hearing examiner for his consideration, an agreement for consent order by the attorney in support of the complaint as to all of the respondents except respondents William E. Brown and John R. Seeger, copartners, doing business as The Dioptron Company, which agreement was duly executed by respondent Joseph Breck & Sons Corporation and individual respondents Luther A. Breck, Jr., James Shiels and Clarence Wells, individually and as officers of Joseph Breck & Sons Corporation and also signed by Michael J. Vitale, counsel supporting the complaint, and approved by Joseph E. Sheehy, Director of the Bureau of Litigation. In 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. It was also provided in said agreement that the said respondents 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 by the agreement 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 shall not become a part of the official record unless and until it becomes a part of the decision of the Commission 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. It is further provided that an order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents; that, 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 said order.

It appearing that the order provided for in said agreement conforms in all respects to the order in the notice portion of the complaint with respect to said respondents and that said agreement provides for an appropriate disposition of that portion of the complaint which involves said respondents signing said agreement and it appearing that, with respect to such issue, this proceeding is in the public interest, the said agreement is hereby accepted and, in accordance therewith, the order contained therein is included in the order hereinafter made. With respect to the remainder of the proceeding, based on the entire record pertaining thereto, and from his observation of the witnesses, the undersigned finds that this proceeding is in the interest of the public and makes the following

FINDINGS OF FACT

I

Respondents William E. Brown and John R. Seeger are copartners doing business under the name of The Dioptron Company with their office and principal place of business located at 704 West Wisconsin Avenue, Milwaukee, Wisconsin. Said respondents are now and for several years last past have been engaged in the business of manufacturing and selling a fly trap and baiting fluid designated respectively as "Big Stinky Fly Trap" and "Big Stinky Control Fluid" to distributors, including wholesalers and retailers, and granted to respondent Joseph Breck & Sons Corporation the exclusive distributorship for said products in the New England area from 1951 through 1954. Since 1954 sales of said products have been made to respondent Breck on a non-exclusive basis. Said respondents cause and have caused said products to be transported in substantial quantities from their said place of business in the State of Wisconsin to respondent Joseph Breck & Sons Corporation at its place of business in the State of Massachusetts.

II

In the course and conduct of their business and for the purpose of inducing the purchase of their said products, said respondents William E. Brown and John R. Seeger, co-partners, doing business as The Dioptron Company, represented either directly or through respondent Joseph Breck & Sons Corporation in advertising matter of general circulation (*a*) that the use of said products will eliminate flies; (*b*) that the use of said products will prevent any possibility of disease caused by flies; (*c*) that the use of said products will prevent polio; and (*d*) that the fly trap manufactured by said respondents was nationally approved for use by the Boy Scouts.

III

In truth and in fact, said products will not (1) eliminate all flies in a given area; (2) prevent the possibility of disease caused by flies; or (3) prevent the spread of polio. Said products, however, will aid in reducing the fly population and, to that extent, will decrease the possibility of disease being caused by flies.

IV

With respect to the representations made by said respondents concerning the approval of respondents' fly trap "for use for the Boy Scouts," it appears that a catalogue of Camp and Waterfront Equipment published by the National Supply Service Division of the Boy Scouts of America in 1953 contains an advertisement of "Big Stinky" as a fly control. It was advertised "for controlling and abating fly problem at camp and other rural installations. Flies are lured by odor, keep regenerating trap. Tested and endorsed by Health and Safety Service." It further appears that the Purchasing Agent of the Boy Scouts, operating under the National Supply Service Division, in a letter dated January 7, 1952, addressed to respondent William E. Brown, stated with respect to the "Big Stinky Fly Trap," "We have decided after a thorough trial and on recommendation of our Health and Safety Committee to list this item in our camp catalogue, which we are working on at the present time." However, an Assistant Director of the

Supply Service Division of the Boy Scouts of America testified that the statement quoted from the catalogue did not authorize anyone to state that the item had been approved by the Boy Scouts or was endorsed by the Boy Scouts without explicit authorization for such reference in advertising. He further explained that respondents' advertising implied that the fly trap was an official item or product of the Boy Scouts of America which was not the case; that normally such official items would be made according to the Boy Scouts' specifications and would carry the seal of the Boy Scouts of America and that respondents' fly trap had never carried such seal. It was admitted by him that the product had been approved to the extent that it "was approved for use by our local Councils primarily in the conduct of their local Scout Camps." This witness insisted, however, that his organization had not given to the respondents herein authorization to make such reference in advertising and that his organization objected to such advertising as a matter of organization policy.

CONCLUSION

The use by respondents of the foregoing false, misleading and deceptive statements and representations mentioned in Paragraph III hereof has had and now has the tendency and capacity to mislead a substantial portion of the purchasing public and distributors into the erroneous and mistaken belief that such statements were and are true and to induce a substantial portion of the purchasing public and distributors because of such mistaken and erroneous belief to purchase the fly trap and baiting fluid sold by respondents and to unfairly divert substantial trade to respondents from their competitors.

With respect to the representations that the respondents' product was "approved for use for the Boy Scouts," it is believed that this representation is substantially true and, although the Boy Scouts of America may have objection to such representation, the fact that these products were advertised in the Boy Scout catalogue as products "Tested and endorsed by Health and Safety Service" would justify the respondents in advertising that the products had been approved for use for Boy Scouts unless the Boy Scouts of America had specifically notified the respondents that such catalogue listing did not authorize respondents to represent to the public that the products had been approved for use for Boy Scouts. Furthermore, the letter in the record written by the Purchasing Agent of the Boy Scouts of America to respondent Brown advising him that the trap was to be listed in the camp catalogue which was to be distributed to local retail dealers and local Council Camps without advising that such action on the part of the Boy Scouts of America did not entitle these respondents to advertise this fact, would also tend to justify the respondents in the statements made as alleged in the complaint. Accordingly, the allegations of the complaint with respect to this representation should be dismissed.

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

ORDER

It is ordered, That respondents William E. Brown and John R. Seeger, copartners, doing business as The Dioptron Company; and Joseph Breck & Sons Corporation, a corporation, and its officers; and Luther A. Breck, Jr., James Shiels and Clarence Wells, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in the offering for sale, sale or distribution of the fly trap and baiting fluid designated respectively as "Big Stinky Fly Trap" and "Big Stinky Control Fluid," or by any other name or names, do forthwith cease and desist from representing, directly or by implication, that the use of their said products will:

1. Eliminate flies.
2. Prevent the possibility of disease caused by flies.
3. Prevent polio.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to the allegation in Paragraph Six thereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner herein; and

It appearing that the respondent Joseph Breck & Sons Corporation was erroneously designated "John Breck & Sons Corporation" in Paragraph II of the findings of fact; and

It further appearing that the words "and its officers" were erroneously omitted from the order to cease and desist:

It is ordered, That this case be, and it hereby is, placed on the Commission's own docket for review.

It is further ordered, That the name "Joseph Breck & Sons Corporation" be, and it hereby is, substituted for the name "John Breck & Sons Corporation" in Paragraph II of the findings of fact contained in the initial decision.

It is further ordered, That the words "and its officers" be, and they hereby are, inserted immediately after the words "Joseph Breck & Sons Corporation, a corporation," in the order to cease and desist contained in said decision.

It is further ordered, That the initial decision as so modified shall, on the 18th day of February 1956, become the decision of the Commission.

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

IN THE MATTER OF

DAVID CRYSTAL, INC.

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

Docket 6412. Complaint, Sept. 13, 1955—Decision, Feb. 22, 1956

Consent order requiring a manufacturer in New York City to cease representing—through use in advertisements in periodicals and on attached labels the word "London", the word "Limited" or its abbreviation "Ltd.", a pictorial simulation of the British Royal Coat of Arms, and the phrase "By Appointment to H. M. the Late King George VI"—that the men's and women's clothing it manufactured was made in England.

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. R. D. Young, Jr. for the Commission.
Mr. Arnold M. Grant, 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 David Crystal, Inc., 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, David Crystal, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 498 Seventh Avenue, New York, New York.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the design, manufacture, sale and distribution of men's and women's wearing apparel.

In the course and conduct of its business, respondent ships its said wearing apparel from the State of New York to the purchasers thereof located in various other States and in the District of Columbia, and maintains, and has maintained, a course of trade in said wearing apparel, in commerce, between and among the various States of the United States and in the District of Columbia.

3. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its said wearing apparel, in commerce, respondent made and is now making certain

statements in advertisements inserted in periodicals and on labels attached to said wearing apparel. Among and typical, but not all inclusive, of said statements so made are the following:

(a) By Appt Shirtmakers to H.M. the Late King George VI
A.
IZOD LTD.
J. (Coat of Arms)
of London
Izod of London, New York 18, New York

(b) A.
IZOD LTD. (Coat of Arms)
J.
of London
American Producers—David Crystal, Inc.

(c) A. J. IZOD LTD.
of London
D'Armigene Sleeve Golfer
Pat. #2,668, 955
by Vin Draddy

(d) The shirts, walking shorts, and beach trunks,
all designed by Izod of London. * * *

PAR. 4. Through the use of the aforesaid statements, and others of similar import but not specifically set out herein, respondent represented and now represents that its said wearing apparel was and is designed and manufactured in London, England.

PAR. 5. The aforesaid statements and representations were and are false, misleading and deceptive. In truth and in fact, said wearing apparel was not and is not designed or manufactured in London, England, but on the contrary said wearing apparel was and is designed and manufactured in New York, New York, by David Crystal, Inc., respondent herein.

PAR. 6. There is a preference on the part of substantial numbers of the purchasing public for wearing apparel designed or manufactured in London, England.

PAR. 7. In the course and conduct of its business respondent was and is in substantial competition in commerce with other corporations and with firms and individuals engaged in the sale of wearing apparel of the same nature as that sold by respondent.

PAR. 8. The use by respondent of the foregoing false, misleading and deceptive statements and representations had, and now have, the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations and statements were and are true and to cause substantial numbers of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's products. As a result, trade has been and is now being unfairly diverted to respondent from its competitors and substantial injury has been and is now being done to competition in commerce.

PAR. 9. The aforesaid acts and practices, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted and now constitutes 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 respondent on September 13, 1955, charging it with having violated the Federal Trade Commission Act through the making of certain false, misleading and deceptive representations regarding the place of design and manufacture of men's and women's wearing apparel. In lieu of submitting answer to said complaint, respondent 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 and the Assistant Director of the Bureau of Litigation.

Respondent, pursuant to the aforesaid agreement, has 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. Respondent 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 it 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 the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and said agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint. The agreement also provided that the order to cease and desist issued in accordance with said agreement may be entered in this proceeding without further notice to respondent; that, 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 David Crystal, 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 498 7th Avenue, in the City of New York, State of New York.

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

ORDER

It is ordered, That the respondent, David Crystal, Inc., a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of wearing apparel in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that the country of origin of the design or manufacture of respondent's wearing apparel is England or any part of the British Isles, or any other country, if such is not the fact.

2. Using any pictorial representation which simulates in appearance the British Royal Coat of Arms unless accompanied by clear and conspicuous language indicating country of origin.

3. Using the word London to designate the place of design or manufacture of wearing apparel sold or manufactured by respondent unless in fact said wearing apparel was designed or manufactured in London, England, as the case might be.

4. Using the word "Limited," or its abbreviation "Ltd.," to designate, describe or refer to any wearing apparel which respondent manufactures or designs unless the word "Limited" or its abbrevia-

tion "Ltd." is used as part of the name of a corporation actually in existence.

5. Using the phrase "By Appointment to H. M. the Late King George VI" or any other words or phrases of similar import to designate, describe or refer to any wearing apparel which respondent manufactures, sells and distributes unless said wearing apparel is designed or manufactured in England or the British Isles.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22nd day of February, 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

IRVING STERN ET AL. TRADING AS STERN BROTHERS JEWELRY MANUFACTURING COMPANY ET AL.

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

Docket 6428. Complaint, Oct. 18, 1955—Decision, Feb. 22, 1956

Consent order requiring New York jewelry manufacturers and their out-of-town distributors to cease branding jewelry, particularly chokers and bracelets, of less than 14 karat gold, with the mark "14 K".

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. Donald K. King for the Commission.
Schaeffer & Goldstein, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Irving Stern, Hyman Stern, Harry Stern and Sylvia Stern hereinafter described as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Irving Stern and Hyman Stern are brothers, trading and doing business as a copartnership under the name Stern Brothers Jewelry Manufacturing Company with their principal office and place of business located at 64 W. 48th Street, New York, New York. Respondents Harry Stern and Sylvia Stern are man and wife trading and doing business as a copartnership under the name Twin Jewelry Company. Their office and principal place of business is also located at 64 W. 48th Street, New York, New York.

PAR. 2. Respondents Irving and Hyman Stern manufacture various types of gold jewelry, particularly chokers and bracelets which they sell to jobbers and wholesalers located in the city of New York. Respondents Harry and Sylvia Stern act as the out-of-town distributors for Irving and Hyman Stern. They do no manufacturing of any kind and buy merchandise exclusively from respondents Irving and Hyman Stern. The two partnerships share the same office and are operated in conjunction with each other.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their merchandise, respondents Irving and Hyman Stern have manufactured and sold and distributed and do now sell and distribute to respondents Harry and Sylvia Stern and others for resale as hereinafter described certain items of gold jewelry with the phrase "14 K" appearing thereon.

By means of said marking respondents Irving and Hyman Stern represent directly and by implication that said jewelry marked "14 K" is manufactured from gold of 14 karat fineness. Whereas, in truth and in fact said jewelry is not manufactured from gold of 14 karat fineness but rather from gold of less than 14 karat fineness.

PAR. 4. In the course and conduct of their business respondents Harry and Sylvia Stern do now and for some time past have purchased from Irving and Hyman Stern gold jewelry marked "14 K" manufactured from gold of less than 14 karat.

PAR. 5. In the course and conduct of their business respondents Harry and Sylvia Stern now cause and for the three years last past have caused the merchandise purchased by them from Irving and Hyman Stern when sold by them to be transported from their place of business in the State of New York to distributors, jobbers, and retailers for ultimate resale to the general public located in various other States of the United States. Such respondents maintain and at all times mentioned herein have maintained a substantial course of business in said merchandise in commerce between and among the various States of the United States.

PAR. 6. The practice of respondents, as aforesaid, in manufacturing, selling, and distributing the above described jewelry in commerce with the phrase "14 K" appearing thereon, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said merchandise is manufactured from gold of 14 karat fineness and into the purchase of substantial quantities of said merchandise because of such mistaken and erroneous belief.

PAR. 7. In the course and conduct of their businesses respondents are in direct and substantial competition with other corporations, firms and individuals engaged in the sale in commerce of gold jewelry.

PAR. 8. The 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 October 18, 1955, charging them with having violated the provisions of the Federal Trade Commission Act through the making of false and misleading representations with respect to the karat fineness of certain articles of jewelry sold by them. In lieu of submitting answer to said complaint, respondents on December 12, 1955, entered into an agreement for consent order with counsel supporting the complaint, disposing of all the issues in this proceeding in accordance with Section 3.25 of the Rules of Practice and Procedure of the Commission, which agreement has been duly approved by the Acting 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.

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. Respondents Irving Stern and Hyman Stern are brothers trading and doing business as a copartnership under the name of Stern Brothers Jewelry Manufacturing Company with their principal office and place of business located at 64 West 48th Street, New York, New York. Respondents Harry Stern and Sylvia Stern are man and wife trading and doing business as a copartnership under the name Twin Jewelry Company at the same address.

