

Decision

IN THE MATTER OF
SYDCO INDUSTRIES, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket 6774. Complaint, Apr. 11, 1957—Decision, July 17, 1957

Consent order requiring a dealer in New York City to cease misbranding wool-filled bed comforters by failing to disclose the nature of the fibers used in the covering materials, and to cease marking containers of such comforters with fictitious prices and with the word "Mothproof" improperly.

Michael J. Vitale and Thomas A. Ziebarth, Esqs. in support of the complaint.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued April 11, 1957, charges the respondents Sydco Industries, Inc., a corporation, and Morton Springer, individually and as an officer of the corporate respondent, with violation of the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and of the Rules and Regulations promulgated under authority of the said Wool Products Labeling Act, in connection with the sale, offering for sale and distribution of bed comforters under the brand name "Sweetheart Custom Made Comforter," in commerce, as "commerce" is defined in said Acts.

After the issuance of said complaint respondents, on May 28, 1957, entered into an agreement for a consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation of the Federal Trade Commission. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement the parties expressly waived a hearing before the Hearing Examiner or the Commission, the making of findings of fact or conclusions of law by the Hearing Examiner or the Commission, the filing of exceptions and oral argument before the Com-

mission, and all further and other procedure before the Hearing Examiner and the Commission to which the respondents may otherwise, but for the execution of said agreement, be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

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

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

Said agreement recites that respondent Sydco Industries, Inc., is a corporation existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at No. 624 Broadway, New York, New York; that respondent Morton Springer is an individual and President of the corporate respondent; that as such he formulates, directs and controls the policies, acts and practices of the corporate respondent.

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

ORDER

It is ordered. That respondents Sydco Industries, Inc., a corporation, and its officers and Morton Springer, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "com-

merce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of bed comforters or other "wool products" as such products are defined in and subject to said Wool Products Labeling Act, which products contain, purport to contain, or in any way are represented as containing "wool," "re-processed wool" or "reused wool" as these terms are defined in said Act, do forthwith cease and desist from misbranding such products by:

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

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

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

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

It is further ordered, That Sydco Industries, Inc., a corporation, and its officers and Morton Springer, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of bed comforters or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

1. Representing in any manner that said bed comforters or any other products are mothproof, when such is not the fact.

2. Representing in any manner that various prices are the regular and usual retail prices of bed comforters or other products when such prices are in excess of the prices at which such bed comforters or other products are usually and regularly sold at retail.

3. Putting into operation any plan or scheme, or furnishing any materials, devices, or promotional media whereby retailers or others may misrepresent the regular and usual retail prices of merchandise.

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 17th day of July, 1957, become the decision of the Commission; and, accordingly:

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

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IN THE MATTER OF
SUPERIOR DISTRIBUTING CORPORATION ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6719. Complaint, Feb. 1, 1957—Decision, July 18, 1957

Consent order requiring sellers in Denver, Colo., to cease representing falsely—through salesmen whom they furnished with sales literature and by advertising in newspapers and periodicals—the profits to be made by a purchaser of ten of their hot drink vending machines or the assistance they rendered purchasers in obtaining locations, that they trained purchasers in maintenance and servicing the machines, allotted exclusive territory, or conducted surveys to determine the number of machines that could be profitably located in a locality; and requiring them to meet promised delivery dates.

Mr. William A. Somers for the Commission.

Mr. Thomas K. Hudson, of Denver, Colo., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that the respondents have violated the provisions of the Federal Trade Commission Act by the use of false and misleading newspaper advertisements in connection with the sale of hot drink vending machines.

After issuance and service of the complaint, the respondents, their counsel, and counsel supporting the complaint entered into an agreement for a consent order. The order disposes of the matters complained about. The agreement has been approved by the Director and Assistant Director of the Bureau of Litigation.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusion of law; respondents waive further procedural steps before the Hearing Examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement; and the signing of said agreement is for settlement purposes only and does not

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constitute an admission by respondents that they have violated the law as alleged in the complaint.

The Hearing Examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. The respondent Superior Distributing Corporation, is a corporation organized and doing business under the laws of the State of Colorado, with its office and principal place of business located at 4555 East Warren Avenue, Denver, Colorado. The individual respondent Glenn E. Mercer is the president of said corporation and his office and principal place of business is the same as that of the corporation.

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

ORDER

It is ordered, That respondents Superior Distributing Corporation, a corporation, and its officers; Glenn E. Mercer, individually and as an officer of said corporation and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of vending machines or vending machine supplies, or both, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That the earnings or profits derived from the operation of respondents' machines are any amounts in excess of those which have been, in fact, customarily earned by operation of their machines.

2. That respondents' experts, or any other person or persons, will obtain satisfactory or profitable locations, or any other locations, for machines purchased from respondents, unless such is the fact.

3. That purchasers of respondents' machines will be trained by respondents' experts, or by any other person, in the maintenance, repair or servicing of said machines, or in any other respect, unless such is the fact.

4. That respondents will allot exclusive territory in which machines purchased by them may be located, unless such is the fact.

5. That respondents conduct surveys of any nature in localities in which their machines are offered for sale, unless such is the fact.

6. That machines purchased will be delivered within a specified period of time unless delivery is made within the time specified.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 18th day of July 1957, 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
BELL & HOWELL COMPANY

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

Docket 6729. Complaint, Feb. 20, 1957—Order, July 19, 1957

Order on interlocutory appeal dismissing—due to abandonment of the alleged unfair practices when respondent terminated its over-all fair trade program prior to issuance of complaint—complaint charging sellers of audio-visual equipment with unfair practices in cases of sales outside of allocated territories, and sales at less than “fair trade” prices, both types of practices dependent for operation upon the establishment of minimum retail prices under the various State fair trade laws.

Before *Mr. John B. Poindexter*, hearing examiner.

Mr. William H. Smith for the Commission.

Campbell, Miller, Carrol & Paxton, of Chicago, Ill., and *Howrey & Simon*, of Washington, D.C., for respondent.

ON INTERLOCUTORY APPEAL FROM RULING OF THE HEARING EXAMINER

By the Commission:

Respondent has appealed from the hearing examiner's order of May 29, 1957, denying its motion to dismiss. Counsel in support of the complaint has filed an answer in opposition thereto. The sole question presented for determination by the Commission is whether the complaint should be dismissed on the ground that the practices alleged have been surely stopped and there is no likelihood that they will be resumed in the future.

Complaint herein was served February 28, 1957. It attacks particularly two practices engaged in by respondent as being violative of Section 5 of the Federal Trade Commission Act. The first of these involves contracts between respondent and its special representatives who sell audio-visual equipment to institutions and commercial accounts whereby such special representatives, if they sell outside their allocated territory, are required to pay respondent the difference between the “dealer net price and the minimum retail price established by respondent.” The second practice involves sales by special representatives or regular retail dealers at less than “fair trade” prices. Where such sales are made, respondent collects from the offender an amount equal to the profit realized on the sale, or equal to the established dealer discount, which in turn is paid to

one of respondent's other dealers who has claimed injury by reason of loss of such sale.

Respondent, according to the supporting affidavits accompanying its motion for dismissal, effective February 1, 1957, terminated its over-all fair trade program, and because both of the practices in question depended for their operation upon the existence of established minimum retail prices under the various state fair trade laws, they became inoperative. Such action was announced to respondent's dealers and to the public in January, 1957, prior to issuance of the complaint herein.

Respondent's action in voluntarily abandoning the practices complained of, it is shown, resulted from its appraisal of the difficulty of maintaining a fair trade program in the light of developments in that field of law in recent years. This evidences respondent's bona fide abandonment of the practices claimed to be unlawful and, we think, establishes it is not only unlikely that they will be resumed, but that there is no reasonable possibility that they will be resumed. The sworn assurances of respondent's responsible officers that the practices will not be revived are likewise persuasive that the "practices alleged have been surely stopped and there is no likelihood that they will be resumed in the future." Everything that could be accomplished by a cease and desist order has been accomplished. It would not be in the public interest for the Commission to issue an order to cease and desist at this time. It is the Commission's opinion that the hearing examiner acted erroneously in denying respondent's motion for dismissal and that respondent's appeal should be granted. The Commission is further of the opinion that the complaint in this proceeding should be dismissed without prejudice. An appropriate order will be entered.

Briefs filed by counsel in support of, and in opposition to, respondent's appeal have afforded sufficient basis for an informed determination on the merits of the appeal and respondent's request for oral argument, therefore, is not being granted.

Chairman Gwynne did not participate in the decision herein.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

This matter having come on to be heard by the Commission upon appeal from the hearing examiner's order denying respondent's motion to dismiss the complaint, and answer of counsel supporting the complaint filed in opposition to the appeal; and

The Commission, for the reasons stated in its accompanying opinion, having determined that respondent's appeal is well taken:

It is ordered, That the appeal of respondent be, and it hereby is, granted.

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It is further ordered, That the complaint in this proceeding be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to issue a new complaint or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

Chairman Gwynne not participating.

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IN THE MATTER OF
NORD-RAY BELT MFG., INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6780. Complaint, Apr. 16, 1957—Decision, July 20, 1957

Consent order requiring a New York manufacturer to cease preticketing ladies', men's, and boys' belts with fictitious prices, thereby giving retailers the means to deceive the public into believing the actual selling price a bargain.

Mr. Harry E. Middleton, Jr. for the Commission.