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 respondents Irving Stern and Hyman Stern, individually and as copartners trading and doing business as Stern Brothers Jewelry Manufacturing Company and Harry Stern and Sylvia Stern, individually and as copartners trading and doing business as Twin Jewelry Company; and respondents' representatives, agents and employees, directly or through any corporate or any other device, in connection with the offering for sale, sale or distribution of any articles composed in whole or in part of gold or an alloy of gold in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Stamping, branding, engraving or marking any article with any phrase or mark such as 14K or 18K, or otherwise representing directly or by implication that the whole or a part of any article is composed of gold or an alloy of gold of a designated fineness, unless the article or part thereof so marked or represented is composed of gold of the designated fineness within the permissible tolerances established by the National Stamping Act (15 U.S. Code, Sections 294, et seq.).

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22nd day of February, 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

WEST COAST PACKING CORPORATION ET AL.

Docket 5432. Order and opinion, Feb. 24, 1956

Order denying petitions and motions to dissolve desist order on grounds that another corporation purchased entire stock of respondent corporation and none of individual respondents owned any stock in successor company, though two still acted as officers.

Mr. Edward S. Ragsdale for the Commission.
Ekdale & Shallenberger, of San Pedro, Calif., for respondents.

ORDER DENYING PETITIONS AND MOTIONS TO DISSOLVE CEASE AND DESIST ORDER AND DIRECTING FILING OF COMPLIANCE REPORT

This matter having come on to be heard upon petitions and motions to dissolve, or to modify, the cease and desist order herein,[1] filed on behalf of Chicken of the Sea, Incorporated (formerly named West Coast Packing Corporation), and on behalf of the named individual respondents, and upon answer in opposition thereto filed by counsel supporting the complaint; and

The Commission, for the reasons stated in the accompanying decision, having denied said petitions and motions:

It is ordered, That respondents shall, within thirty (30) 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 cease and desist order hereinbefore entered.

DECISION ON PETITIONS AND MOTIONS TO DISSOLVE OR MODIFY CEASE AND DESIST ORDER

Per curiam:

On September 5, 1946, the Commission issued its findings as to the facts and conclusion and order to cease and desist in this proceeding directing and requiring West Coast Packing Corporation and its officers and the named individual respondents, in connection with the sale of sea food products in commerce, to cease and desist from paying or granting, directly or indirectly, to any buyer, anything of value as a commission or brokerage, or any compensation, allowance or discount in lieu thereof, upon purchases made for such buyer's own account. Thereafter, the Van Camp Sea Food Company, Inc., purchased 96% of the outstanding stock of West Coast

[1] Order to cease and desist, dated Sept. 5, 1946, is reported in 43 F.T.C. 111.

Packing Corporation and the latter's name was changed to Chicken of the Sea, Incorporated, which together with the individual respondents (by individual respondent Albert Vignolo, Jr.) are the petitioners and movants here.

The petitions and motions in effect seek to have the cease and desist order vacated upon the following grounds: The purchase by Van Camp Sea Food Company, Inc., of West Coast Packing Corporation, now named Chicken of the Sea, Incorporated, included all of the common and preferred stock in West Coast Packing Corporation owned by the individual respondents herein and no one of the individual respondents now owns any interest in West Coast Packing Corporation (Chicken of the Sea, Incorporated).

Chicken of the Sea, Incorporated, presently purchases the products of its parent corporation, Van Camp Sea Food Corporation, for resale throughout the United States and elsewhere. Individual respondent Albert Vignolo, Sr., presently is Chairman of the Board of Chicken of the Sea, Incorporated, and allegedly takes no active part in the formulation of its business policies. He is compensated with a monthly honorarium of $100 per month. Individual respondent Albert Vignolo, Jr., presently is a Vice-President of Chicken of the Sea, Incorporated, in charge of sales of brands formerly packed by West Coast Packing Corporation which sales, it is claimed, amount to less than 4% of sales of Chicken of the Sea, Incorporated. Individual respondent Eugene Giacomino is represented as being in no way connected with Chicken of the Sea, Incorporated, at the present time and as not being engaged in any business or commercial pursuit and as not intending to so engage at any time in the future.

We have concluded that petitioners and movants have failed to establish any facts to warrant the Commission's vacating the order to cease and desist. On the contrary, West Coast Packing Corporation, now named Chicken of the Sea, Incorporated, still is engaged in the sale in commerce of sea food products under the same brand names formerly distributed by it. The fact that less than 4% of some $48,000,000 of annual sales of Chicken of the Sea, Incorporated, are now made under these brands is, in our opinion, immaterial. The change of name of West Coast Packing Corporation, to Chicken of the Sea, Incorporated, and the fact that sales have increased and that the majority of the stock in Chicken of the Sea, Incorporated, is now held by Van Camp Sea Food Company, Inc., do not provide grounds, legal or equitable, for vacating the order. The necessity for the order remains the same as when the order issued.

The petitions and motions are denied.

IN THE MATTER OF

KORDOL CORPORATION OF AMERICA ET AL.

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

Docket 6088. Complaint, June 8, 1953—Decision, Feb. 27, 1956*

Order requiring a corporation in New York City to cease representing falsely in advertising in newspapers, etc., and by radio broadcasts that the drug preparation "Kordolin" which it sold and distributed was an effective treatment for, and would afford complete and permanent relief from the aches and pains of all kinds of arthritis, rheumatism, lumbago, neuritis, and sciatica; was an amazing new discovery; and was more effective as an analgesic than aspirin.

Mr. Joseph Callaway for the Commission.
Mock & Blum, of New York City, for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 24, 1953, issued and subsequently served its original complaint in this proceeding upon respondents Kordol Corporation of America, a corporation, and Lewis S. Block and Lillian B. Block, individually and as officers of said corporation, to which complaint the respondents filed answer. Thereafter, on June 8, 1953, the Commission issued its amended complaint naming the identical respondents, to which amended complaint the respondents filed their answer.

The amended complaint under which this proceeding was tried charges the respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. Thereafter hearings were held in due course in which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before the above-named hearing examiner therefore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the amended complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel, oral argument thereon not having been requested; and said hearing examiner, having duly considered the record herein, finds that this

* Amended complaint. Original complaint issued Mar. 24, 1953.

proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Kordol Corporation of America, 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 618 Lexington Avenue, New York 22, New York. Respondents, Lewis S. Block and Lillian B. Block, whose address is 301 Oxford Road (formerly 214 Trenor Drive), New Rochelle, New York, are the President and Secretary respectively of the corporate respondent. While the amended complaint charges that both of the individual respondents, during the periods herein mentioned, have at all times, controlled and directed the corporate policies and practices, including the practices specifically found herein to exist, the uncontradicted evidence discloses that the male respondent, Lewis S. Block, was the sole director of the policies and practices of the corporate respondent and that Lillian B. Block, his wife, while acting as Secretary, exercised no such control but, on the contrary, respondent Lewis S. Block was in sole control and the active and ultimate authority on business practices of the corporate respondent, on the basis of which finding of fact the complaint will, by the order hereinafter set forth, be dismissed as to the respondent, Lillian B. Block.

PAR. 2. The respondents are now, and for approximately one year next preceding the issuance of the complaint herein, have been engaged in the business of selling and distributing a drug preparation, as the word "drug" is defined in the Federal Trade Commission Act. The designation used by respondents for their said drug preparation, the formula and directions for use thereof are as follows:

Designation: "Kordolin"

Formula:	Acket (Salicylamide)	2 grains
	Calcium Succinate	1½ grains
	Acetphenetidin	1 grain
	Caffeine	½ grain
	Vitamin B_1	1 mgm

Directions for use:

For the greatest benefit from KORDOLIN—the following dosage is recommended:

Take 2 Kordolin tablets with water 3 times a day until relief is obtained. When relief is obtained, dosage may be reduced to one tablet three times a day. If pain still persists or is accompanied by fever or other complications consult your physician. Children should take Kordolin in accordance with doctor's instructions. Do not take larger dosages than directed except upon the advice of your physician.

PAR. 3. Respondents cause their said drug preparation when sold to be transported from the place of business of the corporate respondent in the State of New York to purchasers thereof located in various States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said preparation between and among the various States of the United States. Respondents' volume of business in such commerce is substantial, the sales of said products approximating $100,000 a year.

PAR. 4. Subsequent to March 21, 1938, in the course and conduct of their business, respondents have disseminated and caused the dissemination of certain advertisements concerning their said preparation, Kordolin, via United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including newspapers of general circulation, radio continuities, circulars, folders and other advertising matter for the purpose of inducing and which were likely to induce directly or indirectly the purchase of said preparation.

Among and typical, but not all inclusive, of the statements and representations so aforesaid disseminated are the following:

At last—just released!
KORDOLIN TABLETS
gives you
fast relief
from Aches and Pains of
ARTHRITIS * * * RHEUMATISM
Muscular Aches, Lumbago, Neuritis and Sciatica

If you suffer the agonizing pains of rheumatism, arthritis, sciatica or neuritis * * * here's important news! An amazing discovery is being released through drug stores as of NOW without a prescription! It is KORDOLIN—*7 times as effective as old-fashioned aspirin remedies.* Yet KORDOLIN is nontoxic.

For KORDOLIN contains ACKET, an exclusive brand of Salicylamide. This blessed pain-relieving element is combined with other medically proved ingredients. It took years of research to perfect this amazing formula known as KORDOLIN.

KORDOLIN is offered only after the most thorough pre-testing. People afflicted with rheumatic and arthritic pains found their first glorious freedom from agony with KORDOLIN.

Friends, do you suffer the nagging pains of arthritis and rheumatism? Then here's wonderful news! KORDOLIN may be your answer for amazing fast relief. Yes, KORDOLIN is many times as effective as old-fashioned remedies. Here's why. KORDOLIN contains pain-relieving ACKET—an exclusive brand of Salicylamide—in combination with other medically approved ingredients.

It took years of research to perfect this formula which is nontoxic when taken according to directions. And make no mistake. People afflicted with arthritic and rheumatic pains * * * in many cases people suffering from lumbago, neuritis, sciatica—have told us they found glorious relief from pain with KORDOLIN.

So don't spend another day of misery when wonderful KORDOLIN is at all drug stores. No prescription needed, but hurry! Present supplies are limited.

PAR. 5. It is found and determined that through use of the aforesaid advertisements and others of similar import, respondents have represented, directly and by implication, that their preparation Kordolin, taken as directed, is: (1) An adequate, effective and reliable treatment for, and will afford complete and permanent relief from, the aches and pains of all categories of arthritis, rheumatism, lumbago, neuritis, sciatica, as well also the related aches and pains which are the natural corollaries or concomitants of these morbid conditions; (2) that said preparation is an amazing new discovery and (3) that said preparation is seven times more effective as an analgesic than other preparations containing aspirin.

PAR. 6. To refute the verity of the foregoing representations and imputations on the part of respondents, all of which are found and concluded as above as result of a reading and reasonable interpretation of their advertisements, the Commission introduced the testimony of two eminently qualified medical practitioners, each with many years of specialization in the treatment of, and experimentation in, the field of medicine as it relates to arthritis, rheumatism and related subjects. Supplementing this testimony, which will be hereinafter considered, the parties entered into a stipulation of record, to the effect that the Commission had available and willing to testify in substantiation of the first mentioned two witnesses, two additional witnesses whose experience and qualifications are of record in this proceeding, and the respondents, while so stipulating, did so without conceding or admitting to be true the testimony of the last mentioned witnesses.

Respondents, represented by counsel who conducted cross-examination of the witnesses testifying in support of the complaint, offered no testimony in their defense although tendering four exhibits, none of which were received in evidence so, as the record stands, the testimony which forms the basis of these findings, is unrefuted by countervailing testimony or evidence.

PAR. 7. The terms "rheumatism" and "arthritis" are general terms, sometimes used and understood by the public as referring to any of a number of diseases or pathological conditions including, among others, neuritis, sciatica, neuralgia, gout, fibrositis, bursitis, rheumatoid arthritis, osteoarthritis, rheumatic fever and infectious arthritis, all of which are characterized by manifestations of pain, stiffness and inflammatory and destructive changes in the joints and tissues of the body.

"Sciatica" is an inflammation of the sciatic nerve, the predominant symptom of which is extreme pain along the path of the sciatic nerve; that the administration of Kordolin, taken as directed, would have very little effect on such pains beyond a partial or temporary relief for a short time; Kordolin taken as directed would have very little effect on severe pain occasioned by sciatica and in the matter of minor pains of sciatica would afford only partial or temporary relief for a period of not longer than one hour.

"Neuritis" is an inflammation of the nerves, the predominant symptom of which is pain along the course of a nerve which, as in the case of sciatica, may be of severe or minor nature; that Kordolin, taken as directed, would provide only short temporary relief not in excess of one hour in the less severe or the minor pains of neuritis and could not be relied upon to usually and ordinarily completely relieve the pains of neuritis and this would be equally true of the pains of sciatica.

"Neuralgia" is a vague term to describe pain and aches in the vicinity of nerves and at times affecting the structures, such as muscles and tendons, surrounding the nerves; predominant symptom is severe pain—in fact some of the worst pain known to human suffering, especially in trigeminal neuralgia, and Kordolin would have no therapeutic effect on this type although in the minor pains of neuralgia Kordolin might afford a partial temporary relief for about an hour but under no circumstances would the pain of neuralgia be completely relieved.

"Lumbago" is an inflammation of the lower back or lumbar muscles, termed lumbarmyositis, with concomitant pain and disability, which pains may be either severe or minor; upon severe pains Kordolin has very little effect and in minor pains a short term relief of about one hour but the product, taken as directed, could not be relied upon to usually or ordinarily relieve the pains of lumbago completely.

"Bursitis" is an inflammation of the bursal sacs found frequently around the joints, which sacs contain fluid necessary for proper functioning of the joint; the bursal sacs often are involved in the very painful inflammatory process known as bursitis, the predominant results being extreme pain, disability and limitation of motion; bursitis sometimes gives rise to severe pains and in other instances minor pains and on the severe pains Kordolin would have no effect while on the minor pains the relief would be short-lived continuing for about an hour but could not usually be relied upon to relieve the pain of bursitis completely.

"Osteoarthritis" is a degenerative form of arthritis involving the articulating ends of the bone as characterized by overgrowth of bone formation or spurs; Kordolin, taken as directed, would afford partial or temporary relief from these pains but could not be relied upon to usually or ordinarily relieve the pain completely, the analgesic effect lasting about an hour.

"Infectious arthritis" is the involvement of a joint by a specific germ which can be identified and gives rise to an extremely excruciating painful condition and upon this type of arthritis Kordolin would have no effect at all. This is the one type of arthritis concerning which the medical profession knows the cause, it being uniformly the result of bacterial infection.

"Rheumatoid arthritis" is one of the severer types of arthritis which involves the entire joint structure including the bone, the cartilage, the lining of the capsule, the capsule itself and at times the structures surrounding the joints, including the muscles and tendons; the condition may result in severe as well as minor pain and in the first instance Kordolin would have very little therapeutic effect and in the latter instance may afford partial relief of about an hour but Kordolin taken as directed cannot be relied upon to usually or ordinarily relieve such pains.

"Rheumatism" is a general term for any illness which is characterized by pain in and around the joints; the important types may be grouped under the specific headings of rheumatoid arthritis, osteoarthritis, so-called nonarticular rheumatism or nonarticular arthritis such as fibrositis, bursitis, tendonitis, neuritis, lumbago, sciatica and gout or gouty arthritis. In rare instances there is an infectious arthritis where such is caused by the introduction into the joint of a specific germ as a meningitis or pneumoccocus or gonoccocus.

Branching off from the foregoing are many subdivisions all of which would be different to the technician but would be designated by the layman as "rheumatism." Rheumatism includes the whole group of diseases characterized by pain in the joints or pain surrounding the joints and muscles.

Having to do with the general subject of "muscular aches and pains" concerning which respondents extol their product as beneficial for the relief of such aches and pains, and considering this category separate and distinct from rheumatism and arthritis generally, such aches and pains could be caused by a host of contributing factors and Kordolin would afford relief for a short period or for about one hour; muscular aches and pains, whether systemic or traumatic, or of other origin, cannot ordinarily be completely relieved by use of the product.

PAR. 8. Concerning the treatment of the above-described ailments included in the generally used terms "arthritis" and "rheumatism," there is no drug or combination of drugs howsoever administered which will constitute an adequate, effective or reliable treatment or cure. Kordolin tablets, taken as directed, will not stop the "agonizing pains of rheumatism, arthritis, sciatica or neuritis" nor will those who suffer rheumatic or arthritic pains find "glorious freedom from agony" upon taking Kordolin as directed; that sufferers would get only short term, partial and temporary relief lasting about an hour when pains were not "agonizing" or "severe"; nor would they be relieved of "another day of misery" nor would they experience "amazing fast relief" from the "nagging pains of arthritis and rheumatism."

PAR. 9. Kordolin is not a "new" or "amazing discovery" for the use for which it is recommended, for the reason that all of the component substances of Kordolin have been known for many years and the pharmacological action of salicylamide, calcium succinate, acetphenetidin, caffeine and Vitamin B_1 or thiamin hydrochloride is well known and understood by the medical profession; that the combination of these drugs does not represent a type of drug synergy which would produce a marked or sustained relief of pain nor would same be an effective long term analgesic.

Arthritis and most of the rheumatoid diseases are diseases for which there are no known causes and for which there is, as yet, no specific remedy. Such being the case the researchers' work has dealt primarily with techniques and medications which will bring relief to these patients in an attempt to alleviate the pain, to increase the range of motion, to re-educate muscles and the like; there have been a host of such medications and techniques and the object has been to narrow them down to the most effective of the lot.

Of the ingredients contained in Kordolin, salicylamide is the chief analgesic and the only other substance which can, perhaps, be classified as such in this combination is acetphenetidin appearing in a quantity of 1-grain per Kordolin tablet, although the chief action of this drug is not analgesic. If, therefore, we take 2 grains of salicylamide and 1 grain of acetphenetidin, (treating the latter as an analgesic), we have a total of 3 per tablet which compared with a 5 grain tablet of aspirin gives a ratio in analgesic effect per tablet of 5 to 3 in favor of aspirin.

All of the salicylates (of which salicylamide is one), are approximately the same in their analgesic effects.

Extensive practical, laboratory, experimental and clinical experience and research has been had by the medical profession, not only with salicylamide, but also with other salicylates such as acetylsalicylic acid (the latter otherwise commonly known as aspirin, the ordinarily used form of tablet containing five grains of salicylate), but also with, among other substances, calcium succinate, caffeine, acetphenetidin and Vitamin B_1; that salicylamide is the chief analgesic or pain relieving agent of respondents' product and, according to the formula of respondents' product, each Kordolin tablet contains two grains of salicylamide; that the term "acket," as used in said formula, is synonymous with salicylamide (or aspirin), and respondents have so stated in their advertisement that "Kordolin contains Acket, an exclusive brand of Salicylamide." If, therefore, we compare the analgesic effect of one Kordolin tablet with one aspirin tablet we have a result of almost two to one in favor of aspirin. Therefore, the recommended dosage of Kordolin being two tablets, the taking of such would equal but one aspirin tablet. Salicylamide is approximately equal, grain for grain, to any other sodium salicylate or acetylsalicylic acid.

In view of the foregoing it is found that Kordolin is not "seven times as effective as old-fashioned aspirin remedies" and not "seven times as effective as aspirin" (the latter quote as represented in several exhibits of respondents' advertisements of record, although not quoted or set forth in the representative advertisements cited in the complaint), but on the contrary is no greater as an analgesic agent than aspirin in comparable doses.

PAR. 10. The drug preparation "Kordolin," however taken, will not constitute an adequate, effective or reliable treatment for any arthritic or rheumatic condition, including sciatica, neuritis, neuralgia, lumbago, bursitis, osteoarthritis, infectious arthritis, rheumatoid arthritis or gout, nor will said preparation arrest the progress or effect a cure of any such conditions. The said drug preparation, however taken, will not arrest, dispense with nor ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief afforded by its salicylate content as an analgesic. The said drug preparation will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition and will afford but partial relief of a temporary duration from minor aches, pains and discomforts.

Respondents contended, by their answer as well also by statements of counsel during the course of the proceedings, that their representations as aforesaid did not amount to the holding out of a "cure" of "a complete and permanent cure" of the ailments described. However, an over-all reading of those representations, such as;

> Kordolin contains a blessed pain relieving element *in combination with other medically proved ingredients.*

and

> You have tried other *remedies*, but remember results are what count.

and

> Why spend *one more* day of misery * * *.

and

> If you have tried ordinary *remedies*, the best that were available up to this minute, here's the most important news that has come your way.

leads to the inescapable conclusion by fair reasoning that the very object of the language used was to put over the idea of a complete cure of the conditions enumerated,[1] and nowhere, in said advertisements or representations, can there be found any statement or intimation that the true limit of therapeutic effectiveness of Kordolin is that of an analgesic for the temporary amelioration or relief of a symptom, to wit, pain. There is nowhere any evidence that respondents made any effort to negate a representation, holding out or hope of lasting relief or cure, which could have been done, had respondents been so minded, by the use of appropriate wording.[2]

PAR. 11. Respondents' representations concerning the drug preparation "Kordolin," as hereinabove found, are false and misleading in material respects; have had the capacity and tendency to mislead and deceive and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and into the purchase of substantial quantities of said drug preparation as a result thereof; and constitute false and misleading advertisements within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

The acts and practices of respondents, Kordol Corporation of America and Lewis S. Block, as hereinabove found, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

For the reasons stated and facts found as set forth in Paragraph One hereinabove, the complaint as to the named respondent, Lillian B. Block, will be dismissed.

ORDER

It is ordered, That the respondents, Kordol Corporation of America, a corporation, and its officers and Lewis S. Block, individually

1 *Aronberg* v. *F.T.C.*, 132 F. 2d 165, 168.
Hall v. *U.S.*, 267 F. 795, 798.

2 *F.T.C.* v. *Rhodes Pharmacal Co.*, Docket No. 5691 (Comm. Opinion).

and as an officer of said corporation, their representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of the drug preparation "Kordolin" or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

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

(*a*) will afford any relief of severe aches, pains and discomforts of arthritis, rheumatism, lumbago, neuritis or sciatica, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches and pains of these ailments or of other minor muscular aches and pains;

(*b*) is a new discovery or an amazing new discovery of scientific research;

(*c*) is more effective in any degree as an analgesic than is aspirin in comparable doses.

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

(3) *Further ordered*, That the complaint as to the named respondent, Lillian B. Block, as an individual, be, and the same is hereby, dismissed.

ON APPEAL FROM INITIAL DECISION

By MASON, Commissioner.

Respondents here were charged with disseminating in commerce false advertising for a drug preparation designated Kordolin recommended as an adequate, effective and reliable treatment for, and as affording complete and permanent relief from, aches and pains of all kinds of arthritis, rheumatism, lumbago, neuritis and sciatica. The complaint also attacked representations that Kordolin is an amazing new discovery and is seven times more effective as an analgesic than preparations containing aspirin. On August 15, 1955, the hearing examiner filed his initial decision which required respondents to cease and desist, among other things, from representing that Kordolin:

(a) will afford any relief of severe aches, pains and discomforts of arthritis, rheumatism, lumbago, neuritis or sciatica, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the underlying causes, symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches and pains of these ailments or of other minor muscular aches and pains;

It is with the provisions of this quoted subparagraph (a) of the order that this appeal is concerned. Specifically, counsel in support of the complaint has appealed from the inclusion in this subparagraph of the term "underlying causes."

He contends that since the terms "underlying causes," "symptoms" and "manifestations" are in the disjunctive in the quoted subparagraph, then insofar as "underlying causes" are concerned, the subparagraph could be read as follows:

(a) will afford any relief of severe aches, pains and discomforts of arthritis, rheumatism, lumbago, neuritis or sciatica, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the underlying causes of any such condition in excess of affording temporary and partial relief of minor aches and pains of these ailments or of other minor muscular aches and pains;

When so read, he points out, the subparagraph implies that temporary and partial relief of minor aches and pains may have an effect upon the underlying causes of the ailments enumerated. Counsel in support of the complaint contends vigorously that inclusion of the term "underlying causes" is without the scope of the complaint, contrary to the undisputed evidence and inconsistent with the hearing examiner's findings.

Respondents' counsel cross-examined the expert witnesses testifying in support of the complaint, offering no defense testimony except for tendering four exhibits which were not received in evidence, so the hearing examiner's findings are based on scientific testimony that is unrefuted by countervailing testimony or evidence. The hearing examiner so found and he also found affirmatively that respondents falsely represented that Kordolin is:

* * * (1) an adequate, effective and reliable treatment for, and will afford complete and permanent relief from, the aches and pains of all categories of arthritis, rheumatism, lumbago, neuritis, sciatica, as well also the related aches and pains which are the natural corollaries or concomitants of these morbid conditions * * *.

He further found expressly that Kordolin does not constitute an adequate, effective, reliable treatment for any of the enumerated conditions; that it will not arrest the progress or effect a cure of such conditions; that it will not arrest, dispense with nor ameliorate the aches, pains and discomforts of any such condition beyond the temporary and partial relief afforded by its salicylate content as an analgesic; and, finally, that it will have no significant effect upon severe aches and pains and will afford but partial relief of a temporary duration from minor aches and pains. Nowhere in the initial decision is there any finding, nor for that matter is there any record evidence, supporting the inclusion of the term "underlying causes" in subparagraph (a) of the order to cease and desist. On the contrary, we are of the opinion, and so find, that the evidence is undisputed that Kordolin will have no effect on "underlying causes." We conclude that the appeal by counsel supporting the complaint is well taken in that the inclusion of the term "underlying causes" in the order to cease and desist is in error.

The appeal from the hearing examiner's initial decision should be, and hereby is, granted and the initial decision, modified in accordance with the above, should be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard upon the appeal of counsel in support of the complaint from the hearing examiner's initial decision and supporting appeal brief, no brief in opposition thereto having been filed, and no oral argument requested; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that the appeal of counsel supporting the complaint from the initial decision of the hearing examiner should be granted and the initial decision modified and thereafter adopted as the Commission's decision:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, modified by eliminating the term "underlying causes" from subsection (1) (a) of the order contained therein.

It is further ordered, That the findings, conclusion and order, as so modified, in the initial decision, be, and they hereby are, adopted as the findings, conclusion and order of the Commission.

It is further ordered, That 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

BARCLAY HOME PRODUCTS, INC., ET AL.

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

Docket 6275. Complaint, Dec. 28, 1954—Decision, Feb. 27, 1956

Order requiring a manufacturer in Cohoes, N. Y., to cease misbranding pillows through affixing to them labels stating that the filling was "All New Material Consisting of Down" and "* * * White Goose Down—50%; White Goose Feathers—50%," respectively, when the content of the pillows was less than the percentages so stated by more than the tolerance allowed by the trade practice rules for the industry.

Mr. Ames W. Williams and *Mr. Charles S. Cox* for the Commission.

Mr. Ralph E. Becker, of Washington, D. C., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint in this proceeding charged the respondent corporation and its officers with having engaged in unfair and deceptive acts and practices and unfair methods of competition to the injury of the public and respondents' competitors through having falsely represented on labels attached to their feather and down pillows the kinds or types of filling material, and percentages of each, contained in such pillows. The respondents filed their answer admitting the jurisdictional allegations of the complaint, as well as the use of the representations alleged to have been false, but denied the falsity thereof. By stipulation it was agreed that there may be considered as part of the record in this case those portions of the records in certain other cases[1] "which relate to the feather and down industry generally, the practices in that industry, methods of sampling and analysis of feather and down products, the qualifications of and methods of analysis used by J. Davis Donovan and his associates." The filing of proposed findings of fact, conclusions and order was waived by counsel. On the basis of the entire record, this proceeding is found to be in the interest of the public, and the following findings of fact are made:

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1 The other related cases are:
Docket 6132, National Feather & Down Company;
Docket 6133, The L. Buchman Co., Inc., et al.;
Docket 6134, Burton-Dixie Corp., et al.;
Docket 6135, N. Sumergrade & Sons, et al.; and
Docket 6137, Northern Feather Works, Inc., et al.

1. Respondent Barclay Home Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at North Mohawk Street, Cohoes, New York. Respondents Alexander and Louis Buchman are the officers of said corporate respondent. Their address is the same as that of the corporate respondent. These individuals formulate and direct the policies, acts, practices and business affairs of said corporate respondent, including the acts and practices hereinafter set out.

2. Respondents are now and for more than one year last past have been engaged in the manufacture and sale of pillows and other products, designated as down and feather products, to dealers for resale to the general public. Respondents have caused and now cause their said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in other States of the United States. Respondents maintain, and at all times mentioned herein have maintained a course of trade in said down and feather products, in commerce, among and between the various States of the United States.

3. In the course and conduct of their aforesaid business respondents are now, and have been, in competition in commerce with others engaged in the manufacture, sale and distribution of down and feather products, including pillows.

4. In the course and conduct of their business, respondents have caused labels to be affixed to their pillows purporting to state and set out the kinds or types and proportions thereof of filling material contained therein. Typical of the statements appearing on the labels of two pillows designated "Greylark" is the following:

All New Materials Consisting of Down;

and on the labels of two pillows designated "Lucerne":

All New Material Consisting of
White Goose Down --------50%
White Goose Feathers -----50%

5. Through the use of the aforesaid statements appearing on the labels affixed to said pillows, respondents represent that the filling material in the pillows designated "Greylark" is composed of all down, and that the filling material in the pillows designated "Lucerne" is composed of 50% white goose down and 50% white goose feathers.

6. Two pillows designated "Greylark" and two designated "Lucerne," which were manufactured by respondents, were procured by a representative of the Commission at the same time from the same retail dealer, and were introduced in evidence. The contents

of these four pillows were analyzed by an expert Mr. J. Davis Donovan, for the Commission. Respondents removed samples of filling material from each of these four pillows, and sent two of such samples, one taken from a "Greylark" pillow and one from a "Lucerne" pillow, to each of two experts, U. S. Testing Company, Inc., and Charles D. Pomerantz, for analysis. The analyses made by the Commission's expert showed as follows:

Pillows designated "Greylark"

	Pillow 1 (by weight)	Pillow 2 (by weight)
	Percent	*Percent*
Down	82.2	83.0
Feathers	15.0	13.7
Feather fiber	1.4	2.6
Pith and scale	1.4	.7

Respondents' experts made analyses of the contents of the two "Greylark" pillows, which showed the following:

	Pillow 1	Pillow 2
	Percent	*Percent*
Down and down fiber (fiber not separated)	91.9	90.2
Feathers	8.1	9.8

With respect to respondents' pillows designated "Lucerne," the analyses were as follows:

	Pillow 3	Pillow 4
By the Commission's expert:	*Percent*	*Percent*
Down	36.2	36.4
Goose feathers	52.0	55.4
Damaged feathers	6.8	3.9
Chicken feathers	.5	.6
Fiber	3.2	1.8
Pith and scale	1.3	1.9
By respondents' experts:		
Feathers	50.9	56.0
Down and down fiber	49.1	44.0

7. There are three sources of raw feather supplies upon which respondents are, or have been, drawing. These three sources are domestic, European, and Oriental. Use of domestic feathers ordinarily does not result in labeling problems but that source does not furnish sufficient quantities to meet industry requirements. It is the practices followed in the gathering and sale of European and Oriental feathers, taken together with the procedures followed by pillow manufacturers in this country in the handling and processing of imported raw feathers, that have resulted in the alleged mis-

labeling in violation of Section 5 of the Federal Trade Commission Act which is sought to be corrected in this, and related, proceedings covering practically all pillow production in the industry.