Hoffman, Buchwald, Nadel, Cohen & Hoffman, by *Mr. Irving Margolies*, of New York, N.Y., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, The Federal Trade Commission on April 16, 1957, issued and subsequently served its complaint in this proceeding against respondents Nord-Ray Belt Mfg., Inc., 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 670 Broadway, New York, New York; Ray (Raymond) Sokoloff and Aaron Nordwind (erroneously named in the complaint as Aaron Nordwin), individually and as president-secretary, and vice president-treasurer, respectively, of the corporate respondent. The office and principal place of business of said respondents is the same as that of the corporate respondent.

On June 5, 1957, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the deci-

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sion of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents, and, when so entered, it shall have the same force and effect as if entered after a full hearing, and may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

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

1. Respondent Nord-Ray Belt Mfg., Inc., is a corporation existing and doing business under the laws of the State of New York, with its office and principal place of business located at 670 Broadway, New York, New York. Respondents Ray (Raymond) Sokoloff and Aaron Nordwind (erroneously named in the complaint as Aaron Nordwin) are president-secretary, and vice president-treasurer, respectively, of said corporation, with their office and principal place of business located at the same address as the corporate respondent,

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

ORDER

It is ordered, That the respondents Nord-Ray Belt Mfg., Inc., a corporation, and its officers, Ray Sokoloff and Aaron Nordwind, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of belts or other merchandise, do forthwith cease and desist from:

1. Representing by preticketing or in any manner that certain amounts are the usual and regular retail price for their products when such amounts are in excess of the prices at which their products are usually and regularly sold at retail.

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2. Putting into operation any plan whereby retailers or others may misrepresent the regular and usual retail price of merchandise.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 20th day of July, 1957, 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
SCHICK, INC.

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

Docket 6543. Complaint, Apr. 30, 1956—Decision, July 23, 1957

Consent order requiring a manufacturer of electric razors to cease representing falsely in advertising on nationwide telecasts and in magazines and newspapers, etc., that a purchaser would get his money back in full if not satisfied with a Schick electric razor after a 14-day trial; and to cease selling as new, razors which it had "redressed" or reconditioned after such home trials or after their use as salesmen's samples or for display and demonstration purposes.

Mr. Harold A. Kennedy for the Commission.

Dunnington, Bartholow & Miller, by *Mr. R. D. Saxe*, of New York, N.Y., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on April 30, 1956, charging Respondent with nationally advertising a 14-day free home trial offer of its razors which had not been honored by all retailers, and with selling used razors as new, in violation of the Federal Trade Commission Act.

On May 20, 1957, Respondent, its counsel and counsel supporting the complaint entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and the Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the Hearing Examiner for consideration.

Respondent Schick, Inc. is identified in the agreement as a Delaware corporation, with its office and principal place of business located at 216 Greenfield Road, Lancaster, Pennsylvania.

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

Respondent, in the agreement, waives any further procedure before the Hearing Examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights it 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; that the order to cease and desist as contained in the agreement 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; that the complaint herein may be used in construing the terms of said 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.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the Respondent and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

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

1. Representing, directly or indirectly, that any purchaser of such product may obtain a refund of the purchase price thereof by returning said product to the retailing seller thereof within 14 days after its purchase, or within any other specified period of time, unless such is the fact;

2. Offering for sale, selling or delivering to others for ultimate sale to the public such product if composed in whole or in part of previously used materials, unless clear disclosure is made on such product, in such manner that it cannot be readily hidden or obliterated, that such product is composed, in whole or in part, as the case may be, of previously used materials.

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 twenty-

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third day of July, 1957, become the decision of the Commission; and, accordingly:

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

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IN THE MATTER OF
THE LAFAYETTE BRASS MANUFACTURING
COMPANY, INC., ET AL.

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

Docket 6671. Complaint, Oct. 31, 1956—Decision, July 23, 1957

Consent order requiring three associated New York concerns to disclose the foreign origin of lawn sprinklers, hose nozzles and connections, and faucet aerators they import in whole or in part from Japan, and to cease selling such products as wholly of domestic origin; and to cease misrepresenting the extent to which their sprinklers can withstand water pressure.

A charge that respondents falsely represent that they manufacture the products they sell, by use of the word "Manufacturing" in their corporate names, is still pending.

Simeon F. House, Esq. supporting the complaint.

Charles Korn, Esq., and *Marvin Machson, Esq.*, of New York, N.Y., for respondents.

INITIAL DECISION PRO TANTO* BEFORE JAMES A. PURCELL,
HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on October 31, 1956, charging them with violation of the Federal Trade Commission Act in the offering for sale, sale and distribution of various products, including lawn sprinklers, hose nozzles, hose connections and faucet aerators, in commerce as the word "commerce" is defined in said Act. Subsequent to service of the complaint respondents appeared by counsel and thereafter entered into an agreement providing for the issuance of a consent order to cease and desist, dated May 9, 1957, purporting to dispose of all of the charges of the complaint as to all parties, *except* as to the use of the word "manufacturing" in the corporate names of the respondents The Lafayette Brass Manufacturing Company, Inc., and The Durst Manufacturing Company, Inc., as more specifically charged in Paragraph Nine of the complaint.

Said agreement, which has been signed by all respondents and their counsel, as well also by counsel in support of the complaint,

* There remains to be disposed of by future action a charge in the complaint of improper and misleading use of the word "manufacturing" in the corporate names of respondents, The Lafayette Brass Manufacturing Company, Inc., and The Durst Manufacturing Company, Inc.

and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration and action in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional facts alleged in the complaint, and have agreed that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. Said agreement further provides that, with respect to that part of the proceeding therein disposed of, respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with said agreement. It has also been agreed 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 and that the complaint may be used in construing the terms of said order. It was further agreed that the aforesaid 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 portion of this proceeding, which is the subject of the aforementioned agreement containing consent order, having now come on for final consideration on the complaint and the said agreement, and it appearing that, with respect to the issues covered by said agreement, the order therein contained provides for an appropriate disposition, *pro tanto*, of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon becoming a part of the decision of the Commission, pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice. The hearing examiner accordingly makes the following jurisdictional findings and order:

1. That respondents, The Lafayette Brass Manufacturing Company, Inc., The Durst Manufacturing Company, Inc., and Marshall Metal Products, Inc., are corporations existing and doing business under and by virtue of the laws of the State of New York, with their offices and principal place of business located at No. 409 Lafayette Street, New York, New York. Respondents Pauline D. Kohn, Norman Redlich and David Durst are officers of said corporations and formulate, direct and control the policies, acts and practices of said corporate respondents. Their address is the same as that of the corporate respondents.

2. That the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named.

3. That the complaint herein states a valid cause of action against the said respondents, under the provisions of the Federal Trade Commission Act, and that this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents The Lafayette Brass Manufacturing Company, Inc., a corporation, The Durst Manufacturing Company, Inc., a corporation, Marshall Metal Products, Inc., a corporation, and their officers, and respondents Pauline D. Kohn, Norman Redlich and David Durst, individually and as officers of said corporate respondents, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the sale and distribution of lawn sprinklers, hose nozzles, hose connections and faucet aerators and other similar products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling said products, which are in whole or substantial part of foreign origin, without clearly and conspicuously disclosing on such products and their containers, in such manner that it will not be hidden or obliterated, the country of origin thereof.

2. Representing, directly or by implication, that its products are of domestic origin, when, in fact, such products are manufactured in whole or in substantial part in Japan or any other foreign country.

3. Representing, directly or by implication, that their lawn sprinklers are crimped in such a manner as to withstand the water pressure of any municipality in the United States, unless such is the fact, or otherwise misrepresenting the extent to which said sprinklers can withstand water pressure.

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 23rd day of July, 1957, 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.

Appearances

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IN THE MATTER OF
CALIFORNIA FISH CANNERS ASSOCIATION, INC., ET AL.

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

Docket 6623. Complaint, Aug. 29, 1956—Decision, July 24, 1957

Consent order requiring a substantial part of the West Coast tuna industry, including an association of cannery members and its eight corporate members, seven associations of tuna boat owners, and three area unions of fishermen and cannery workers, to cease concerted fixing of prices for the purchase and sale of canned, raw, or frozen tuna fish, and suppressing competition in the industry, including practices of curtailing the volume and raising the price of tuna imported from Japan, maintaining a patrol of all fishing ports coming into San Pedro harbor to unload at the canneries to ascertain that they sold all tuna at the established prices and paid an assessment for the maintenance of the patrol, coercing buyers to pay fixed prices and, on the part of the cannery members' association, collecting statistics of individual inventories, purchases, sales, etc., for price-fixing purposes; and Order dismissing complaint as to certain respondents.

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

Mr. Fletcher G. Cohn, *Mr. Lewis F. DePro*, *Mr. Arthur Edgeworth* and *Mr. Charles I. Steele* for the Commission.

Covington & Burling, of Washington, D.C., for California Fish Cannery Ass'n, Inc.

Ekdale & Shallenberger, of San Pedro, Calif., for F. E. Booth Co., Inc., Pan-Pacific Fisheries, Inc., South Coast Fisheries, Inc., South Pacific Canning Co., Inc., West Shore Co. and South Pacific Canning Co.

Mr. Herbert R. Lande, of San Pedro, Calif., for California Marine Curing & Packing Co.

Mr. J. Marion Wright, of Los Angeles, Calif., for Franco-Italian Packing Co., Inc.