(1) It is the custom of industry members to purchase European feathers on the basis of samples from which the quality and type of offerings are determined, through visual examination or laboratory analysis of the samples, by each manufacturer. All new stock is seldom available from European markets, it being the common practice there to mix second-hand feathers with new.

(2) Oriental feathers are purchased by manufacturers through importers and commission merchants who circularize the industry on the basis of "offers" (without samples). A typical offer would be 100 two-hundred-pound bales of Formosan grey goose feathers at 90¢ a pound, 90% clean, 20% maximum of duck feathers, 5% chicken feathers, 3% quills, and a minimum of 30% down. Quality and type are determined, after purchase, by each manufacturer through visual examination or laboratory analysis of samples from 10% of the bales selected at random from the lot. Oriental feathers are not carefully sorted and a bale represented as goose feathers may, and usually does, contain substantial quantities of duck and chicken feathers.

(3) The first step in processing feathers after purchase is for the manufacturer to dust, wash, sterilize, dry, and fluff them by mechanical means. They are then sorted into various bins or containers, customarily in lots of fifty pounds, through blowing or suction processes. Feathers of similar weight and specific gravity theoretically are deposited in the same bins or containers after being blown over baffles in the sorting. Types of pillow-filling materials recognized in the industry in the order of their relative intrinsic value or utility are:

(*a*) *down*—waterfowl undercoating—clusters of light, fluffy filaments attached to one quill point but without any quill shaft;

(*b*) *down fiber*—down plumes or filaments separated from quill points, without any quill;

(*c*) *waterfowl feathers*—goose, duck, or a mixture of both;

(*d*) *natural feathers*—bird or fowl, having quill shafts and barbs;

(*e*) *quill feathers*—wing or tail feathers, or any mixture of both;

(*f*) *crushed feathers*—feathers, including quills, crushed or curled by machine;

(*g*) *feather fiber*—feather barbs separated from quill shaft;

(*h*) *damaged feathers*—other than crushed, chopped, or stripped, which are broken, damaged by insects, or otherwise materially injured.

(4) It is reasonably practical to segregate high percentages of the various types of feathers and down into appropriate classification bins or containers. However, feathers cannot be segregated as to type of fowl or as to inferior or second-hand material. Feathers of the same degree of lightness, applying principles of specific gravity, will go over sorting-machine baffles at the same time regardless of whether they are from waterfowl or landfowl or whether they are new or used. And, in each sorting bin or container, there will be some down and some heavier type feathers inappropriate to the particular classification. Further, in each sorting bin or container, the mixture will not consistently be of uniform content or bulk. Heavier feathers will be at the bottom and downy material at the top in lesser or greater degree. This is true even though there be vigorous agitation of the material in each sorting bin or container.

(5) A manufacturer may fill from 1,200 to 1,400 *pairs* of pillows a day. In making up a pillow order the desired mixture is obtained by placing in each filling bin, holding up to about 400 pounds, the requisite number of bags of each type of feather sufficient to produce from two to three hundred pillows.

(6) Pillows usually are filled from two spouts fed by suction from the filling bin. During the filling process feathers in the filling bin are agitated with wooden forks when contents of the filling bin get to the level where that is possible. Even so, pillows filled from the same bin will vary in content. At the bottom of the bin will be collected the heavier feathers and the greater amounts of pith, scale, and other extraneous matter.

8. Prior to 1951 the Federal Trade Commission, upon application of the industry, held a trade practice conference, as a result of which trade practice rules for the industry were formulated through the cooperative efforts of industry members and the Commission's staff. The Commission approved these rules, and they were promulgated April 26, 1951, as a revision and supplementation of, and as superseding, 1932 trade practice rules for the Feather and Down Products Industry. These rules are interpretations of the laws administered by this Commission and express Commission policy with respect to the practices involved in this proceeding.

(1) The trade practice rules, in pertinent part, provide substantially as follows. It is an unfair practice to misrepresent or conceal identity of the kind or type of feather or down, and proportions of each, when pillow-filling material is a mixture of more than one kind or type. Identification and disclosure is required to be made by tag or label as well as on invoices and all advertising

and trade promotional literature. The rules permit listing each kind or type in order of its predominance by weight or by fraction or percentage by weight of the entire mixture. The rules define the kinds and type of feather and down stock in terms substantially as outlined above. They provide that a pillow may be represented as being filled with one kind or type or filling material when 85% of all such material contained therein is of the represented kind or type *or* that the filling material may be represented as a mixture of kinds or types with accompanying disclosure of the percentage by weight of the entire mixture represented by each if the percentage shown:

"is not at variance with the actual proportion of the weight of the entire mixture represented by each such kind or type by more than *15% of the stated * * * percentage*" [underscoring supplied].

The rules parenthetically state that this tolerance is to allow for errors and not for any intentional adulteration.

(2) By way of limitation, or restriction, the rules provide that:

(a) When a pillow is represented as *all down*, any proportion of the 15% tolerance which is not down shall consist principally of down fiber and/or small, light, and fluffy waterfowl feathers and that the 15% tolerance shall not contain in excess of 2% each, or 5% in the aggregate, of damaged feathers, quill pith, quill fragments, trash or foreign material;

(b) When a pillow is represented as a mixture of down and feathers, or as a mixture of feathers, any proportion, or aggregate of proportions, of the filling material at variance with the representations, but within the 15% tolerance, shall not contain in excess of 2% each, or 5% in the aggregate, of quill pith, quill fragments, trash or foreign material. It is further provided with regard to mixed filling materials that, unless disclosed, not more than 5% thereof shall consist of crushed, chopped, quill, or damaged feathers.

(3) Finally, the rules provide that, in testing feather and down content of pillows, samples of equal weight and size shall be drawn from three locations in each pillow; that the samples shall be thoroughly mixed; and that not less than three grams of the resulting mixtures shall be tested. At least two pillows of the same type are required to be tested separately with the conclusions to be drawn therefrom to be based on an average of the test results.

9. The expert who analyzed the samples of pillow-filling material for the Commission and testified in support of the allegations of the complaint followed the procedures prescribed in the Trade Practice Rules for the Feather and Down Products Industry, whereas

the two experts who performed respondents' analyses did not follow these procedures, and failed to separate the samples of pillow contents tested by them into all the component parts. Their test results cannot be accepted as accurate, and the test results of the expert who testified in support of the complaint, therefore, must be accepted as representative of the contents of the pillows tested.

10. The average of his analyses of the contents of the two "Greylark" pillows shows down content of 82.6%. Under the Trade Practice Rules, it should be not less than 85%; hence the labeling of these pillows as "All New Material Consisting of Down" must be found to be false, misleading and deceptive. The average of the contents of the two pillows designated "Lucerne" shows down content of 36.3% and goose-feather content of 53.7% . Even taking into account the 15% tolerance, the down content of these two pillows is less, and the goose-feather content is more, than that stated on the labels, and, accordingly, the labeling of the "Lucerne" pillows must likewise be found to be false, misleading and deceptive.

CONCLUSIONS

The use by respondents of the aforesaid false, misleading and deceptive representations on the labels affixed to their pillows has had and now has the tendency and capacity to mislead and deceive dealers and the purchasing public as to the composition of the filling material of said pillows, and to induce the purchase of substantial quantities of their pillows because of such mistaken and erroneous belief.

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

It is ordered, That the respondents, Barclay Home Products, Inc., a corporation, and Alexander Buchman and Louis Buchman, individually and as officers of said corporation, and their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of feather and down products, do forthwith cease and desist from misrepresenting in any manner, or by any means, directly or by implication, the identity of the kind or type of filling material contained in any such products, or of the kinds or types, and proportions of each, when the filling material is a mixture of more than one kind or type.

ON APPEAL FROM INITIAL DECISION

Per Curiam:

This case is similar to a number of other cases, all tried and considered together,[1] involving the use on labels of allegedly false and deceptive representations with respect to the filling material contained in feather and down pillows.

Except as to the results of the analyses of the different pillows used as exhibits, as to which the record in each of the cases is specific and definite, this case is not unlike the cases of Burton-Dixie Corporation, et al., D. 6134, and Bernard H. Sumergrade and Harry Sumergrade, copartners trading as N. Sumergrade & Sons, D. 6135, in which the Commission has written opinions setting forth in some detail its views on the issues involved. The similarity between the Burton-Dixie Corporation and Sumergrade cases and the instant matter renders the opinions in those cases equally applicable here, and for the reasons there stated the Commission is of the view that the hearing examiner correctly concluded that the respondents have misrepresented the contents of certain of their pillows in violation of the Federal Trade Commission Act and that the order to cease and desist contained in the initial decision is appropriate.

Accordingly, the respondents' appeal is denied and the initial decision is affirmed.

Commissioner Secrest did not participate in the decision of this matter.

FINAL ORDER

The respondents having filed an appeal from the hearing examiner's initial decision in this proceeding; and the matter having been heard on briefs and oral argument, and the Commission having rendered its decision denying the appeal and affirming the initial decision:

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

Commissioner Secrest not participating.

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[1] In deciding this matter the Commission to the extent permitted by stipulation of counsel, entered on the record on April 14, 1955, considered the relevant portions of the records in the following related proceedings which are identified by principal respondents as:

D. 6132 National Feather & Down Company,
D. 6133 The L. Buchman Co., Incorporated,
D. 6134 Burton-Dixie Corporation, et al.,
D. 6135 N. Sumergrade & Sons,
D. 6137 Northern Feather Works, Inc.

IN THE MATTER OF

C. G. OPTICAL COMPANY ET AL.

Docket 6260. Complaint, Nov. 5, 1954—Decision, Mar. 1, 1956

Order reopening proceeding, vacating decision, and remanding case to hearing examiner.

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

Mr. Frank McManus for the Commission.

Frank E. & Arthur Gettleman and *Mr. Benjamin D. Ritholz*, of Chicago, Ill., for respondents.

This matter having been heard upon the respondents' motion for an order directing the receipt and filing of their report purporting to show compliance with the order to cease and desist entered herein pursuant to an agreement for consent order executed by the parties on March 24, 1955;[1] or, in the alternative for an order vacating the decision accepting said agreement and granting a new trial; and

The respondents having alleged a misunderstanding on their part as to the scope of the order agreed to, it being their understanding that the requirements of said order related only to statements made on inserts packaged with their eye testing device and not to their advertising generally; and

It appearing to the Commission that while the order on its face admits of no ambiguity, clearly applying to all forms of advertising disseminated by the United States mail or by any means in commerce, the discussion on the record does indicate a possible basis for the respondents' misunderstanding; and

The Commission being of the opinion that in the circumstances the public interest will best be served by vacating the decision and directing that the case be tried:

It is ordered, That the respondents' request for an order directing the receipt and filing of their report of compliance be, and it hereby is, denied.

It is further ordered, That this proceeding be reopened and that the initial decision of the hearing examiner, filed April 12, 1955, and the Decision of the Commission and Order to File Report of Compliance, issued May 22, 1955, be, and they hereby are, vacated and set aside.

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

Commissioner Kern not participating.

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[1] 51 F.T.C. 1209.

IN THE MATTER OF

CORDAGE IMPORTERS ASSOCIATION, INC., ET AL.

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

Docket 6389. Complaint, June 30, 1955—Decision, Mar. 6, 1956[1]

Consent orders requiring 18 importers of Mexican twine and a trade association to cease conspiring to hinder and suppress competition in the importation and sale of Mexican twine in commerce in the United States, and specifically to cease fixing and maintaining prices, terms, and conditions for the purchase, sale, and resale of Mexican twine; establishing and maintaining classifications or uniform designations of purchasers, preventing and restricting sale to cooperatives; fixing and maintaining uniform freight charges; enforcing compliance with resale prices and conditions by the discontinuance, or threats of discontinuance, of sales to any non-complying importer; maintaining a policy and practice of having the Mexican sources of supply discontinue the sale of twine to any importer reported as selling or reselling below their fixed prices.

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

Mr. Fletcher G. Cohn and *Mr. Lewis F. Depro* for the Commission.

Mr. Harry K. Nadell, of New York City, for respondents.

Respondents were also represented as follows:

Underhill & Rubinger, of New York City, for Milton L. Mintzer, Adolph A. Krejtman and A. A. Krejtman, Inc.

Madden, Meccia, O'Flaherty & Freeman and *Groble, O'Flaherty & Hayes*, of Chicago, Ill., for Howard Duizend.

Mr. William T. Eckhoff, of San Francisco, Calif., for G. C. Pierson.

Mr. Albert V. Hass, of Chariton, Ia., for Robert M. Stone and Keith E. Stone.

Ward & Palzer, of New York City, for Paulsen-Webber Cordage Corp. and Elwood Long.

Meyer, Kissell, Matz, Reynolds & Seward, of New York City, and *Legier, McEnerny & Waguespack*, of New Orleans, La., for Carl L. Ruch.

Mr. Dulany Foster, of Baltimore, Md., for Howard H. Short.

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

[1] Initial decision and identical order against Elwood Long immediately following.

Trade Commission, having reason to believe that the respondents named in the caption hereof have violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Cordage Importers Association, Inc., hereinafter referred to as respondent "Importers" is a membership corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 55 West 42nd Street, New York 36, New York.

Respondent Daniel Kelminson is named as a respondent herein in his individual capacity and as President and as a member of the Board of Directors of the respondent Importers. Said respondent is also President of respondent General Twine Corporation, a member of respondent Importers and has his principal office and place of business located at 55 West 42nd Street, New York 36, New York.

Respondent J. Howard Bancroft is named as a respondent herein in his individual capacity, and as Vice President and Secretary, and as a member of the Board of Directors of respondent Importers. Said respondent is also President and Treasurer of respondent Independent Twine & Yarn Company, Inc., a member of respondent Importers and has his principal office and place of business located at 517 Arch Street, Philadelphia, Pennsylvania.

Respondent Milton L. Mintzer is named as a respondent herein in his individual capacity and doing business under the trade name of Milton L. Mintzer Company, as a member of respondent Importers and also as Treasurer and a member of the Board of Directors of respondent Importers. His principal office and place of business is located at 75 Maiden Lane, New York 7, New York.

Respondent Howard Duizend is named as a respondent herein in his individual capacity and doing business under the trade name of Atlas Cordage Company, as a member of respondent Importers, and as a member of the Board of Directors of respondent Importers. His principal office and place of business is located at 219 East North Water Street, Chicago, Illinois.

Respondent G. C. Pierson is named as a respondent herein in his individual capacity and doing business under the trade name of Davis Cordage Company, as a member of respondent Importers and as a member of the Board of Directors of respondent Importers. His principal office and place of business is located at 1709 North Spring Street, Los Angeles, California.

Respondent Adolph A. Krejtman is named as a respondent herein in his individual capacity and as a member of the Board of Directors of respondent Importers. Said respondent is also President of respondent A. A. Krejtman, Inc., a member of respondent Importers, and has his principal office and place of business located at 38 Pearl Street, New York, New York.

Respondent Robert H. Stone is named as a respondent herein in his individual capacity and as a copartner in the partnership doing business under the trade name of Bob Stone Cordage Company, as a member of respondent Importers, and also as a member of the Board of Directors of respondent Importers. His principal office and place of business is located at Chariton, Iowa.

Respondent General Twine Corporation is named as a respondent herein in its corporate capacity and as a member of respondent Importers. It is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 55 West 42nd Street, New York 36, New York.

Respondent Independent Cordage Company is named as a respondent herein in its corporate capacity and as a member of respondent Importers. It is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 399 Washington Street, New York 13, New York.

Respondent Independent Twine & Yarn Company, Inc., is named as a respondent herein in its corporate capacity and as a member of respondent Importers. It is a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business located at 517 Arch Street, Philadelphia 6, Pennsylvania.

Respondent A. A. Krejtman, Inc., is named as a respondent herein in its corporate capacity and as a member of respondent Importers. It is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 38 Pearl Street, New York, New York.

Respondent Paulsen-Webber Cordage Corporation is named as a respondent herein in its corporate capacity and as a member of respondent Importers. It is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 170 John Street, New York 38, New York.

Respondent Carl L. Ruch is named as a respondent herein in his individual capacity and doing business under the trade name of The Cord-Tex Company, and as a member of respondent Importers, with his principal office and place of business located at 730 Gravier Street, New Orleans, Louisiana.

Respondent Fred L. V. Schoenfeld is named as a respondent herein in his individual capacity and doing business under the trade name of Schoenfeld Mills Agency, and as a member of the respondent Importers with his principal office and place of business located at 1201 Commerce Street, Houston, Texas.

Respondent Daniel H. Shield is named as a respondent herein in his individual capacity and doing business under the trade name of Daniel H. Shield Cordage Company, and as a member of respondent Importers, and has his principal office and place of business located at 130 North Wells Street, Chicago, Illinois.

Respondent Harold H. Short is named as a respondent herein in his individual capacity and doing business under the trade name of Allied Cordage Company, and as a member of respondent Importers, and has his principal office and place of business located at 120 South Calvert Street, Baltimore, Maryland.

Respondent J. C. Shuford is named as a respondent herein in his individual capacity and doing business under the trade name of J. C. Shuford Company, and as a member of respondent Importers, and has his principal office and place of business located at the Merchandise Mart, Chicago, Illinois.

Respondent Keith E. Stone is named as a respondent herein in his individual capacity and as a copartner in the partnership doing business under the trade name of Bob Stone Cordage Company, and as a member of respondent Importers. His principal office and place of business is located at Chariton, Iowa.

Respondent Edward Long is named as a respondent herein in his individual capacity and doing business under the trade name of Mid-West Cordage Company, and has his principal office and place of business located at Fayette, Missouri.

PAR. 2. The respondent Importers was organized in 1953. Its announced object was to foster trade in commerce among those having a common interest in the importation and sale of cordage and twine, to procure uniformity and certainty in the customs and usages of the trade and commerce, to promote a more enlarged and friendly intercourse among businessmen and to secure the attainment and accomplishment of all purposes mentioned in the certificate of incorporation for the benefit of all members.

All of the respondents, identified in PARAGRAPH ONE as members of respondent Importers, who are hereinafter referred to as a group as "respondent members," were the original incorporators or charter members of respondent Importers.

Respondent Kelminson has been President of respondent Importers since its inception. Respondent Ruch was Vice President of respondent Importers from the date of its inception until January 22, 1955, when he resigned and was succeeded by respondent J. Howard Bancroft. Respondent Daniel H. Shield was Secretary and member of the Board of Directors of respondent Importers during some of the times hereinafter mentioned. Respondent Milton L. Mintzer has been an official of respondent Importers since its inception. Respondents G. C. Pierson, Adolph A. Krejtman and Robert H. Stone have been members of the Board of Directors of respondent Importers since its organization. Respondent Howard Duizend, now a member of the Board of Directors of respondent Importers, was one of its charter members.

The by-laws of the respondent Importers provide that the government of the respondent Importers shall be vested in a Board of Directors consisting of eight members, as follows: The four officers and one elective member from each of the four different geographical regions of the United States.

Pursuant to this provision, respondents Daniel Kelminson, J. Howard Bancroft, Milton L. Mintzer, Howard Duizend, G. C. Pierson, Adolph A. Krejtman and Robert H. Stone, hereinafter referred to as a group as "respondent officials," when acting in their respective official positions in respondent Importers and/or when acting as members of the Board of Directors of respondent Importers, have directed and controlled, and do direct and control, the policies, acts and practices of respondent Importers, including the policies, acts and practices hereinafter set forth.

Also, while so acting, respondent officials have acted for, on behalf of, and with the approval of respondent members and their actions were intended to, and did, bind said respondent members in the same manner and with the same effect as though said respondent members had directly engaged in same.

Respondent Importers is not itself engaged in the importation, sale and distribution of any commodity in commerce, but has been used, and is being used, as a medium through which respondent officials and respondent members, directly or indirectly, have participated in some or all of the acts, practices, understandings and agreements hereinafter set forth.

Respondent nonmember, by, directly or indirectly, participating in, approving or adopting one or more of the policies, acts and practices hereinafter set forth, has consented to, approved or affirmed the activities of the respondent Importers and the respondent officials when either or both performed any of such policies, acts or practices.

PAR. 3. Each of the respondents named herein has, directly or indirectly, participated in, approved, or adopted one or more of the alleged illegal policies, acts and practices hereinafter set forth.

PAR. 4. The products involved are agricultural baler and binder twine, commercial wrapping twine, also called "ply" twine, and rope, all of which are hereinafter referred to as "Mexican twine." They are manufactured from Henequen fibre or sisal, grown in Yucatan, Mexico, by about 55 manufacturers located in the vicinity of Merida, Yucatan, Mexico. Approximately 90% of the total exports of such twines are to the United States. In 1952 the Mexican manufacturers exported 65,591,682 pounds of this Mexican twine, of which 61,200,496 pounds were shipped to the United States.

PAR. 5. The respondent members, together with respondent Edward Long, hereinafter referred to as "respondent nonmember," are among the largest importers of Mexican twine in the United States and account for well in excess of 50 percent of the total imports of such twine into the United States.

Said respondent members and nonmember are in a position to dominate and control, and have, to a large extent, dominated and controlled prices at which such twines are imported into the United States and resold in the United States, as well as the terms and conditions of such importation and resale.

PAR. 6. Immediately after its organization, respondent Importers appointed a committee of four to go to Merida, Yucatan, for the purpose of conferring with the Mexican manufacturers; this committee was authorized "to speak on behalf of the Association [respondent Importers] and its membership which had unanimously decided to discuss with the manufacturers in Mexico the problems that commonly face them and to try to seek a solution to these problems for the benefit of all." On this committee were respondents Daniel Kelminson, A. A. Krejtman, Robert H. Stone, and Carl L. Ruch. All of said members, with the possible exception of respondent Carl L. Ruch, did meet with a committee representing the Mexican manufacturers. At that time said Mexican manufacturers were members of a trade association called Productores de Artefactos de Henequen, which was organized under the laws of the country of Mexico.

As a result of such meeting, an agreement was entered into with reference to the importation into the United States of the Mexican twine manufactured by such Mexican manufacturers.

This agreement was made pursuant to and as part of the understanding, agreement, combination, conspiracy and planned common course of action to hinder and suppress competition in price and otherwise in the importation, sale and distribution of Mexican twines in commerce in the United States, as hereinafter set forth.

PAR. 7. In December 1953, the name of the association of manufacturers of the Mexican twine was changed to Cordeleros de Mexico. The association of Mexican manufacturers of such twine is hereinafter referred to as "Mexican Association," regardless of what its actual name may have been. Such Mexican Association is a party to the aforementioned described understanding, agreement, combination, conspiracy and planned common course of action, to hinder and suppress competition in price and otherwise in the importation, sale and distribution of Mexican twine in commerce in the United States, as hereinafter set forth, but is not made a party respondent hereto.

PAR. 8. In the course and conduct of their respective businesses, respondent members and respondent nonmember import Mexican twine into the United States, and sell and distribute said products to purchasers thereof located in various States of the United States, and, in so doing, each of said respondents causes such products, when so sold, to be shipped or transported to such purchasers located in States of the United States other than the place of origin of such shipments.

Respondent Importers and respondent officials, since they are the media whereby respondent members and nonmember have performed and conducted, in commerce, the understanding, agreement, combination, conspiracy and planned common course of action and the policies, acts and practices, hereinafter set forth, are each engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

PAR. 9. Respondent members and nonmember, in the course and conduct of their respective businesses, at all times mentioned herein, have been, and are now, in competition with each other and with other corporations, partnerships, and individuals engaged in similar businesses in the sale and distribution of such twine in such commerce except insofar as same has been restrained, restricted or suppressed by the understanding, agreement, combination, conspiracy and planned common course of action and the policies, acts and practices hereinafter set forth.

PAR. 10. Respondent members and respondent nonmember, acting in cooperation with each other and through, by and in cooperation with respondent Importers and respondent officials have, since about 1953, entered into, and been engaged in carrying out and performing, an understanding, agreement, combination, conspiracy, and planned common course of action between and among themselves and with the cooperation and assistance of the Mexican Association, to hinder and suppress competition in price and otherwise in the importation into the United States of Mexican twine and thereafter in the sale and distribution of same in commerce in the United States, and also to create in the respondent members and nonmember a monopoly in such commerce in the importation, sale and distribution of such Mexican twine.

PAR. 11. As part of, and pursuant to, such understanding, agreement, combination, conspiracy, and planned common course of action, and in furtherance thereof, respondent members and nonmember, acting in concert with each other, through and by means of respondent Importers and respondent officials, and in cooperation with the Mexican Association and by other means and methods, have, among others, performed and pursued the following policies, acts and practices:

(1) Attempted to fix and maintain, and they have fixed, the prices of Mexican twine which all importers, including respondent members and respondent nonmember, shall pay, and have paid, for the purchase of such twine imported into the United States from Mexico;

(2) Attempted to fix and maintain, and they have fixed, the prices to be charged, and which have been charged, by Mexican manufacturers who are members of the Mexican Association, for the Mexican twine exported by such manufacturers into the United States;

(3) Attempted to fix and maintain, and they have fixed, the prices at which such Mexican twine is to be resold, and has been resold, in the United States to jobbers and wholesalers by importers thereof, including respondent members and nonmember;

(4) Attempted to fix and maintain, and they have fixed, the prices at which such Mexican twine is to be resold, and has been resold, in the United States by such jobbers, wholesalers and importers, including respondent members and nonmember, to retail dealers in the United States;

(5) Attempted to establish and maintain, and they have established, the terms and conditions of sale for the importation into the United States, and the sale and resale thereof, of Mexican twine;

(6) Attempted to classify, and they have classified, the buyers of Mexican twine imported into the United States into definite and specific categories, namely, as importers, wholesalers, dealers and consumers;

(7) Attempted to fix and maintain, and they have fixed, different prices at which buyers within each of the four above-mentioned categories shall resell such Mexican twine;

(8) Attempted to prevent, and they have prevented, the sale of Mexican twine to cooperatives at the same prices and conditions of sale as those made by the members of the Mexican Association to importers thereof;

(9) Attempted to require, and they have required, that all sales by members of the Mexican Association of Mexican twine, imported into the United States, to cooperatives be at the prices and conditions of sale which the importers of such twine, including respondent members and nonmember, specify for the wholesale or dealer customers of such importers;

(10) Attempted to fix and maintain, and they have fixed, the resale prices and conditions of sale for such Mexican twine by cooperatives in the United States;

(11) Attempted to establish and maintain, and they have established and maintained, a policy or practice that importers of Mexican twine, including respondent members and nonmember, and/or wholesalers, where any of them operates his own delivery truck, shall, in making sales of such twine, include a mark-up or additional charge for inland freight which is to be at the same rate charged by public carriers for transportation between the port of entry or between the importer's or the wholesaler's warehouse and the customer's destination;

(12) Attempted to maintain, and they have maintained, a system for enforcing the resale prices in the United States for such imported Mexican twine by the importers thereof, including respondent members and nonmember;

(13) Attempted to enforce, and they have enforced, a policy or practice requiring such importers, including respondent members and nonmember, to compel their respective wholesale customers to resell such Mexican twine to retail dealers at fixed prices;

(14) Attempted to enforce, and they have enforced, a policy or practice of having the respondent members and respondent nonmember report to the Mexican Association or the Association's members any and all sales by importers, resales by wholesale customers of such importers, or by retail customers of said importers, at prices below those fixed for such sales or resales;

(15) Attempted to establish and maintain, and they have established and maintained, a policy or practice of having the members of the Mexican Association discontinue the sale of Mexican twine to any importer, including respondent members and nonmember, who has been reported as selling, reselling, offering for sale, or offering for resale, Mexican twine at prices below the fixed prices.

PAR. 12. Pursuant to, as a part of, and as the result of the understanding, agreement, combination, conspiracy and planned common course of action, and of the policies, acts and practices, also hereinbefore alleged, certain importers of Mexican twine into the United States have been unable to obtain same for prolonged periods of time and thereafter not until they had given assurance that they would adhere in the future to the fixed resale prices.

PAR. 13. The capacity and tendency of the aforesaid understanding, agreement, combination, conspiracy, and planned common course of action, and the policies, acts and practices done and performed thereunder and pursuant thereto, have been, and are now, to coerce importers of Mexican twine into the United States who are not members of respondent Importers, to withdraw from the importation of such twine or to refrain from competing price-wise with respondent members and nonmember; to place in the respondents the power to control and police prices in the sale and distribution of Mexican twine in commerce in the United States; to restrict and limit the importation of such twine into the United States; to confine the importation of such twine to those importers who adhere to the fixed resale prices; and to create a monopoly in the respondent members and nonmember in the importation into the United States of Mexican twine and the sale and distribution thereof in commerce in the United States.

PAR. 14. The policies, acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public; have a dangerous tendency to and have actually hindered and restricted competition between and among said respondents, and between and among said respondents and others, in the importation, sale, and distribution of Mexican twine in commerce in the United States within the intent and meaning of Section 5 of the Federal Trade Commission Act, and have unreasonably restricted and restrained trade in commerce in the United States in such Mexican twine and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

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 and performance of unfair acts and practices and unfair methods of competition in commerce, by cooperatively entering into, carrying out and performing an understanding, agreement, combination, conspiracy and planned common course of action between and among themselves and with the cooperation and assistance of the Mexican Association, with the tendency and effect of hindering and restricting competition between and among themselves and others in the importation, sale, and distribution of Mexican Twine in commerce in the United States, in violation of Section 5 of the Federal Trade Commission Act.

Thereafter, on December 20, 1955, all respondents herein, except respondent J. C. Shuford, who was named in the complaint individually and doing business under the trade name of J. C. Shuford Company, who is now deceased, wherefore, as to him, the complaint herein will be dismissed; and respondent Paulsen-Webber Cordage Corporation, a corporation, and respondent Elwood Long (erroneously named in the complaint as Edward Long), individually and doing business under the trade name of Mid-West Cordage Company, against both of whom this proceeding will continue; entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the hearing examiner a Form of Proposed Agreement Containing Consent Order to Cease and Desist, disposing of all the issues involved in this proceeding as to the seventeen respondents signatory thereto.