Mr. M. L. Real, of San Diego, Calif., for High Seas Tuna Packing Co., Inc., Pan-Pacific Fisheries, Inc., The Quaker Oats Co., South Coast Fisheries, Inc., South Pacific Canning Co., Inc., West Shore Co. and South Pacific Canning Co.

Mitchell, Silberberg & Knupp, of Los Angeles, Calif., for The Quaker Oats Co.

Mr. Douglas R. Giddings, of San Diego, Calif., for Breast-o'-Chicken Tuna, Inc., Van Camp Sea Food Co., Inc., Western Cannery Co. and Westgate-California Tuna Packing Co.

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

Mr. John Gerald Driscoll, Jr., of San Diego, Calif., for American Tunaboat Ass'n and its officers, directors and members.

Mitchell & Hilbert, of Los Angeles, Calif., for Fishermen's Association of San Pedro and its officers, directors and members and Mason Case.

Lind & Schmitz, of Wilmington, Calif., for California Commercial Fishermen's Ass'n and Federated Fishermen's Ass'n, Inc. and their officers, directors and members.

Mr. John H. Thomsen, of San Diego, Calif., for Five Star Fish and Cold Storage and its officers, directors and members.

Lycette, Diamond & Sylvester, of Seattle, Wash., for Fishermen's Cooperative Ass'n (of Seattle) and its officers, directors and members.

Turner & Winslow, of Fort Bragg, Calif., for Salmon Trollers Marketing Ass'n, Inc. and its officers, directors and members.

Rose, Klein & Marias, of Los Angeles, Calif., for Cannery Workers & Fishermen's Union of the Pacific and its officers, trustees and members.

Margolis, McTernan & Branton, of Los Angeles, Calif., for Local No. 33, Fishermen and Allied Workers Division, International Longshoremen & Warehousemen's Union and its officers, trustees, members of the Executive Board and members.

Gilbert, Nissen & Irvin, of Los Angeles, Calif., for Seine and Line Fishermen's Union of San Pedro and its officers, trustees, members of the Executive Board and members.

DECISION OF THE COMMISSION

On August 29, 1956, the Federal Trade Commission issued its complaint in this proceeding, charging that the corporations, firms and persons therein named as respondents had engaged in unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. After service of the complaint, six agreements were entered into between counsel supporting the complaint and certain of the respondents or counsel for various of them, each of which agreements contained a consent order in disposition of all of the issues of this proceeding with respect to the respondents to whom such agreements relate. The term "respondents" as used hereinafter refers to the aforesaid respondents to whom the agreements relate and excludes other parties respondent in this proceeding. Under procedures provided in section 3.25(e) of the Commission's Rules of Practice, the agreements have been submitted by counsel to the Commission for its consideration.

Pursuant to such agreements, the respondents have admitted all jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts have been duly made in accordance with such allegations. The agreements further provide that the respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings as to the facts or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. The agreements further state that they are for settlement purposes only and do not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The respondents additionally have agreed that the order to cease and desist shall have the same force and effect as if entered after full hearing, and that it may be altered, modified or set aside in the manner provided by statute for other orders, and that the complaint may be used in construing the terms of the order.

For reasons stated in its accompanying opinion, the Commission has determined that the agreements containing the consent orders to cease and desist provide for an appropriate disposition of this proceeding as to the parties designated in such agreements, and the same are accepted and ordered filed; and

Having determined that this proceeding is in the public interest, the Commission hereby makes the following findings, for jurisdictional purposes, and order:

PAR. 1. (a) Respondent California Fish Cannery Association, Inc., is a membership corporation, organized and existing under the laws of the State of California, with its principal office and place of business located in the Ferry Building, Terminal Island, California.

Respondent California Marine Curing & Packing Co. is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 333 Cannery Street, Terminal Island, California.

Respondent Franco-Italian Packing Co., Inc., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 223 Fish Harbor Wharf, Terminal Island, California.

Respondent Pan-Pacific Fisheries, Inc., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 350 Sardine Street, Terminal Island, California.

Respondent South Coast Fisheries, Inc., is a corporation organized and existing under the laws of the State of California, with

its principal office and place of business located at 820 Ways Street, Terminal Island, California.

Respondent Star-Kist Foods, Inc., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 582 Tuna Street, Terminal Island, California.

Breast-o'-Chicken Tuna, Inc., is the company formerly named and named in the complaint as respondent Sun Harbor Packing Company, and is a corporation organized under the laws of the State of California, as Southern California Fish Corporation, existing under such laws and acquiring the name Sun Harbor Packing Company in October, 1954; its principal office and place of business is located at 736 South Seaside Avenue, Terminal Island, California.

Respondent Van Camp Sea Food Company, Inc., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 772 Tuna Street, Terminal Island, California.

Westgate-California Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 28th and Harbor Drive, San Diego, California, and is the legal successor to respondent Westgate-California Tuna Packing Company, which was a corporation organized and existing under the laws of the State of California, with its principal office and place of business also located at 28th and Harbor Drive, San Diego, California.

(b) The respondent High Seas Tuna Packing Co., Inc., is no longer in existence; the respondents South Pacific Canning Co., Inc., and West Shore Company, and respondents Carleton E. Byrne, Esther J. Byrne, Robert C. Jackson, Edith Lloyd Smith, and Lloyd Melvin Smith, formerly doing business as South Pacific Canning Company, are no longer in business; Walter M. Longmoor, Jerrold E. Spangler and Thomas A. Thomas, doing business as Western Cannery Company, are not commercially engaged in the business of canning tuna, nor is the Quaker Oats Company. Respondent F. E. Booth Company, Inc., has taken no active part in the acts and practices alleged in the complaint, and respondent Columbia River Packers Association, Inc., took no part in the acts and practices alleged in the complaint.

PAR. 2. Respondent, American Tunaboat Association, is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at No. 1 Tuna Lane, in the City of San Diego, State of California.

Respondent, Fishermen's Association of San Pedro (the legal successor to Fishermen's Cooperative Association of San Pedro, which was named as a party respondent in the complaint, and under which name this said respondent is conducting business) is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at Berth 73, in the City of San Pedro, State of California.

Respondent, California Commercial Fishermen's Association, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 745 South Seaside Avenue, Terminal Island, State of California.

Respondent, Five Star Fish and Cold Storage, is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 2401 North Harbor Drive, City of San Diego, State of California.

Respondent, Salmon Trollers Marketing Association, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at Ft. Bragg, State of California.

Respondent, Federated Fishermen's Association, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 745 South Seaside, Terminal Island, State of California.

PAR. 3. (a) Respondent Cannery Workers & Fishermen's Union of San Diego is an unincorporated association, with its office and principal place of business located at 640 State Street, San Diego, California; the individual respondents named herein as officers and trustees hold their designated positions in said Union, and have their offices and principal places of business at the same location as the respondent Union.

(b) The respondents Gus Adams, Lester Balinger, Frank Currier, A. Landowsky, George Ledesma, Frank Silva and Jack Tarantino, are representative of the entire membership of the aforesaid respondent Union.

PAR. 4. (a) Respondent Local No. 33, Fishermen and Allied Workers Division, International Longshoremen and Warehousemen's Union, is an unincorporated association, with its office and principal place of business located at 339 7th Street, San Pedro, California; the individual respondents named herein as trustees, officers, directors or members of the Executive Board of said Union

hold their designated positions in said Union, and have their offices and principal places of business at the same location as the respondent Union.

(b) The respondents Paul Higashi, Milenko D. Kolumbic, Nick Lovrich and Steve Setka, are representative of the entire membership of the aforesaid respondent Union.

PAR. 5. (a) Respondent Seine and Line Fishermen's Union of San Pedro, is an unincorporated association, with its office and principal place of business being located at 261 7th Street, San Pedro, California; the individual respondents named herein as officers, trustees and members of the Executive Board hold their designated positions in the respondent Union, and have their offices and principal places of business at the same locations as the respondent Union.

(b) The respondents John Calise, Pat DiMassa, Nick Pecoraro and Kiyohi Shigekawa, are representative of the entire membership of the aforesaid respondent Union.

ORDER

I. *It is ordered*, That the respondents California Marine Curing & Packing Co.; Franco-Italian Packing Co., Inc.; Pan-Pacific Fisheries, Inc.; South Coast Fisheries, Inc.; Star-Kist Foods, Inc.; Breast-o'-Chicken Tuna, Inc. (named in the complaint as respondent Sun Harbor Packing Company); Van Camp Sea Food Company, Inc.; and Westgate-California Corporation (the legal successor to the respondent named in the complaint as Westgate-California Tuna Packing Company), their respective successors and assigns, agents, representatives, employees, directly or through any corporate or other device, in connection with the purchase or sale or offering to purchase or to sell in commerce, as "commerce" is defined in the Federal Trade Commission Act, of canned tuna fish, raw tuna fish, or frozen tuna fish, in any form for canning, 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 or things:

1. To establish, fix, or maintain prices, terms or conditions of sale for the purchase or sale of raw or frozen tuna;
2. To refuse to sell canned tuna fish on a consignment basis, or to compel or to coerce any processor or canner not to sell canned tuna fish on a consignment basis;

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3. To negotiate jointly or collectively, by any means or method, in the purchase or sale of raw, canned or frozen tuna, in any form for canning;

Provided, That nothing in this order shall be interpreted to prevent any of said respondent Cannerys from individually negotiating and agreeing, in the purchase of raw or frozen tuna fish for canning by said Cannery, as to the price, terms or conditions of sale with any fishing vessel or other individual seller of such fish or with any Cooperative Association of fishermen acting pursuant to the Fishermen's Cooperative Marketing Act (15 U.S.C. Pars. 521-522);

Provided, further, however, That if any respondent Cannery enters into any contract or agreement with any Cooperative Association of Fishermen acting pursuant to the said Fishermen's Cooperative Marketing Act, for the purchase of raw or frozen tuna caught by any cooperative member vessel in which said Cannery has an interest, said Cannery shall not, during the term of said contract or agreement, exercise any control inconsistent with said contract or agreement, over the marketing, sale, delivery or disposition of such raw or frozen tuna fish.