Corporate respondents are identified in the agreement as follows:

Cordage Importers Association, Inc., a New York corporation with its principal office and place of business located at 55 West 42nd Street, New York 36, New York;

General Twine Corporation, a New York corporation with its principal office and place of business located at 55 West 42nd Street, New York 36, New York;

Independent Cordage Company, a New York corporation with its principal office and place of business located at 399 Washington Street, New York 13, New York;

Independent Twine & Yarn Company, Inc., a Delaware corporation with its principal office and place of business located at 517 Arch Street, Philadelphia 6, Pennsylvania; and

A. A. Krejtman, Inc., a New York corporation with its principal office and place of business located at 38 Pearl Street, New York, New York;

and individual respondents are identified therein as follows:

Daniel Kelminson, individually and as President and as a member of the Board of Directors of Corporate Respondent Cordage Importers Association, Inc., his office and principal place of business being located in care of General Twine Corporation, 55 West 42nd Street, New York, New York;

J. Howard Bancroft, individually and as Vice President and Secretary, and as a member of the Board of Directors of Corporate Respondent Cordage Importers Association, Inc., his office and principal place of business being located at 517 Arch Street, Philadelphia, Pennsylvania;

Milton L. Mintzer, individually and doing business under the trade name of Milton L. Mintzer Company, as a member of Corporate Respondent Cordage Importers Association, Inc., and as Treasurer and member of the Board of Directors thereof, with his office and principal place of business located at 75 Maiden Lane, New York, New York;

Howard Duizend, individually and doing business under the trade name of Atlas Cordage Company and as a member of Corporate Respondent Cordage Importers Association, Inc., with his office and principal place of business located at 219 East North Water Street, Chicago, Illinois (Respondent Duizend was also named in the complaint in this proceeding as a member of the Board of Directors of Corporate Respondent Cordage Importers Association, Inc., but in fact does not hold such a directorship);

G. C. Pierson, individually and doing business under the trade name of Davis Cordage Company, as a member of Corporate Respondent Cordage Importers Association, Inc., and a member of the Board of Directors thereof, with his office and principal place of business located at 1709 North Spring Street, Los Angeles, California;

Adolph A. Krejtman, individually and as a member of the Board of Directors of Corporate Respondent Cordage Importers Association, Inc., with his office and principal place of business located at 38 Pearl Street, New York, New York;

Robert M. Stone (erroneously designated in the complaint as Robert H. Stone), individually and as a copartner in the partnership doing business under the trade name of Bob Stone Cordage Company, as a member of Corporate Respondent Cordage Importers Association, Inc., and as a member of the Board of Directors thereof, with his office and principal place of business in care of Bob Stone Cordage Company, Chariton, Iowa;

Carl L. Ruch, individually, with his office and principal place of business located at 730 Gravier Street, New Orleans, Louisiana (this respondent was alleged in the complaint to be doing business under the trade name "Cord-Tex Company," when, in fact, at the time the acts complained of took place, this respondent was merely an employee of Cord-Tex Company);

Fred L. V. Schoenfeld, individually, with his office and principal place of business located at 1201 Commerce Street, Houston, Texas (this respondent was named in the complaint both individually and as doing business under the trade name "Schoenfeld Mills Agency," but, subsequent to the filing of the complaint, went bankrupt and is no longer doing business under that name);

Daniel H. Shield, individually and doing business under the trade name of Daniel H. Shield Cordage Company, with his office and principal place of business located at 130 North Wells Street, Chicago, Illinois;

Harold H. Short, individually and doing business under the trade name of Allied Cordage Company, with his office and principal place of business located at 120 South Calvert Street, Baltimore, Maryland; and

Keith E. Stone, individually and as a copartner in the partnership doing business under the trade name of Bob Stone Cordage Company, with his office and principal place of business in care of Bob Stone Cordage Company, Chariton, Iowa.

Respondents admit all of 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.

All corporate and individual respondents named herein, in their various capacities herein described, 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, insofar as they relate to the seventeen respondents signatory thereto, it appears that such order will safeguard the public interest, with regard to the practices of these seventeen respondents, 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 Form of Proposed Agreement Containing Consent Order to Cease and Desist and finds that the Commission has jurisdiction over the respondents signatory thereto 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 Cordage Importers Association, Inc., a corporation; Daniel Kelminson, individually and as President and as a member of the Board of Directors of Cordage Importers Association, Inc.; J. Howard Bancroft, individually and as Vice President and Secretary, and as a member of the Board of Directors of Cordage Importers Association, Inc.; Milton L. Mintzer, individually and doing business under the trade name of Milton L. Mintzer Company, as a member of Cordage Importers Association, Inc., and as Treasurer and as a member of the Board of Directors of Cordage Importers Association, Inc.; Howard Duizend, individually and doing business under the trade name of Atlas Cordage Company and as a member of Cordage Importers Association, Inc.; G. C. Pierson, individually and doing business under the trade name of Davis Cordage Company, as a member of Cordage Importers Association, Inc., and as a member of the Board of Directors of Cordage Importers Association, Inc.; Adolph A. Krejtman, individually and as a member of the Board of Directors of Cordage Importers Association, Inc.; Robert M. Stone, individually and as a copartner in the partnership doing business under the trade name of Bob Stone Cordage Company, as a member of Cordage Importers Association, Inc., and as a member of the Board of Directors of Cordage Importers Association, Inc.; and General Twine Corporation, a corporation, Independent Cordage Company, a corporation, Independent Twine & Yarn Company, Inc., a corporation, A. A. Krejtman, Inc., a corporation, Carl L. Ruch, individually, Fred L. V. Schoenfeld, individually, Daniel H. Shield, individually and doing business under the trade name of Daniel H. Shield Cordage Company, Harold H. Short, individually and doing business under the trade name of Allied Cordage Company, and Keith E. Stone, individually and as a copartner in the partnership doing business under the trade name of Bob Stone Cordage Company, as members of Cordage Importers Association, Inc., their respective officers, directors, agents, representatives and employees, together with the successors or assigns of such respondents, directly or through any corporate or other device, in connection with the purchase, offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of agricultural baler and binder twine, commercial wrapping twine, also called "ply" twine, and rope manufactured in Mexico, all of which are hereinafter referred to as "Mexican Twine," do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any planned common and concerted course of action, understanding or agreement between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts:

1. Fixing, establishing, maintaining, or adhering to, or attempting to fix, establish, maintain, or cause adherence to, by any means or method, any prices, terms or conditions for the purchase, sale or resale of Mexican twine in the United States;

2. Establishing or maintaining, or attempting to establish or maintain, any classifications or uniform designations of customers or purchasers for sale or resale of Mexican twine, for the purpose or with the effect of fixing or maintaining any purchase, sale or resale prices of such twine;

3. Preventing, restricting, or attempting to prevent or restrict, by any means or method, the sale of Mexican twine to cooperatives;

4. Fixing, establishing, maintaining, or adhering to, or attempting to fix, establish, maintain or cause adherence to, by any means or method, uniform charges or assessments for freight for the transportation of Mexican twine;

5. Enforcing or attempting to enforce compliance with, or adherence to, any resale prices or conditions for resale of Mexican twine in the United States, by the discontinuance, or threats of discontinuance, of sales to any importer of Mexican twine, who fails, or refuses, to comply with any such prices or conditions for resale, or by any other means or method of enforcement of compliance with, or adherence to, any such resale prices or conditions for resale;

6. Causing, directly or indirectly, or attempting to cause, directly or indirectly, by any means or method, the cancellation, or suspension, of orders for, or the discontinuance of sources of supply of, Mexican twine to any purchaser or prospective purchaser of same.

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

It is ordered, That Respondents Cordage Importers Association, Inc., a corporation; Daniel Kelminson, individually and as President and as a member of the Board of Directors of Cordage Importers Association, Inc.; J. Howard Bancroft, individually and as Vice President and Secretary, and as a member of the Board of Directors of Cordage Importers Association, Inc.; Milton L. Mintzer, individually and doing business under the trade name of Milton L. Mintzer Company, as a member of Cordage Importers Association, Inc., and as Treasurer and as a member of the Board of Directors of Cordage Importers Association, Inc.; Howard Duizend, individually and doing business under the trade name of Atlas Cordage Company and as a member of Cordage Importers Association, Inc.; G. C. Pierson, individually and doing business under the trade name of Davis Cordage Company, as a member of Cordage Importers Association, Inc., and as a member of the Board of Directors of Cordage Importers Association, Inc.; Adolph A. Krejtman, individually and as a member of the Board of Directors of Cordage Importers Association, Inc.; Robert M. Stone, individually and as a copartner in the partnership doing business under the trade name of Bob Stone Cordage Company, as a member of Cordage Importers Association, Inc., and as a member of the Board of Directors of Cordage Importers Association, Inc.; and General Twine Corporation, a corporation, Independent Cordage Company, a corporation, Independent Twine & Yarn Company, Inc., a corporation, A. A. Krejtman, Inc., a corporation, Carl L. Ruch, individually, Fred L. V. Schoenfeld, individually, Daniel H. Shield, individually and doing business under the trade name of Daniel H. Shield Cordage Company, Harold H. Short, individually and doing business under the trade name of Allied Cordage Company, and Keith E. Stone, individually and as a copartner in the partnership doing business under the trade name of Bob Stone Cordage Company, as members of Cordage Importers Association, Inc., shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

INITIAL DECISION AS TO RESPONDENTS PAULSEN-WEBBER CORDAGE CORPORATION, ELWOOD LONG AND J. C. SHUFORD BY ABNER E. LIPSCOMB, HEARING EXAMINER

On June 30, 1955, the Federal Trade Commission issued its complaint in this proceeding, charging Respondents with unfair acts and practices and unfair methods of competition in commerce, by cooperatively entering into, carrying out and performing an understanding, agreement, combination, conspiracy and planned common course of action between and among themselves and with the cooperation and assistance of the Mexican Association, with the tendency and effect of hindering and restricting competition between and among themselves and with others in the importation, sale, and distribution of Mexican Twine in commerce in the United States, in violation of Section 5 of the Federal Trade Commission Act.

Thereafter, on December 20, 1955, all Respondents herein except Respondent J. C. Shuford, who was named in the complaint individually and doing business under the trade name of J. C. Shuford Company; Respondent Paulsen-Webber Cordage Corporation, a corporation; and Respondent Elwood Long (erroneously named in the complaint as Edward Long, individually and doing business under the trade name of Mid-West Cordage Company) entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the Hearing Examiner a Form of Proposed Agreement Containing Consent Order to Cease and Desist, on the basis of which an initial decision as to the seventeen Respondents signing such agreement was issued on January 13, 1956.

Subsequently, on February 1, 1956, Respondent Elwood Long, individually and as president of Fayette Livestock Auction Corporation, doing business as Midwest Cordage Company (erroneously named in the complaint herein as Edward Long, individually and doing business under the trade name of Mid-West Cordage Company), together with his attorney, entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the Hearing Examiner a proposed Agreement Containing Consent Order to Cease and Desist, disposing of all the issues involved in this proceeding as to said Respondent.

Respondent Elwood Long is identified in the agreement as an individual and as president and operating head of Fayette Livestock Auction, Inc., a corporation, doing business under the trade name of Midwest Cordage Company, with his principal office and place of business located at Fayette, Missouri.

Respondent Long admits all of the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondent Long waives 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 he may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. Respondent Long, his attorney and counsel supporting the complaint agree that the answer to the complaint herein previously submitted by Respondent Long shall be considered as having been withdrawn, and for all legal purposes said answer shall hereafter be regarded as withdrawn; that the record on which the initial decision and the decision of the Commission as to Respondent Long 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 Respondent Long that he has 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, insofar as they relate to Respondent Long, and the provisions of the proposed order contained in the agreement, it appears that such order will safeguard the public interest, with regard to the practices of this Respondent, 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 said agreement, the Hearing Examiner accepts the proposed Agreement Containing Consent Order to Cease and Desist Against Elwood Long, Individually and as President of Fayette Livestock Auction, Inc. Doing Business as Midwest Cordage Company, and finds that the Commission has jurisdiction over this Respondent and over his acts and practices as alleged in the complaint, and that this proceeding, as to him, is in the public interest.

On February 14, 1956, at a formal conference held in this proceeding in Washington, D. C., counsel supporting the complaint submitted a motion in which counsel for Respondent Paulsen-Webber Cordage Corporation joined, requesting that the complaint herein be dismissed as to that Respondent, and presented in support of said motion three letters, two of which, designated Commission's Exhibits 1–A, B and 2, are from Harry K. Nadell, counsel herein for Respondent Cordage Importers Association, Inc., to Fletcher G. Cohn, counsel supporting the complaint. These letters show that Respondent Paulsen-Webber Cordage Corporation had refused to participate with the other Respondents in this proceeding in any discussion regarding selling prices or pricing policies, and that Respondent Paulsen-Webber's interest in Respondent Cordage Importers Association, Inc. was only to standardize the quality of the products imported from Mexico, and to obtain fair and uniform treatment under Tariff regulations and before Customs officials. A third document, designated Commission's Exhibit 3, is a statement by Daniel Kelminson, president of Respondents General Twine Corporation and Cordage Importers Association, Inc., to the effect that he approves the contents of the letter designated Commission's Exhibit 1–A, B. Counsel supporting the complaint, in referring to this statement, said that Mr. Kelminson would be his principal witness against Respondent Paulsen-Webber Cordage Corporation in the event this proceeding came to trial as to that Respondent. Counsel supporting the complaint further asserted that in view of the facts revealed in those three documents, he believes that it would be practically impossible to prove the allegations of the complaint as to Respondent Paulsen-Webber Cordage Corporation. He also stated, in substance, that the force and effect of the orders to cease and desist issued against other Respondents in this proceeding would not be lessened by the dismissal of the complaint herein as to Respondent Paulsen-Webber Cordage Corporation.

In the light of the evidence and the statements of counsel supporting the complaint, it appears that the joint motion to dismiss the complaint herein as to Respondent Paulsen-Webber Cordage Corporation should be granted.

Counsel supporting the complaint also moved that the complaint herein be dismissed as to Respondent J. C. Shuford, individually and doing business under the trade name of J. C. Shuford Company, for the reason that this Respondent is now deceased, which motion will, of course, be granted. Accordingly,

It is ordered, That Respondent Elwood Long, individually and as president of Fayette Livestock Auction, Inc., a corporation, doing business as Midwest Cordage Company (erroneously named in the complaint as "Edward Long, individually and doing business under the trade name of Mid-West Cordage Company"), his agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase, offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of agricultural baler and binder twine, commercial wrapping twine, also called "ply" twine, and rope manufactured in Mexico, all of which are hereinafter referred to as "Mexican twine," do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common and concerted course of action, understanding or agreement with any one or more of the Respondents named in any other order or orders to cease and desist issued by the Commission against any of the other Respondents named in the complaint herein, or between him and others not parties to any such other order or orders to cease and desist issued by the Commission in this case, to do or perform any of the following acts:

1. Fixing, establishing, maintaining, or adhering to, or attempting to fix, establish, maintain, or cause adherence to, by any means or method, any prices, terms or conditions for the purchase, sale or resale of Mexican twine in the United States;

2. Establishing, or maintaining, or attempting to establish or maintain, any classifications or uniform designations of customers or purchasers for sale or resale of Mexican twine, for the purpose or with the effect of fixing or maintaining any purchase, sale or resale prices of such twine;

3. Preventing, restricting, or attempting to prevent or restrict, by any means or method, the sale of Mexican twine to cooperatives;

4. Fixing, establishing, maintaining, or adhering to, or attempting to fix, establish, maintain or cause adherence to, by any means or method, uniform charges or assessments for freight for the transportation of Mexican twine;

5. Enforcing, or attempting to enforce, compliance with, or adherence to, any resale prices or conditions for resale of Mexican twine in the United States, by the discontinuance, or threats of discontinuance, of sales to any importer of Mexican twine, who fails, or refuses, to comply with any such prices or conditions for resale, or by any other means or method of enforcement, of compliance with, or adherence to, any such resale prices or conditions for resale;

6. Causing, directly or indirectly, or attempting to cause, directly or indirectly, by any means or method, the cancellation, or suspension, of orders for, or the discontinuance of sources of supply of, Mexican twine to any purchaser or prospective purchaser of same.