Provided further, That nothing in this order shall be interpreted to prevent bona fide collective bargaining between any such respondent in its capacity as the owner or operator of any fishing vessel and any employee or employees thereon, or the Union to which they belong, with respect to their wages, hours or working conditions.

II. *It is further ordered*, That the respondent California Fish Cannerys Association, Inc., its officers and directors, and respondents California Marine Curing & Packing Co.; Franco-Italian Packing Co., Inc.; Pan-Pacific Fisheries, Inc.; South Coast Fisheries, Inc.; Star-Kist Foods, Inc.; Breast-o'-Chicken Tuna, Inc.; Van Camp Sea Food Company, Inc.; and Westgate-California Corporation, their respective successors and assigns, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase or sale or offering to purchase or to sell in commerce, as "commerce" is defined in the Federal Trade Commission Act, of canned tuna fish, or frozen tuna fish, in any form, for canning, do forthwith cease and desist from entering into, or 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, or things:

1. To establish, fix or maintain prices, terms or conditions of sale for the purchase or sale of canned tuna or of imported tuna fish, in any form, for canning;

2. To collect or to compile, for the purpose or with the effect of fixing or maintaining prices, terms or conditions of sale of canned tuna fish, statistical compilations or reports, in any form, showing, for the processors or canners furnishing same, for any period of time, the number of cases of canned tuna packed, or the number sold, or the number purchased from others, or the number of cases on hand at the end of any particular period, or showing any other similar information;

3. To restrain or to suppress competition, by any means or method, from canned tuna fish, or frozen tuna fish, in any form, for canning, imported into the United States from any other country, which has for its purpose or effect the curtailing of the volume of such imports or the raising of the prices of such imports of canned tuna fish or frozen tuna fish, in any form, for canning;

Provided, That nothing in this order shall be interpreted:

(a) To prohibit the joint collection of factual information in any exporting country for the purpose of its presentation to any agency of the United States, or of any State or to Congress;

(b) To prohibit one or more of the aforesaid respondents from entering into or continuing a bona fide partnership, joint operation, or venture for the purchase in, or from, any exporting country of canned tuna fish, or frozen tuna fish, in any form, for canning; but this proviso shall not be construed as an approval or disapproval of the legality of any specific partnership, joint operation or venture, or as permitting the formation or continuation of such a partnership, joint operation or venture, where the purpose or the effect of same is to render ineffectual or unenforceable any of the inhibitions of this order;

(c) To prevent any respondent canner from directing the operations of any corporation which it utilizes in marketing its canned tuna fish and which is wholly or substantially owned by the same interests, where such marketing operations do not result in any restraint of trade.

It is further ordered. That the complaint be dismissed as to the respondents F. E. Booth Company, Inc.; High Seas Tuna Packing Co., Inc.; Quaker Oats Company; South Pacific Canning Co., Inc.; West Shore Company, Carleton E. Byrne, Esther J. Byrne, Robert C. Jackson, Edith Lloyd Smith and Lloyd Melvin Smith, doing business as South Pacific Canning Company; and Walter M. Longmoor, Jerrold E. Spangler and Thomas A. Thomas, doing business

as Western Cannery Company; and Columbia River Packers Association, Inc.

III. *It is further ordered*, That respondents American Tunaboat Association, a corporation organized and existing under the laws of the State of California; Fishermen's Association of San Pedro (the legal successor to Fishermen's Cooperative Association of San Pedro, which was named as party respondent in the complaint, and under which name this said respondent is conducting business), a corporation organized and existing under the laws of the State of California; California Commercial Fishermen's Association, Inc., a corporation organized and existing under the laws of the State of California; Five Star Fish and Cold Storage, a corporation organized and existing under the laws of the State of California; Salmon Trollers Marketing Association, Inc., a corporation organized and existing under the laws of the State of California; and Federated Fishermen's Association, Inc., a corporation organized and existing under the laws of the State of California; and each of said respondents, and their respective successors and assigns, and each and all of them, acting by or through any of their respective officers, directors, agents, employees or members, directly or through any corporate or other device, in connection with the sale or purchase or offering to sell or purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of raw tuna fish in any form for canning, 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 any other respondent or respondents in the instant case, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

1. To negotiate jointly or collectively, by any means or method, in the sale or purchase of raw tuna fish, or to establish, fix or maintain prices, terms or conditions of sale for the sale or purchase of said raw tuna fish, except in the manner and to the extent authorized by law, as hereinafter set forth in the first proviso hereto;

2. To threaten, coerce or compel, by any means or method, as a condition or requirement for the purchase or prospective purchase of said raw tuna fish, the prior simultaneous or subsequent purchase of any other type or species of raw fish;

3. To threaten, coerce or compel, by any means or method, as a condition or requirement for the purchase or prospective purchase of any other type or species of raw fish, the prior, simultaneous or subsequent purchase of raw tuna fish;

4. To participate in, oversee, or contribute to any assessment or levy, by whatever name called or by whatever means computed, for the purpose or with the effect of attempting to establish, fix or maintain, or establishing, fixing or maintaining prices for the purchase or sale of raw tuna fish, by the patrolling of waters or harbors leading into or forming part of any port or ports;

5. To curtail or attempt to curtail the importation of raw or frozen tuna from any foreign country into the United States by any means or method not permitted by law.

6. To create, form, maintain or operate or to attempt to create, form, maintain or operate any corporation, association, group or organization of those who own, control or operate fishing boats which are engaged wholly or partially in the catching of raw tuna, by whatever name called, without its having control over the marketing, sale, delivery and disposition of raw tuna fish caught by all of its members.

Provided, however, That nothing herein shall prevent any association of bona fide tuna fishermen acting pursuant to and in accordance with the provisions of the Fishermen's Cooperative Marketing Act (15 U.S.C.A. Pars. 521-522) from performing any of the acts and practices permitted by said Act.

Provided further, The fact that any of the aforesaid corporations may have negotiations with any prospective purchaser for the purchase and sale of future catches of tuna by any of its members, for the purpose or with the effect of entering into, or which actually results in, or does not result in, a contract or agreement for the purchase and sale of any type or species of fish other than raw tuna, in addition to the purchase and sale of said raw tuna, shall not, in itself, be interpreted or construed as violation of the aforesaid subsections 2 or 3.

Provided further, That nothing herein contained shall prevent the proper enforcement by any of the aforesaid corporations of any existing contract or contracts which it has, or may have, with its own members or any purchasers of raw tuna fish caught by its members.

It is further ordered, That the charges of the complaint be, and they hereby are, dismissed as to the respondent individuals joined as parties hereto in Paragraphs 3, 4, 5, 6, 8 and 9 of the complaint in their individual capacities and in their capacities as officers, directors and representatives of all the members of respondents American Tunaboat Association, Fishermen's Association of San Pedro, California Commercial Fishermen's Association, Inc., Five Star Fish and Cold Storage, Salmon Trollers Marketing Association, Inc., and Federated Fishermen's Association, Inc.

IV. *It is further ordered*, That respondents Cannery Workers & Fishermen's Union of San Diego (incorrectly referred to in the complaint as Cannery Workers & Fishermen's Union of the Pacific); its officers, trustees and members; Gus Adams, Lester Balinger, Frank Currier, A. Landowsky, George Ledesma, Frank Silva and Jack Tarantino, individually, as officers, trustees and as representative of the entire membership of Cannery Workers & Fishermen's Union of San Diego; and each of said respondents, together with all of the members of the respondent Union, and the successors, assigns, agents, representatives and employees of said respondent Union, directly or through any corporate or other device, in connection with the purchase or sale in commerce, as "commerce" is defined in the Federal Trade Commission Act, of raw tuna fish 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 any other respondent or respondents in the instant case, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

1. To establish, fix or maintain prices, for the sale or purchase of said raw tuna fish;

2. To threaten, coerce or compel, by any means or method, as a condition or requirement for the purchase or prospective purchase of said raw tuna fish, the prior, simultaneous or subsequent purchase of any other type or species of raw fish;

3. To threaten, coerce or compel, by any means or method, as a condition or requirement for the purchase or prospective purchase of any other type or species of raw fish, the prior, simultaneous or subsequent purchase of raw tuna fish;

4. To negotiate jointly or collectively, by any means or method, for the sale or purchase of said raw tuna fish;

5. Participating in, overseeing, or contributing to any assessment or levy, by whatever name called or by whatever means computed, for the purpose or with the effect of attempting to establish, fix or maintain, or establishing, fixing or maintaining prices for the purchase or sale of raw tuna fish, by the patrolling of waters or harbors leading into or forming part of any port or ports;

6. To threaten, coerce or compel, by any means or method, purchasers or prospective purchasers of any raw tuna fish, to pay, adhere to, or comply with, any particular or specific prices for the purchase or sale of same;

Provided, however, Nothing herein contained shall be construed or interpreted as preventing or prohibiting any respondent, individually, from purchasing or selling or bargaining for the purchase or sale of any such raw tuna fish with any single buyer or seller;

Provided further, That nothing herein contained shall prevent genuine collective bargaining between respondent Union and any employer or employers with respect to rates of pay or wages, hours and working conditions of any employee members of said Union, or activities in relation thereto, or shall prevent or prohibit said Union from performing any of the acts or practices permitted by the provisions of the Labor-Management Relations Act, 1947 (Act of June 23, 1947, Public Law 101, 80th Congress) or any other lawfully authorized Union activities;

Provided further, The fact that the respondent Union, acting on behalf of its members, may have negotiations with any employer or employers of said members for compensation relating to future catches of tuna by any of said members, for the purpose or with the effect of entering into, or which actually results in, or does not result in a working agreement relating to the compensation for the catching of any type or species of fish other than raw tuna, in addition to the compensation for catching said raw tuna, shall not, in itself, be interpreted or construed as a violation of the aforesaid subsections 2 or 3;

Provided further, That nothing herein contained shall be construed as preventing the enforcement, against the other parties thereto, by patrol or other means, by the respondent Union of any contract or contracts which it now has, or may have, at the time of the aforesaid enforcement, with its own members, pertaining to their relationship as members of said Union, or with any employer or employers of said members pertaining to rates of pay or wages, hours or working conditions of such members as employees;

Provided further, That nothing herein contained shall prevent bona fide fishermen members of respondent Union, or the Union itself while acting on behalf of its members, where the specific raw tuna fish has already been caught by said members and cannot otherwise be sold or disposed of in accordance with the existing contract between the employer of said members and the purchaser or purchasers named in said contract, from negotiating in good faith for the sale or to sell such specific fish, for the benefit of the members who caught same;

Provided further, That nothing herein contained shall be construed as preventing the respondent Union from taking proper ac-

tion on behalf of its members who participated in a particular catch of raw tuna fish, or the members themselves, to protect the interest of such members against a purchaser of said fish who refuses or fails to comply with, or abide by, the terms, conditions or provisions of an existing contract covering said catch, to enforce said contract.

V. *It is further ordered*, That respondents Local No. 33, Fishermen and Allied Workers Division, International Longshoremen & Warehousemen's Union, its officers, trustees, members of the Executive Board and members; Paul Higashi, Milenko D. Kolumbic, Nick Lovrich and Steve Setka, individually, as trustees, officers, directors or members of the Executive Board, and as representative of the entire membership of Local No. 33, Fishermen and Allied Workers Division, International Longshoremen & Warehousemen's Union; and each of said respondents together with all of the members of the respondent Union, and the successors, assigns, agents, representatives and employees of said respondent Union, directly or through any corporate or other device, in connection with the purchase or sale in commerce, as "commerce" is defined in the Federal Trade Commission Act, of raw tuna fish 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 any other respondent or respondents in the instant case, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

1. To establish, fix, or maintain prices, for the sale or purchase of said raw tuna fish;
2. To threaten, coerce or compel, by any means or method, as a condition or requirement for the purchase or prospective purchase of said raw tuna fish, the prior, simultaneous or subsequent purchase of any other type or species of raw fish;
3. To threaten, coerce or compel, by any means or method, as a condition or requirement for the purchase or prospective purchase of any other type or species of raw fish, the prior, simultaneous or subsequent purchase of raw tuna fish;
4. To negotiate jointly or collectively, by any means or method, for the sale or purchase of said raw tuna fish;
5. Participating in, overseeing, or contributing to any assessment or levy, by whatever name called or by whatever means computed, for the purpose or with the effect of attempting to establish, fix or maintain, or establishing, fixing or maintaining prices for the pur-

chase or sale of raw tuna fish, by the patrolling of waters or harbors leading into or forming part of any port or ports;

6. To threaten, coerce or compel, by any means or method, purchasers or prospective purchasers of any raw tuna fish, to pay, adhere to, or comply with, any particular or specific prices for the purchase or sale of same.

Provided, however, Nothing herein contained shall be construed or interpreted as preventing or prohibiting any respondent, individually, from purchasing or selling or bargaining for the purchase or sale of any such raw tuna fish with any single buyer or seller;

Provided further, That nothing herein contained shall prevent genuine collective bargaining between respondent Union and any employer or employers with respect to rates of pay or wages, hours and working conditions of any employee members of said Union, or activities in relation thereto, or shall prevent or prohibit said Union from performing any of the acts or practices permitted by the provisions of the Labor-Management Relations Act, 1947 (Act of June 23, 1947, Public Law 101, 80th Congress) or any other lawfully authorized Union activities;

Provided further, The fact that the respondent Union, acting on behalf of its members, may have negotiations with any employer or employers of said members for compensation relating to future catches of tuna by any of said members, for the purpose or with the effect of entering into, or which actually results in, or does not result in a working agreement relating to the compensation for the catching of any type or species of fish other than raw tuna, in addition to the compensation for catching said raw tuna, shall not, in itself, be interpreted or construed as a violation of the aforesaid subsections 2 or 3;

Provided further, That nothing herein contained shall be construed as preventing the enforcement, against the other parties thereto, by patrol or other means, by the respondent Union of any contract or contracts which it now has, or may have, at the time of the aforesaid enforcement, with its own members, pertaining to their relationship as members of said Union, or with any employer or employers of said members pertaining to rates of pay or wages, hours or working conditions of such members as employees;

Provided further, That nothing herein contained shall prevent bona fide fishermen members of respondent Union, or the Union itself while acting on behalf of its members, where the specific raw tuna fish has already been caught by said members and cannot otherwise be sold or disposed of in accordance with the existing contract be-

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tween the employer of said members and the purchaser or purchasers named in said contract, from negotiating in good faith for the sale or to sell such specific fish for the benefit of the members who caught same;

Provided further, That nothing herein contained shall be construed as preventing the respondent Union from taking proper action on behalf of its members who participated in a particular catch of raw tuna fish, or the members themselves, to protect the interest of such members against a purchaser of said fish who refuses or fails to comply with, or abide by, the terms, conditions or provisions of an existing contract covering said catch, to enforce said contract.

VI. *It is further ordered*, That respondents, Seine and Line Fishermen's Union of San Pedro, its officers, trustees, members of the Executive Board and members; and John Calise, Pat DiMassa, Nick Pecoraro and Kiyohi Shigekawa, individually, as officers, trustees or members of the Executive Board, and as representative of the entire membership of Seine and Line Fishermen's Union; and each of said respondents together with all of the members of the respondent Union, and the successors, assigns, agents, representatives and employees of said respondent Union, directly or through any corporate or other device, in connection with the purchase or sale in commerce, as "commerce" is defined in the Federal Trade Commission Act, of raw tuna fish 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 any other respondent or respondents in the instant case, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

1. To establish, fix or maintain prices, for the sale or purchase of said raw tuna fish;
2. To threaten, coerce or compel, by any means or method, as a condition or requirement for the purchase or prospective purchase of said raw tuna fish, the prior, simultaneous or subsequent purchase of any other type or species of raw fish;
3. To threaten, coerce or compel, by any means or method, as a condition or requirement for the purchase or prospective purchase of any other type or species of raw fish, the prior, simultaneous or subsequent purchase of raw tuna fish;
4. To negotiate jointly or collectively, by any means or method, for the sale or purchase of said raw tuna fish;

5. Participating in, overseeing, or contributing to any assessment or levy, by whatever name called or by whatever means computed, for the purpose or with the effect of attempting to establish, fix or maintain, or establishing, fixing or maintaining prices for the purchase or sale of raw tuna fish, by the patrolling of waters or harbors leading into or forming part of any port or ports;

6. To threaten, coerce or compel, by any means or method, purchasers or prospective purchasers of any raw tuna fish, to pay, adhere to, or comply with, any particular or specific prices for the purchase or sale of same.

Provided, however. Nothing herein contained shall be construed or interpreted as preventing or prohibiting any respondent, individually, from purchasing or selling or bargaining for the purchase or sale of any such raw tuna fish with any single buyer or seller;

Provided further. That nothing herein contained shall prevent genuine collective bargaining between respondent Union and any employer or employers with respect to rates of pay or wages, hours and working conditions of any employee members of said Union, or activities in relation thereto, or shall prevent or prohibit said Union from performing any of the acts or practices permitted by the provisions of the Labor-Management Relations Act, 1947 (Act of June 23, 1947, Public Law 101, 80th Congress) or any other lawfully authorized Union activities;

Provided further. The fact that the respondent Union, acting on behalf of its members, may have negotiations with any employer or employers of said members for compensation relating to future catches of tuna by any of said members, for the purpose or with the effect of entering into, or which actually results in, or does not result in a working agreement relating to the compensation for the catching of any type or species of fish other than raw tuna, in addition to the compensation for catching said raw tuna, shall not, in itself, be interpreted or construed as a violation of the aforesaid subsections 2 or 3;

Provided further. That nothing herein contained shall be construed as preventing the enforcement, against the other parties thereto, by patrol or other means, by the respondent Union of any contract or contracts which it now has, or may have, at the time of the aforesaid enforcement, with its own members, pertaining to their relationship as members of said Union, or with any employer or employers of said members pertaining to rates of pay or wages, hours or working conditions of such members as employees;

Provided further. That nothing herein contained shall prevent bona fide fishermen members of respondent Union, or the Union itself while acting on behalf of its members, where the specific raw

tuna fish has already been caught by said members and cannot otherwise be sold or disposed of in accordance with the existing contract between the employer of said members and the purchaser or purchasers named in said contract, from negotiating in good faith for the sale or to sell such specific fish for the benefit of the members who caught same;

Provided further, That nothing herein contained shall be construed as preventing the respondent Union from taking proper action on behalf of its members who participated in a particular catch of raw tuna fish, or the members themselves, to protect the interest of such members against a purchaser of said fish who refuses or fails to comply with, or abide by, the terms, conditions or provisions of an existing contract covering said catch, to enforce said contract.