It is further ordered, That the complaint herein, insofar as it relates to Respondent Paulsen-Webber Cordage Corporation, a corporation, be, and the same hereby is, dismissed.

It is further ordered, That the complaint herein, insofar as it relates to Respondent the late J. C. Shuford, individually and doing business under the trade name of J. C. Shuford Company, be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner filed February 16, 1956, in which decision the examiner accepted a proposed agreement containing a consent order against Elwood Long, individually and as president of Fayette Livestock Auction, Inc., a corporation, and issued his order to cease and desist in conformity with said agreement; and

It appearing that said initial decision contains two typographical errors which should be corrected:

It is ordered, That this case be, and it hereby is, placed on the Commission's own docket for review.

It is further ordered, That the date "February 14, 1965" at the beginning of the ninth paragraph of the initial decision be changed to "February 14, 1956," and that the word "does" immediately following the words "Mexican twine" in the twelfth paragraph of said decision be changed to "do."

It is further ordered, That the initial decision as so modified shall, on the 31st day of March, 1956, become the decision of the Commission.

It is further ordered, That respondent Elwood Long, individually and as president of Fayette Livestock Auction, Inc., a corporation, 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

STERLING MATERIALS COMPANY, INC., ET AL.

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

Docket 6426. Complaint, Oct. 4, 1955—Decision, Mar. 6, 1956

Consent order requiring three associated New York paint firms to cease making false representations, with respect to exclusive sales territory and sales and promotional assistance; through their salesmen whom they trained to recruit "Franchise Dealers"; and representing falsely in advertising in newspapers and periodicals, and in circulars and other literature furnished to dealers, that they had been selling their paint products for 30 to 35 years, and that many well-known manufacturers, industrial firms, railroads, and agencies of the U. S. Government had used and approved them.

Before *Mr. Abner E. Lipscomb*, hearing examiner.
Mr. Terral A. Jordan for the Commission.
Mr. S. Michael Ress, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Sterling Materials, Inc., a corporation; David Jacobs and Jacob Nadler, individually and as officers of Sterling Materials Company, Inc.; Carbozite Protective Coatings, Inc., a corporation; Sidney Jacobs and Jacob Nadler, individually and as officers of Carbozite Protective Coatings, Inc.; Ohmlac Paint and Refining Co., Inc., a corporation, and Charles A. Jacobs and Lillian Nathan, individually and as officers of Ohmlac Paint and Refining Co., Inc.; all 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 Sterling Materials Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its offices and principal place of business at 1860 Broadway, New York 23, New York. Respondents David Jacobs and Jacob Nadler are president-treasurer and secretary, respectively, of said corporate respondent, Sterling Materials Company, Inc., and these individuals acting in cooperation with each other, formulate, direct and control the acts, policies and practices of said corporate respondent. Their addresses are the same as that of said corporate respondent.

Respondent Carbozite Protective Coatings, Inc., is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with its offices and principal place of business at 24-13 Bridge Plaza, North, Long Island City 1, New York. Respondents Sidney Jacobs and Jacob Nadler are president-treasurer and secretary, respectively, of said corporate respondent, Carbozite Protective Coatings, Inc., and these individuals acting in cooperation with each other, formulate, direct and control the acts, policies and practices of said corporate respondent. Their addresses are the same as that of said corporate respondent.

Respondent Ohmlac Paint and Refining Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its offices and principal place of business at 24-13 Bridge Plaza, North, Long Island City 1, New York. Respondents Charles A. Jacobs and Lillian Nathan are president, and secretary-treasurer, respectively, of said corporate respondent, Ohmlac Paint and Refining Co., Inc., and these individuals acting in cooperation with each other, formulate, direct and control the acts, policies and practices of said corporate respondent. Their addresses are the same as that of said corporate respondent.

PAR. 2. Said respondents are now, and since January 1947 have been, engaged in the sale and distribution in commerce, as the term "commerce" is defined in the Federal Trade Commission Act, of various types of roofing and foundation paints and coatings, which products are manufactured at plants owned and operated by the respondent Ohmlac Paint and Refining Co., Inc., at Newark, New Jersey and Chicago, Illinois. Said respondents and each of them cause their said products when sold to be shipped, transported and distributed in commerce to dealer-distributors thereof located in various States of the United States other than the States in which said products are manufactured and sold. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade, in commerce, among and between the various States of the United States, and are now and at all times mentioned herein have been, in substantial competition in commerce with other corporations, firms or businesses similarly engaged in the manufacture, sale and distribution of roofing and foundation paints or coatings.

PAR. 3. Respondents since January 1947, have operated and continue to operate a sales plan by means of which they secure agents or dealers for the sale and distribution of their products to the purchasing public. These agents or dealers are secured or recruited by salesmen employed by the respondents, which salesmen are specially selected and trained by the respondents for this purpose. The primary function of these salesmen is to establish said dealerships and to obtain orders for the products of the respondents by means of written contracts or agreements with which are combined a provision for the initial orders for respondents' products. These agents or dealers are hereafter described and referred to as "Franchise Dealers."

Said written agreements which are referred to therein as "Special Dealer's Franchise" or as "Exclusive Franchise for ( ) Dealership" are executed for a definite period of time ranging from one to two calendar years and they include the initial order for the products of the respondents together with optional provision for payment therefor.

PAR. 4. As a part of said sales plan, but not restricted thereto, said salesmen for the respondents acting within the scope of their employment and with knowledge, acquiescence and support on the part of the respondents, and for the purpose of inducing prospective dealers to enter into the aforementioned franchise agreements and to purchase respondents' products, falsely represented and continue to falsely represent to prospective dealers that:

1. Following the execution of the aforementioned franchise agreements, respondents will:

(*a*) designate and assign to said dealer certain definite, exclusive and restricted sales territory for the period of time in said franchise agreement provided;

(*b*) furnish the dealer with adequate and timely selling or sales assistance in the form of missionary salesmen and demonstrators who will call shortly thereafter for the purpose of assisting the newly established franchise dealer in order that he may sell to his prospective customers all of the materials included in the initial order executed simultaneously with said franchise dealer agreement;

(*c*) furnish the dealer with adequate quantities of advertising materials and related sales helps in the form of direct mail advertising, including letters, testimonials, circulars, folders, and brochures, all at no cost to said dealer;

(*d*) will undertake to and arrange for the direct mailing of respondents' advertising material to prospective customers of said dealer in accordance with lists of such prospects furnished by the dealer to the respondents for that purpose, all at no cost to the dealer;

(*e*) assume and pay or allow to the dealer up to fifty percentum of the total cost of special or periodic newspaper advertising incurred by said dealer for the purpose of advertising the products of the respondents based upon newspaper mats to be furnished free of charge by the respondents to the dealer for that purpose;

(*f*) assume and pay or allow to the dealer up to fifty percentum of the total cost of outdoor advertising, described by said salesmen as billboards or bill-posters for the purpose of advertising the products of the respondents;

(*g*) assume and pay or allow to the dealer up to fifty percentum of the total cost of radio spot advertising for the purpose of advertising the products of the respondents;

(*h*) furnish free of charge to the dealer or to his prospective customers, free samples of the respondents' products;

(*i*) furnish promptly and free of charge to the dealer adequate displays or models showing the application of the products manufactured by the respondents.

2. That certain designated leading manufacturers, oil companies, railroads and industrial corporations throughout the United States are users and indorsers of the products of the respondents.

PAR. 5. Respondents, acting by and through said salesmen in turn acting within the scope of their employment, enter into written contracts or agreements with dealers or franchise distributors for the sale and distribution of their said products, said agreements being described as franchise agreements as hereinbefore set forth. Among the covenants and stipulations provided therein are those denominated "Sales Corporation" and "Sales Promotion," whereby said respondents stipulate and agree with the franchise dealer to provide a factory representative to assist said dealer in selling to such prospects of the dealer as have therefore been furnished with samples of respondents' products; and to correspond directly with such prospects on behalf of the said dealer in case the dealer has furnished respondents with the names and addresses thereof.

Notwithstanding said covenants and stipulations with respect to sales cooperation and promotion as above set forth respondents have failed and continue to fail to carry out the provisions in said agreements set forth although called upon to do so by the said franchise dealers.

PAR. 6. Respondents, in the course and conduct of their business and for the purpose of inducing the purchase of their products, have made and now make certain statements with respect to their said products in newspapers and periodicals and in circulars and other advertising literature furnished to their dealers. Among and typical of such statements are the following:

For over 30 years CARBOZITE PROTECTIVE COATINGS have served America's industries * * * including Railroad, Automotive, Rubber, Steel, Chemical and Oil Companies.

UNANIMOUS ACCLAIM BY HUNDREDS OF ELATERITE PRODUCTS Users Offers Concrete Evidence of This Materials' Enduring and Protective Qualities (together with reproductions of order forms or letterheads grouped to one side showing names of a number of large railroads and manufacturers).

OVER 30 YEARS IN USE—For over 30 years America's largest industries have put all their faith in CARBOZITE. * * *

DURING THE PAST 30 YEARS, CARBOZITE PROTECTIVE COATINGS HAVE BEEN CONSPICUOUS IN SERVING AMERICA'S LARGEST INDUSTRIES, SOME OF WHICH APPEAR IN THE LISTING BELOW:

(There follows the names and addresses of a large number of nationally known manufacturers, railroads, public utilities, mail-order houses, United States Army and Navy bases, and Federal agencies.)

CARBOZITE PRODUCTS MUST BE TOPS TO BE ACCEPTED BY USERS LIKE THESE. * * *

(There follows a number of names of well-known manufacturers, railroads, and references to the U. S. Army and Navy, concluding with) "* * * and many hundreds of others."

FOR OVER 30 YEARS CARBOZITE PROTECTIVE COATINGS HAVE SERVED AMERICA'S MOST PROMINENT INDUSTRIES.

Listed on this page are only a few of the thousands of famous users of Carbozite products. The approval of these large nationally known corporations is your assurance of Carbozite's outstanding quality and dependability.

(There follows, listed in three parallel rows the names and addresses of some 66 well-known railroads, manufacturers, oil companies, etc.)

For over 30 years, Carbozite Protective Coatings have been widely used by America's largest industries. * * *

For over thirty years CARBOZITE PROTECTIVE COATINGS have served America's leading industries. Included are Railroads, Automotive, Rubber, Steel, Chemical and Oil Companies—also the United States Army, Navy and other government agencies.

For over 30 years, Carbozite Protective Coatings have served America's industries, including key railroads, and automotive, rubber, steel, chemical and oil companies. * * *

———It, (Carbo-tex) is backed by a concern which, since 1905, has served America's largest industries; Railroads, Steel, Chemical and Oil Companies.

Carbozite has been manufactured for 35 years and numbers among its users many of the most prominent concerns in the United States.

PAR. 7. By and through the use of the statements set out above, respondents represented that they had marketed and sold their said products for a continuous period of time of 30 to 35 years and that the various manufacturers, industrial corporations, railroads and the various agencies and departments of the United States

Government designated in the advertising matter had used and approved their said products.

PAR. 8. Said statements were false, misleading and deceptive. In truth and in fact, the length of time during which each of the respondents has sold its said products is much less than 30 years and many of the manufacturers, industrial corporations, railroads and agencies and departments of the United States Government listed in said advertising have neither used nor approved any of respondents' products.

PAR. 9. The use by the respondents of the aforesaid false, deceptive and misleading statements and representations with respect to their said products has and has had the tendency and capacity to mislead and deceive a substantial number of their said franchise dealers as well as members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true, and to cause substantial numbers of said franchise dealers as well as members of the purchasing public to purchase substantial quantities of the respondents' products because of such erroneous and mistaken belief. As a consequence, substantial trade in commerce has been unfairly diverted to the respondents from their competitors and substantial injury done to competition in commerce.

PAR. 10. The acts and practices of the respondents as hereinbefore set forth were and are all to the prejudice and injury of their representatives or franchise dealers and the public and of their competitors and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On October 4, 1955, the Federal Trade Commission issued its complaint in this proceeding, charging the respondents with unfair and deceptive acts and practices and unfair methods of competition in commerce by failing to carry out the provisions with respect to cooperation and promotion assistance contained in contracts or agreements with dealers or franchise distributors for the sale and distribution in commerce of respondents' roofing and foundation paints and coatings, and by the use of false, misleading and deceptive representations as to the length of time respondents had marketed and sold their said products, and as to the use and approval thereof by various manufacturers, industrial corporations, railroads, and agencies and departments of the United States Government, in violation of the Federal Trade Commission Act, as amended.

On November 14, 1955, respondents submitted their answers to the complaint herein, and on January 6, 1956, all respondents, except Jacob Nadler and Lillian Nathan, 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, to which were attached three affidavits, one, signed by respondent David Jacobs, averring that the duties of respondent Jacob Nadler, as Secretary of respondent Sterling Materials Company, Inc., are nominal and clerical, and that he has not formulated, directed, controlled or participated in the acts or practices alleged in the complaint herein; another affidavit of similar import with regard to respondent Jacob Nadler as Secretary of respondent Carbozite Protective Coatings, Inc., signed by respondent Sidney Jacobs; and a like affidavit respecting respondent Lillian Nathan as Secretary-Treasurer of Respondent Ohmlac Paint & Refining Co., Inc., signed by respondent Charles A. Jacobs.

The agreement also states that the duties of respondents Jacob Nadler and Lillian Nathan are clerical, that neither formulated, directed, controlled nor participated in the acts, policies or practices alleged in the complaint herein, that the complaint should be dismissed as to these two respondents individually, and that therefore they are not included in the term "respondent" as used thereafter in the agreement. In view of the foregoing facts, the complaint will be dismissed as to respondents Nadler and Nathan.

Respondent Sterling Materials Company, Inc., is identified in the agreement as a New York corporation, with its office and principal place of business located at 1860 Broadway, New York, New York, and respondent David Jacobs as an individual and president-treasurer of respondent Sterling Materials Company, Inc., his address being the same as that of the said corporate respondent.

Respondent Carbozite Protective Coatings, Inc., is identified in the agreement as a Pennsylvania corporation, with its office and principal place of business located at 24-13 Bridge Plaza, North, Long Island City, New York, and respondent Sidney Jacobs as an individual and president-treasurer of respondent Carbozite Protective Coatings, Inc., his address being the same as that of said corporate respondent.

Respondent Ohmlac Paint & Refining Company, Inc., is identified in the agreement as a New York corporation, with its office and principal place of business located at 41-40 Crescent Street, Long Island City, New York, and respondent Charles A. Jacobs as an individual and president of respondent Ohmlac Paint & Refining Company, his address being the same as that of said 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 in the agreement 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 therewith. All parties agree that the answers heretofore filed by respondents shall be withdrawn, and for all legal purposes they will hereafter be regarded as withdrawn; 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, the agreement, the three affidavits appendant thereto, and the provisions of the proposed order contained in the agreement, the hearing examiner is of the opinion 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; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That the corporate respondents, Sterling Materials Company, Inc., Carbozite Protective Coatings, Inc., Ohmlac Paint & Refining Company, Inc., their officers; and David Jacobs, individually and as an officer of Sterling Materials Company, Inc.; Sidney Jacobs, individually and as an officer of Carbozite Protective Coatings, Inc.; Charles A. Jacobs, individually and as an officer of Ohmlac Paint & Refining Company, and said respondents' respective representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or distribution of roofing and foundation paints or coatings or other related products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly, indirectly or by implication, through salesmen, agents, solicitors, in advertising or in any other manner or by any other means:

1. That respondents will sell or dispose of or assume the responsibility for the sale or disposition in whole or in part of the aforesaid products for the dealers, agents or other distributors to whom the aforesaid products are sold or that such distributors will not have to pay respondents until said products have been sold or that advertising material, direct mail canvassing, advertising allowances or other sales assistance will be provided to an extent not actually made available or furnished;

2. That the sales territory assigned to dealers, agents or other distributors for the sale and distribution of those of respondents' aforesaid products specified in the franchise or agreement of assignment of said territory is exclusive where all or part of said sales territory has been or is subsequently assigned to others for the sale and distribution of the same named product during all or a part of the period of said assignment;

3. That respondents' aforesaid products have been used, endorsed, acclaimed or approved by persons, firms, corporations, organizations or instrumentalities either public or private which have not within a reasonable period of time prior to the making of the aforesaid representations by respondents actually used substantial quantities of respondents' aforesaid products in the manner and for the purposes for which respondents represent said products to be effective, and which have not affirmatively given thereto their endorsement, acclamation or approval;

4. That respondents' aforesaid products have been offered for sale and sold for a period of time in excess of that for which substantially similar products have actually been offered for sale and sold by respondents or their predecessors in interest.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondents Jacob Nadler aud Lillian Nathan.