It is further ordered, That the respondents named in this order, except those as to whom the complaint has been hereby dismissed, 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.

OPINION OF THE COMMISSION

By the Commission:

The complaint in this proceeding charges, among other things, an unlawful combination, conspiracy and planned common course of action by the respondents to hinder and suppress competition in the purchase and sale of raw tuna and tuna-like fish caught in the waters of the Pacific Ocean. Joined as parties respondent were various firms and corporations engaging as canners of fish, certain cooperative associations composed of boat owners, together with their officers, directors and memberships, and three unions and their officers and memberships of fishermen and cannery workers. Five agreements were entered into by counsel supporting the complaint and various of the respondents or their counsel, each of which agreements contained a consent order in disposition of all the issues of this proceeding with respect to the respondents to whom such agreements related. A sixth agreement identical with that executed by other correspondent cooperative associations subsequently was entered into by another of the respondents. Pursuant to the provisions of § 3.25 of the Commission's Rules of Practice, the five agreements were submitted to the hearing examiner for his consideration. The agreements were rejected by the hearing examiner as inappropriate and counsel supporting the complaint, and counsel for the respondents to which the agreements relate have filed joint appeal from that ruling as permitted under § 3.25 of the aforesaid rules.

Each of the agreements contained a consent cease and desist order prohibiting various of the signatories' use of the acts and practices charged as unlawful in the complaint. The hearing examiner's conclusion that the agreements were inadequate was not based, however, on the scope of the injunctive provisions contained in the orders; it primarily was based, instead, on his concern with respect to various additionally included provisos or exemptions. The latter, in his view, either served to detract from the clarity of the prescriptions in instances or were deemed an unnecessary reservation of rights nowise affected by the orders.

Provisos similar to one of those included in certain of the instant orders have been incorporated in judgments rendered by district courts, and another of such provisions has been adopted in an order previously issued by the Commission. Implicit in various of the provisos was recognition of the fact that the Fishermen's Cooperative Marketing Act and the Labor-Management Relations Act, 1947, sanction joint and collective activity in certain categories. We think that the provisos served to place the orders' injunctive provisions in proper perspective and do not detract from the clarity and effectiveness of the respective orders. The six agreements, accordingly, are accepted and ordered filed.

Our decision in this matter should not be construed, however, as general approval and approbation for the inclusion of provisos in consent orders to cease and desist. The production and initial marketing of the particular marine products to which this proceeding relates normally necessitate cooperative and joint endeavors in varying degrees between and among different industry member groups having wage and other financial interests therein. As previously noted, joint activities in categories there designated are expressly sanctioned by special statutes. Hence, the agreements' recognition of that circumstance and other relevant commercial relationships and conditions existing in the industry was appropriate here.

INITIAL DECISION DISMISSING THE COMPLAINT
AS TO CERTAIN RESPONDENTS

This proceeding is before the hearing examiner upon motion of counsel supporting the complaint to dismiss the Fishermen's Cooperative Association (of Seattle), its officers, directors and members.

On July 24, 1957, the Commission accepted agreements for consent order and issued its Order to Cease and Desist as to all of the 138 respondents named in the complaint except the above-named respondents.

It was represented by the attorney in support of the complaint in his motion to dismiss that the Order to Cease and Desist entered

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by the Commission will effectively prevent the continuation or repetition of the acts and practices alleged in the complaint as being violative of Section 5 of the Federal Trade Commission Act, even though the above-named respondents are not parties to such order; and that it would not be in the public interest to expend the time and money which would be necessary to try the entire case for the purpose of securing an order to cease and desist against this single group of respondents. In view of the above,

It is therefore ordered, That the complaint herein be dismissed without prejudice as to respondents Fishermen's Cooperative Association (of Seattle), its officers, directors and members; and Reidar Hammer, Dan Hjort, Bert G. Johnston, Adam Kanzler, Kristian Kyvik, Harry J. McCool, Henry Parpart and Neil Rasmussen, individually, as officers, directors and as representative of the entire membership of Fishermen's Cooperative Association (of Seattle).

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner as to respondents Fishermen's Cooperative Association (of Seattle), its officers, directors and members; and Reidar Hammer, Dan Hjort, Bert G. Johnston, Adam Kanzler, Kristian Kyvik, Harry J. McCool, Henry Parpart and Neil Rasmussen, individually, as officers, directors and as representative of the entire membership of Fishermen's Cooperative Association (of Seattle) shall on February 14, 1958, become the decision of the Commission.

Decision

IN THE MATTER OF
SYDNEÉ, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6681. Complaint, Nov. 27, 1956—Decision, July 27, 1957

Consent order requiring a corporate seller in Chicago to cease representing falsely by statements and depictions in advertising and on labels and packaging, that its domestic perfumes and colognes were made in France, and that excessive fictitious prices were its customary retail prices; and by simulation of the script, packaging, shape of bottle, and trade name of certain nationally advertised and accepted products, that its perfumes and colognes were such preferred products;

Similar order entered by default against four individuals with places of business at Miami and Miami Beach, Fla., cooperating with the aforesaid concern.

INITIAL DECISION AS TO RESPONDENT SYDNEÉ, INC., AND AS TO
SIDNEY BELMONT AND MILDRED BELMONT

Mr. Everett F. Haycraft, hearing examiner.

Mr. William A. Somers for the Commission.

Mr. Samuel Morgan, of Chicago, Ill., for respondents, Sydneé, Inc., Sidney Belmont and Mildred Belmont.

The Federal Trade Commission, on November 27, 1956, issued its complaint against the respondents named in the caption hereof, charging them with the dissemination in commerce of advertisements containing false and misleading representations with respect to their perfumes and colognes, and charging that the use of such advertisements constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The Commission in its complaint alleged that respondents had been for some time last past engaged in the business of selling various perfumes and colognes which are cosmetics as defined in the Federal Trade Commission Act and that said respondents had caused such products to be shipped in interstate commerce to purchasers thereof located in various states of the United States. It was further alleged that in the course and conduct of their business respondents have disseminated advertisements concerning their said products by the United States mails and by various means in commerce such as newspapers, periodicals, and circulars wherein respondents made statements which were misleading in material respects and constituted false advertisements as that term is defined in the Federal

Trade Commission Act. It was alleged in this connection that the prices set out in said advertisements were fictitious and greatly in excess of the prices at which respondents said products were usually or customarily sold at retail and that said respondents represented that said products were compounded or imported from France when as a matter of fact they were manufactured or compounded in the United States. And it was further alleged that said products were sold in packages which simulated the packages and trade names of certain nationally advertised products when in truth and in fact said products were not the nationally advertised products as indicated.

On March 25, 1957, corporate respondent Sydneé, Inc., and individual respondents Sidney Belmont and Mildred Belmont, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and the Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent Sydneé, Inc., as a corporation existing and doing business under and by virtue of the laws of the State of Illinois; respondent Sidney Belmont, as an individual and president of said corporate respondent; and respondent Mildred Belmont, as an individual and secretary of said corporate respondent. Said corporate and individual respondents have their offices and principal place of business located at 1414 South Wabash Avenue, Chicago, Illinois.

In the agreement, respondent Sydneé, Inc., and respondents Sidney Belmont and Mildred Belmont 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.

Said respondents in the agreement waived any and all 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 the agreement.

It was further agreed that the record on which the initial decision and the decision of the Commission shall be based, insofar as they relate to the respondent Sydneé, Inc., and respondents Sidney Belmont and Mildred Belmont, shall consist solely of the complaint and the agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the order to cease and desist, as contained in the agreement, shall have the same force and effect as if entered

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after a full hearing, and may be altered, modified, or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by corporate respondent Sydneé, Inc., and individual respondents Sidney Belmont and Mildred Belmont, that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the hearing examiner concludes that such order constitutes a satisfactory disposition of this proceeding, insofar as it relates to respondent Sydneé, Inc., and respondents Sidney Belmont and Mildred Belmont. Accordingly, in consonance with the terms of the aforesaid agreement and with sections 3.21 and 3.25 of the Rules of Practice, the hearing examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the respondent Sydneé, Inc., and respondents Sidney Belmont and Mildred Belmont, 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 respondents Sydneé, Inc., a corporation, and its officers, and Sidney Belmont and Mildred Belmont, individually and as officers of said corporation, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of perfumes, colognes and allied products, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said products, which advertisement:

(a) Contains or lists prices or amounts which purport to be, or may be accepted to be retail prices, when such prices or amounts are in excess of the prices at which the products referred to are usually and customarily sold at retail.

(b) Uses the words or terms "by Yvonne," "Yvonne's," "by Sydneé," or "Sydneé's," or any other words or terms indicative of French origin, as a corporate or trade name, or as a part thereof, or any name, word, term or depiction, indicative of French origin, in connection with products manufactured or compounded in the United States, unless it is clearly and conspicuously revealed in im-

mediate connection and conjunction therewith that such products are manufactured or compounded in the United States.

(c) Represents that products manufactured or compounded in the United States are manufactured in France.

(d) Contains depictions which simulate the script, wrapping, packaging, shape of bottle or trade names, or any other simulations, of nationally advertised, preferred and accepted perfumes, colognes or allied products.

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 of said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representations or depictions prohibited by Paragraph 1 of this order.

It is further ordered, That respondents Sydneé, Inc., a corporation, and its officers, and Sidney Belmont and Mildred Belmont, individually and as officers of said corporation, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of perfumes, colognes and allied products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Setting out prices or amounts on the label or in the labeling of their products, which purport to be, or may be accepted to be, retail prices, when such prices or amounts are in excess of the prices at which such products are usually and customarily sold at retail.

2. Using the words or terms "by Yvonne," "Yvonne's," "by Sydneé," or "Sydneé's," or any other words or terms indicative of French origin, as a corporate or trade name, or as a part thereof, or any name, word, term or depiction indicative of French origin in connection with products manufactured or compounded in the United States on the labels or in the labeling of their products unless it is clearly and conspicuously revealed in immediate connection and conjunction therewith that such products are manufactured and compounded in the United States.

3. Representing on the labels or in the labeling that products manufactured or compounded in the United States are manufactured or compounded in France.

4. Simulating the trade name and script on the label or in the labeling or in any other manner, or simulating the wrapping, packaging, shape of bottle, or other characteristics of nationally advertised, preferred and accepted perfumes, colognes or allied products.

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 27th day of July, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Sydneé, Inc., a corporation; and Sidney Belmont and Mildred Belmont, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

INITIAL DECISION AS TO INDIVIDUAL RESPONDENTS HAROLD SHAPIRO,
SHIRLEY SHAPIRO, BEN SHAPIRO AND MARY MAHEU

Mr. Everett F. Haycraft, hearing examiner.

Mr. William A. Somers for the Commission.

No appearance on behalf of respondents.

The Federal Trade Commission, on November 27, 1956, issued its complaint against the respondents named in the caption hereof, which was duly served upon them, charging them with the dissemination in commerce of advertisements containing false and misleading representations with respect to their perfumes and colognes, and alleging that the use of such advertisements constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the meaning and intent of the Federal Trade Commission Act.

Respondents Harold Shapiro, Shirley Shapiro, Ben Shapiro, and Mary Maheu have been and are now active in a personal and financial way in respondent Sydneé, Inc., and cooperate and have cooperated with the officials thereof in the promotion and sale of its products. Further, at present and heretofore, said respondents have by various devices initiated and carried on the acts and practices hereinafter found, and other similar acts and practices. The last known address of respondents Harold Shapiro and Shirley Shapiro is 133 South Royal Poinciana Boulevard, Miami, Florida, and that of respondents Ben Shapiro and Mary Maheu is 5455 North Bay Road, Miami Beach, Florida.

After due notice, hearings were held in Washington, D.C., on March 5 and 15, 1957, to give respondents an opportunity to appear and show cause why an order to cease and desist should not be entered against them. The respondents under consideration herein neither answered nor appeared at any hearing; and at the second

hearing the attorney in support of the complaint requested the hearing examiner to enter an order declaring respondents Harold Shapiro, Shirley Shapiro, Ben Shapiro, and Mary Maheu in default, which request was granted on the record as to said respondents. Accordingly, the following findings, conclusions and order are entered:

FINDINGS OF FACT

PARAGRAPH 1. Said respondents are now, and for some time last past, have been engaged in the business of selling various perfumes and colognes, which are cosmetics as "cosmetic" is defined in the Federal Trade Commission Act, and have caused and are causing said products when sold to be shipped to purchasers thereof located in various States of the United States other than the States in which such shipments originate. Said respondents maintain, and at all times in question have maintained, a substantial course of trade in said products, in commerce, among and between various States of the United States.

PAR. 2. Said respondents, in the course and conduct of their businesses, have disseminated, are disseminating, and have caused the dissemination of advertisements concerning their said products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements were or are likely to induce, directly or indirectly, the purchase of their said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

By means of such statements and depictions, the said advertisements inserted in newspapers and periodicals, in circulars, and in other advertising media, disseminated as aforesaid, respondents have falsely represented, directly and by implication:

1. That certain of their products have been sold or are being sold at various prices, thereby representing that such prices were the usual and customary retail prices of their products;

2. Through the use of French names or words, such as "by Yvonne," "by Sydneé," "Yvonne's" and "Sydneé's," that said products were and are compounded in and imported from France; and

3. By simulation of the script, packaging, shape of bottle and trade names of certain nationally advertised, accepted and preferred products, and by depictions and words, that their products were and are actually such nationally advertised, accepted and preferred products.

PAR. 3. Said advertisements were and are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. The prices set out in the advertisements were and are fictitious and greatly in excess of the prices at which respondents' products were usually or customarily sold at retail.

2. Respondents' products were neither compounded nor imported from France, but were manufactured or compounded in the United States. While some imported ingredients may have been contained in the essence used in compounding or manufacturing some of respondents' products, the major portion of ingredients was of domestic origin.

3. Respondents' products were not the nationally advertised, accepted and preferred products that their script, wrapping, packaging, shape of bottle and trade names indicated them to be.

The dissemination of the advertisements containing the false, misleading, and deceptive statements and depictions hereinbefore set out and the use of the practices hereinbefore described have 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 that such practices and acts cause and have caused substantial numbers of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of the products of respondent Sydneé, Inc. As a result of the practices hereinbefore stated, trade has been and is being unfairly diverted to the aforesaid respondents from their competitors, and substantial injury has been done and is being done to competition in commerce.

CONCLUSIONS

The aforesaid acts and practices, as herein found, were and 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; and

Since respondents have presented neither answer nor appearance, under the default provisions of Rule 3.7(2)(b) of the Commission's Rules of Practice, the hearing examiner declares and finds that respondents Harold Shapiro, Shirley Shapiro, Ben Shapiro, and Mary Maheu are in default. Therefore,

It is ordered, That respondents Harold Shapiro, Shirley Shapiro, Ben Shapiro, and Mary Maheu, individually and as representatives and employees of respondent Sydneé, Inc., directly or through any corporate or other device, in connection with the offering for sale,

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sale, or distribution of perfumes, colognes, and allied products, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said products, which advertisement:

(a) Contains or lists prices or amounts which purport to be, or may be accepted to be, retail prices, when such prices or amounts are in excess of the prices at which the products referred to are usually and customarily sold at retail.

(b) Uses the words or terms "by Yvonne," "Yvonne's," "by Sydneé," or "Sydneé's," or any other words or terms indicative of French origin, as a corporate or trade name, or as a part thereof, or any name, word, term or depiction, indicative of French origin, in connection with products manufactured or compounded in the United States, unless it is clearly and conspicuously revealed in immediate connection and conjunction therewith that such products are manufactured or compounded in the United States.

(c) Represents that products manufactured or compounded in the United States are manufactured in France.

(d) Contains depictions which simulate the script, wrapping, packaging, shape of bottle or trade names, or any other simulations, of nationally advertised, preferred and accepted perfumes, colognes or allied products.

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 of said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representations or depictions prohibited by Paragraph 1 of this order.

It is further ordered. That respondents Harold Shapiro, Shirley Shapiro, Ben Shapiro, and Mary Maheu, individually and as representatives and employees of Sydneé, Inc., directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of perfumes, colognes, and allied products, do forthwith cease and desist from, directly or indirectly:

1. Setting out prices or amounts on the label or in the labeling of their products, which purport to be, or may be accepted to be, retail prices, when such prices or amounts are in excess of the prices at which such products are usually and customarily sold at retail.

2. Using the words or terms "by Yvonne," "Yvonne's," "by Sydneé," or "Sydneé's," or any other words or terms indicative of French origin, as a corporate or trade name, or as a part thereof, or

any name, word, term or depiction indicative of French origin in connection with products manufactured or compounded in the United States on the labels or in the labeling of their products unless it is clearly and conspicuously revealed in immediate connection and conjunction therewith that such products are manufactured and compounded in the United States.

3. Representing on the labels or in the labeling that products manufactured or compounded in the United States are manufactured or compounded in France.

4. Simulating the trade name and script on the label or in the labeling or in any other manner, or simulating the wrapping, packaging, shape of bottle, or other characteristics of nationally advertised, preferred and accepted perfumes, colognes or allied products.

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 27th day of July, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Harold Shapiro, Shirley Shapiro, Ben Shapiro and Mary Mahen, individually, 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
H. B. DAVIS CORPORATION ET AL.

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

Docket 6697. Complaint, Dec. 26, 1956—Decision, July 31, 1957

Consent order requiring a seller in New York City to cease labeling as "All new material consisting of wool batting," bed comforters which contained substantial amounts of fibers other than wool, and failing to conform to the labeling requirements of the Wool Products Labeling Act; including in the transparent containers of the comforters streamers bearing fictitious prices; and representing falsely in catalogs that said comforters were "100% All Wool Filled" and bore "Good Housekeeping Seal of Approval."