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

It is ordered, That respondents Sterling Materials Company, Inc., a corporation, and David Jacobs, individually and as an officer of Sterling Materials Company, Inc.; Carbozite Protective Coatings, Inc., a corporation, and Sidney Jacobs, individually and as an officer of Carbozite Protective Coatings, Inc.; Ohmlac Paint & Refining Co., Inc., a corporation, and Charles A. Jacobs, individually and as an officer of Ohmlac Paint & Refining Co., Inc., shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

THOMAS Y. CROWELL COMPANY

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

Docket 6480. Complaint, Dec. 21, 1955—Decision, Mar. 6, 1956

Consent order requiring a New York City publisher to cease discriminating in price in violation of Sec. 2 (a) of the Clayton Act, as amended, by allowing greater discounts from list prices of its trade books to customers it classified as "wholesalers" than it allowed its "institutional suppliers" or "sub-jobbers."

Before *Mr. William L. Pack*, hearing examiner.
Mr. Fletcher G. Cohn for the Commission.
Greenbaum, Wolff & Ernst, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an act of Congress entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for Other Purposes", approved October 15, 1914 (Clayton Act), as amended by an act of Congress approved June 19, 1936 (Robinson-Patman Act) (U.S.C., Title 15, Sec. 13), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Thomas Y. Crowell Company, hereinafter referred to as "respondent", has violated the provisions of sub-section (a) of Section 2 of the Clayton Act, as amended, hereby issues its complaint stating its charges in these respects as follows:

PARAGRAPH 1. Respondent Thomas Y. Crowell Company is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 432 Fourth Avenue, New York, New York.

PAR. 2. Respondent is now and has since 1875 been engaged directly or indirectly in the publication, sale, and distribution of the various types and classes of books, including popular fiction and non-fiction books which are commonly known as trade books. For the fiscal year ending June 30, 1955, the total gross sales of books published, sold and distributed by this respondent was $1,942,039.79.

Respondent classifies the customers to whom it sells and distributes the books published by it into several different categories of customers, the principal classifications being (1) "wholesalers," (2) "institutional suppliers", and (3) "retailers."

PAR. 3. In the course and conduct of its business, respondent has been and is now engaged in commerce as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act in that it ships or causes to be shipped books published by it from the state or states in which said books are produced or published to purchasers thereof located in other states of the United States and the District of Columbia; and there is and has been at all times herein mentioned, a continuous current of trade and commerce in said books between and among the several states of the United States and the District of Columbia.

PAR. 4. Except insofar as it has been affected, as alleged in Paragraph Six hereof, respondent, in the course and conduct of its said business in commerce, has been, and is now, in competition with persons, firms, and other corporations which were, and are, engaged in commerce in the same business as respondent.

Also, except insofar as it has been affected, as alleged in Paragraph Six hereof, some of the purchasers, to whom respondent sells and distributes the books published by it in the aforesaid commerce, and whom respondent classifies as "wholesalers" were, and are, in competition with some of the purchasers of books sold and distributed by respondent, whom respondent classifies as "institutional suppliers" in that many of such wholesalers and institutional suppliers compete or attempt to compete, often in commerce, in reselling and attempting to resell such books to the same libraries and other types of institutions.

PAR. 5. Respondent, in the course and conduct of its said business in commerce has been for many years last past, and more particularly since June 19, 1936, and is now, discriminating in price between purchasers of the books published and distributed by respondent by selling such books to some purchasers at higher prices than it sells such books of like grade and quality to other purchasers, and some of such other purchasers are engaged in active and open competition with the less favored purchasers in the resale of such books within the United States, except as such competition has been affected as herein alleged.

Respondent has priced and sold the books which it publishes and distributes to those of its customers which it classifies as "wholesalers" at list prices less discounts, which are greater than those dicounts which it allows to those of its purchasers which it classifies as "institutional suppliers" or "sub-jobbers."

Respondent has so discriminated in that it has priced and sold and still does price and sell such books to such wholesalers at one discount schedule, which is as follows:

Number of copies ordered of same title:	Discount from list price (percent)
1–50	43
50–99	44½
100–999	46
1,000 and over	48–50

while respondent was and is pricing and selling such books to institutional suppliers or sub-jobbers who are in competition in the resale of said books with the wholesalers receiving the aforementioned discounts, at the following discount schedule:

Number of copies ordered:	Discount from list price (percent)
1–25 of the same title 1–50 of assorted titles	
25–99 of the same title 50 or more of assorted titles	43
100–999 of the same title	44
1,000 and over of the same title	46

PAR. 6. The effect of the aforesaid discriminations or any appreciable part thereof has been, or may be, substantially to lessen competition or tend to create a monopoly in the respondent and said wholesalers in the respective lines of commerce in which they are engaged, and to injure, destroy, or prevent competition respectively with respondent and with said wholesalers who receive the benefit of said discriminations or with the customers of either of them.

PAR. 7. The acts and practices of respondent, as alleged in Paragraph Five hereof, are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Section 13).

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter, issued December 21, 1955, charges the respondent with discriminating in the prices of its products in violation of Section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act. An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and 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; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and 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.

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

1. Respondent Thomas Y. Crowell Company is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 432 Fourth Avenue, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent, Thomas Y. Crowell Company, a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the publication, sale or distribution of any type or class of books, including popular fiction and nonfiction books which are commonly known as "trade books," in commerce, as "commerce" is defined, construed and understood in the Clayton Act (15 U.S.C.A., Section 15), do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such books published by it by selling to any purchaser at net prices higher than the net prices charged any other purchaser competing in fact in the resale and distribution of said books.

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 March, 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

CHARLET UNDERGARMENT CORPORATION ET AL.

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

Docket 6399. Complaint, Aug. 23, 1955—Decision, Mar. 7, 1956

Consent order requiring a seller in Passaic, N. J., to cease misrepresenting the retail selling price, quality, and value of slips and other women's garments, through such statements on tickets affixed to them prior to their sale to retailers and dealers as "Made to sell for $5.95," when the usual price of the garments was substantially less.

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. Terral A. Jordan for the Commission.
Muhlstock & Blei, of New York City, for respondents.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Charlet Undergarment Corporation, a corporation, and Leonard Steinman, Charles Gerber, and Ted Pojanowski, 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 Charlet Undergarment Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 122 Eighth Street, Passaic, New Jersey. Respondents Leonard Steinman, Charles Gerber, and Ted Pojanowski are President, Treasurer, and Secretary, respectively, of said corporate respondent. These individuals, acting in conjunction with each other formulate, direct, and control all of the policies, acts, and practices of said corporation. Their address is the same as that of the corporate respondent.

Par. 2. Respondents are now, and have been for more than six months last past, engaged in the sale and distribution of women's slips and wearing apparel to retailers and dealers in commerce among and between the various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said garments, in commerce, among and between the various States of the United States and in the District of Columbia. Said slips and wearing apparel are sold to retailers and dealers for resale to the purchasing public.

PAR. 3. In the course and conduct of their said business respondents have made and continue to make many representations respecting the retail selling price or quality or value of said slips and wearing apparel. These representations are and have been made on the tickets affixed by respondents to said women's slips prior to their sale and distribution as aforesaid.

Typical and illustrative of such representations are the following:

Made to sell for $5.95.
Suggested Retail Price $5.95.

PAR. 4. Through the use of the aforesaid representations and others similar thereto not specifically set forth herein, respondents have represented and now represent, directly or by implication:

(*a*) That the said slips preticketed as aforesaid sell and have sold in the usual and customary course of business at retail for $5.95 each.

(*b*) That their said slips preticketed as aforesaid are of a quality or value equal to similar merchandise made by other manufacturers and offered for sale and sold in the usual and customary course of business at retail for $5.95 each.

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

(*a*) Respondents' said slips preticketed as aforesaid do not sell and have not sold in the usual and customary course of business at retail for $5.95 each; but said slips sell and have sold in the usual and customary course of business at retail for an amount substantially less than $5.95 each.

(*b*) Respondents' said slips preticketed as aforesaid are not of a quality or value equal to similar merchandise made by other manufacturers and offered for sale and sold in the usual and customary course of business at retail for $5.95; but said slips are of a quality or value equal to similar merchandise made by other manufacturers and offered for sale and sold in the usual and customary course of business at retail for substantially less than $5.95 each.

PAR. 6. By furnishing to retailers and dealers preticketed women's slips as aforesaid, respondents provide such retailers and dealers with the means and instrumentalities through and by which they may mislead and deceive the purchasing public as to the usual

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and customary retail selling price or quality or value of said slips.

PAR. 7. In the course and conduct of their business respondents are in direct and substantial competition with other corporations, firms, and individuals engaged in the sale, in commerce, of women's slips and wearing apparel.

PAR. 8. The aforesaid acts and practices of the respondents had and now have the capacity and tendency to mislead and deceive a substantial number of retailers, dealers, and members of the purchasing public with respect to the usual and customary retail selling price or quality or value of respondents' said slips. 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. 9. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair 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 23, 1955, charging them with having violated the Federal Trade Commission Act through the making of certain misrepresentations regarding the retail selling price or quality or value of women's slips and wearing apparel.

After the issuance of said complaint and the filing of their answer thereto, the respondents entered into an agreement with counsel supporting the complaint, dated November 28, 1955, providing for the entry of a consent order disposing of all the issues in this proceeding as to all parties, which agreement was duly approved by the Acting 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 said agreement.

By said agreement respondents' 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 said agreement. It was further agreed 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 respondents that they have violated the law as alleged in the complaint. The agreement also provided that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; that it may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

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

1. Respondent Charlet Undergarment Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 122 Eighth Street in the City of Passaic, State of New Jersey. Respondents Leonard Steinman, Charles Gerber, and Ted Pojanowski are individuals and are President, Treasurer, and Secretary, respectively, of said 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 respondents, Charlet Undergarment Corporation, a corporation, and its officers, and Leonard Steinman, Charles Gerber, and Ted Pojanowski, individually and as officers of said corporate respondent, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of women's wearing apparel, including underclothes and slips, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly, indirectly, or by implication, or providing retailers, dealers, or others with pre-ticketed merchandise or other material, device, or plans which represent, directly, indirectly, or by implication:

1. That the regular retail selling price of respondents' said wearing apparel is any amount greater than the price at which such wearing apparel is usually and customarily sold at retail by retailers regularly selling such wearing apparel;

2. That the retail value of respondents' said wearing apparel is equal to the retail selling price of higher-priced merchandise made by other manufacturers regularly selling or having been sold contemporaneously in the same general trade area supplied by respondents and such other manufacturers, unless respondents' said wearing apparel is in fact of substantially equal grade, quality, design, and workmanship to said higher-priced merchandise, in which case respondents may so represent.

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 March 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

ELMO, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS. 2 (d) AND 2 (e) OF THE CLAYTON ACT

Docket 6443. Complaint, Nov. 8, 1955—Decision, Mar. 7, 1956

Consent order requiring a manufacturer of cosmetics, beauty aids, and toilet preparations to cease discriminating in price in violation of subsections 2 (d) and 2 (e) of the Clayton Act, as amended, through furnishing demonstrator services and promotional and advertising allowances in varying amounts to certain customers, but not to their competitors in the Chicago trade area, and not requiring from the favored customers reciprocal services of proportionally equal degree.

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. Donald K. King for the Commission.
LaBrum & Doak, of Philadelphia, Pa., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent Elmo, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at Tulip and Rhawn Streets, Philadelphia, Pennsylvania.

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

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

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

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

PAR. 6. Specifically respondent:

1. Furnished or contracted to furnish demonstrator services or allowances and/or paid or contracted to pay promotional allowances and/or advertising allowances to some competing customers and respondent did not offer to pay or otherwise make available any such services and/or allowances or any alternative services to all other competing customers.

2. Furnished or contracted to furnish demonstrator services or allowances, and/or paid or contracted to pay promotional allowances and/or advertising allowances to certain competing customers in amounts (based on respondent's costs) not equal to the same percentage of net purchases of respondent's products by such customers and not proportionally equal by any other test; and respondent did not offer to pay or otherwise make available such services and allowances in amounts equal to the largest of such percentages to all such competing customers, and not proportionally equal by any other test.

Illustrative of and included among the practices referred to above were respondent's following described dealings with its 42 accounts in the Chicago, Illinois, trade area during 1954:

1. Five competing customers received from respondent demonstrator services or allowances in amounts, based on respondent's cost, varying from 7.6% up to 55.9% of their individual net purchases from respondent.

2. Eight competing customers received from respondent promotional allowances at substantially different rates ranging up to 25% of their individual net purchases from respondent.

3. Six competing customers received from respondent contributions for cooperative advertising at substantially different rates ranging up to 100% of their individual net purchases from respondent.

4. Other competing customers were accorded and received no such services or allowances from respondent.

5. Reciprocal services of a proportionally equal degree were not demanded or required by respondent from said competing customers in exchange for respondent's contributions to them. For example, in some instances some customers were required to file retail sales reports to receive promotional allowances while others were paid solely on the basis of net purchases. In other instances some customers receiving the smaller payment or allowance were required to furnish a greater amount of counter and display space than were other customers receiving the greater payment or allowance.

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

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

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on November 8, 1955, charging it with a violation of subsections (d) and (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. After being duly served with said complaint, the respondent in lieu of submitting answer to said complaint, entered into an agreement on December 27, 1955, for a consent order with counsel supporting the complaint, disposing of all the issues in this proceeding in accordance with Section 3.25 of the Rules of Practice and Procedure of the Commission, which agreement has been duly approved by the Acting Director of the Bureau of Litigation.

Respondent, pursuant to the aforesaid agreement, has 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. Respondent 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 it 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 respondent that it has 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 and the Amended Trade Practice Rules for the Cosmetic and Toilet Preparations Industry, promulgated September 10, 1954, 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 Elmo, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at Tulip and Rhawn Streets, Philadelphia, Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, which is in the public interest, and of the respondent hereinabove named; the complaint herein states a cause of action against said respondent under the provisions of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Section 13).

ORDER

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

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

2. Furnishing or contributing to the furnishing of demonstrator services to any purchaser of its products when such services are not accorded on proportionally equal terms to all other purchasers located in the same competitive trade area, or all other purchasers who in fact resell such products in competition with purchasers who receive such demonstrator services.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner herein; and

It appearing that the word "By" was superfluously used to commence Paragraph 2 of the order to cease and desist contained therein:

It is ordered, That this case be, and it hereby is, placed on the Commission's own docket for review.

It is further ordered, That the word "By," appearing as the first word of Paragraph 2 of the order to cease and desist contained in the initial decision, be deleted.

It is further ordered, That the initial decision as so modified shall, on the 7th day of March 1956, become the decision of the Commission.

It is further ordered, That Elmo, Inc., 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.