Mr. S. F. House for the Commission.

Mr. J. Wolfe Chassen, of Brooklyn, N.Y., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on December 26, 1956, issued its complaint herein under the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939 against the above-named respondents H. B. Davis Corporation, a corporation, and Harry B. Davis and Charles J. Schwartz, individually and as officers of said corporation. The complaint charges respondents with having violated in certain particulars the provisions of said Acts and the Rules and Regulations promulgated under said Wool Products Labeling Act. The respondents were duly served with process. Upon being advised that Commission's counsel and the respondents were negotiating an agreement for a consent cease and desist order pursuant to Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, the times for answer and for initial hearing were postponed by appropriate order, pending the negotiation of such an agreement.

On June 11, 1957, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease and Desist," which had been entered into by and between each of the respondents, other than Harry B. Davis, and S. F. House, counsel supporting the complaint, under date of May 3, 1957, and subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been

thereafter duly approved by the Director and Assistant Director of the Commission's Bureau of Litigation.

On due consideration of the said Agreement Containing Consent Order To Cease And Desist, the hearing examiner finds that said agreement both in form and content is in accord with said Section 3.25 of the Rules of Practice and Procedure of the Commission and that by said agreement the parties have specifically agreed that:

1. Respondents H. B. Davis Corporation, a corporation, and Charles J. Schwartz, an individual and officer of said corporate respondents, have their offices and principal place of business located at 145 West 15th Street, New York, New York.

2. Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission on December 26, 1956, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

3. 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.

4. This agreement disposes of all of this proceeding as to all parties except Harry B. Davis, who in accordance with respondent's answer is no longer connected with respondent corporation. It was therefore stipulated and agreed that the complaint be dismissed as to Harry B. Davis. References hereafter to "respondents" shall hereafter not include Harry B. Davis but only the parties to the agreement.

5. Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The makings of findings of fact or conclusions of law; and

(c) 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.

6. 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.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This 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.

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The parties have further specifically agreed that the proposed order to cease and desist included in said agreement 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 the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated under the latter Act, against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding, such order to become final only if and when it becomes the order of the Commission; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That the respondents H. B. Davis Corporation, a corporation, and its officer, Charles J. Schwartz, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from introducing into commerce, or offering for sale, selling, transporting or distributing, in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act, bed comforters or other "wool products," as such products are defined in and subject to said Wool Products Labeling Act, which products contain, purport to contain, or in any way are represented as containing "wool," "re-processed wool," or "reused wool" as those terms are defined in said Act:

1. Any such products which are misbranded in that they are falsely or deceptively stamped, tagged, labeled or otherwise iden-

tified as to the character or amount of the constituent fibers contained therein.

2. Any such products which are misbranded in that they are falsely or deceptively identified as to prices at which they are sold by retailers in their usual and regular course of business.

3. Any such products which are misbranded in that a stamp, tag, label or other means of identification is not on or securely affixed to such product showing in a clear and conspicuous manner:

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

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

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

It is further ordered, That H. B. Davis Corporation, a corporation, and its officer, Charles J. Schwartz, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of bed comforters or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Misrepresenting in any way the constituent fiber or material used in their merchandise or the respective percentage thereof;

2. Representing in any manner that a certain amount is the usual and regular retail price for their products when such amount is in excess of the price at which their products are usually and regularly sold at retail;

3. Representing directly or by implication that their products are approved by Good Housekeeping Magazine or any other individual, firm, or organization, unless such is the fact.

It is still further ordered, That the complaint be, and the same hereby is, dismissed as to the respondent Harry B. Davis.

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 31st day of July, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondents H. B. Davis Corporation, a corporation, and Charles J. Schwartz, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Decision

IN THE MATTER OF
ALRICH MANUFACTURING CO., INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6771. Complaint, Apr. 8, 1957—Decision, July 31, 1957

Consent order requiring sellers in Great Neck, Long Island, of a sheet of transparent plastic sprayed with colored paint designated "Color Pix" and designed to be attached to television sets, to cease representing falsely in advertising in periodicals and in material supplied to their customers, that a black and white television set would produce the same visual effect as a color television when said "Color Pix" was attached to it; that its use would eliminate glare and snow from television screens, and eliminate eyestrain and relieve headaches caused by viewing television; and that it would not burn.

Mr. Brockman Horne for the Commission.

Mr. Alan G. Trebach of *Trebach, Carroll & Siegel*, of New York, N.Y., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes hereinafter referred to as the Commission), on April 8, 1957, issued its complaint herein under the Federal Trade Commission Act against the above-named respondents, Alrich Manufacturing Co., Inc., a corporation, and Judith Gleichenhaus, individually and as an officer of said corporation, charging said respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars. The respondents were duly served with process.

On June 19, 1957, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between said respondents and Brockman Horne, counsel supporting the complaint, under date of June 18, 1957, and subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by the Director and Assistant Director of the Commission's Bureau of Litigation.

In view of the subsequent approval herein of said agreement, the initial hearing set for June 19, 1957, at ten o'clock in New York, New York, as fixed in the notice portion of the complaint, was canceled by order dated June 3, 1957.

On due consideration of the said "Agreement Containing Consent Order To Cease And Desist," the hearing examiner finds that said agreement, both in form and in content, is in accord with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings and that by said agreement the parties have specifically agreed that:

1. Respondent Alrich Manufacturing Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at P.O. Box 469, Great Neck, Long Island, State of New York.

Individual respondent Judith Gleichenhaus is President of said corporation and she formulates, directs, and controls its policies, acts and practices. Her address is 100 Riverside Drive, City of New York, State of New York.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 8, 1957, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

3. Respondents admit all the jurisdiction 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.

4. This agreement disposes of all of this proceeding as to all parties.

5. Respondents waive:

- a. Any further procedural steps before the hearing examiner and the Commission;
- b. The making of findings of fact or conclusions of law; and
- c. 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.

6. 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.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This 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.

In the said agreement, the parties have further specifically agreed that the proposed order to cease and desist included therein may be entered in this proceeding by the Commission without further notice to the respondent; that when so entered it shall have the same force

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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.

Upon due consideration of the complaint filed herein, and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the person of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act both generally and in each of the particular charges alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the full disposition of all the issues in this proceeding, such order to become final only if and when it becomes the order of the Commission; and that said order, therefore, should be, and hereby is, entered as follows:

ORDER

It is ordered. That respondents Alrich Manufacturing Co., Inc., a corporation, and its officers, and Judith Gleichenhaus, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a plastic sheet to be fastened over the viewing screen of a television set, designated as "Color Pix," or any other product of substantially similar construction or possessing substantially the same characteristics, whether sold under the same or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:
 - (a) That by the use of said product:
 - (1) In connection with the operation of a black-and-white television set, said television will thereby produce the same visual effect as a color television set.
 - (2) Glare will be eliminated from television screens.
 - (3) Snow will be eliminated from television screens.
 - (4) Eye strain caused by viewing television will be eliminated.
 - (5) Headache caused by viewing television will be relieved.
 - (b) That said product will not burn.

2. Using the word "Manufacturing" or any other words of the same import as a part of a trade or corporate name, or otherwise representing in any manner that respondents manufacture said product.

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 31st day of July, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Alrich Manufacturing Co., Inc., a corporation, and its officers, and Judith Gleichenhaus, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Decision

IN THE MATTER OF
SIRO FASHIONS, INC., ET AL.

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

Docket 6761. Complaint, Apr. 4, 1957—Decision, Aug. 1, 1957

Consent order requiring a manufacturer in New York City to cease violating the Wool Products Labeling Act by failing to stamp or tag ladies' wool dresses so as to show the name or registration number of the manufacturer or other responsible persons, as required by the Act.

Mr. Michael J. Vitale and Mr. Thomas A. Ziebarth for the Commission.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that Siro Fashions, Inc., a corporation, and Jules Roth, individually and as an officer of said corporation, hereinafter called respondents, have violated the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act, and the Rules and Regulations promulgated under the last-named Act, in the operation of their business.

After issuance and service of the complaint, the respondents and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been approved by the Director and Assistant Director of the Bureau of Litigation. The order disposes of the matters complained about.

The material provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusion of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement; and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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The hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. The respondent Siro Fashions, Inc., is a corporation, organized and doing business under the laws of the State of New York, with its office and principal place of business located at 463 Seventh Avenue, New York City, New York. The individual respondent Jules Roth is the president of said corporation and his office and principal place of business is the same as that of the corporation.

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

ORDER

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

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

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

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 1st day of August 1957, 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
ALBERT GROSS FURS, INC., ET AL.

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

Docket 6738. Complaint, Mar. 8, 1957—Decision, Aug. 7, 1957

Consent order requiring a furrier in New York City to cease violating the Fur Products Labeling Act by invoicing of fur products which failed to conform to the requirements of the Act.

Mr. Robert E. Vaughan and *Mr. Ross D. Young* for the Commission.

Wiess & Wiener, by *Mr. Leo Wiener*, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with violation of the Federal Trade Commission Act and of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, by falsely and deceptively invoicing their fur products.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director and the Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement identifies respondent Albert Gross Furs, Inc. as a New York corporation, with its office and principal place of business located at 146 West 29th Street, New York, New York, and respondent Albert Gross as an individual, now president of respondent corporation, who directs and controls the acts and practices of the respondent corporation and has the same address as the corporate respondent.

The agreement provides, among other things, that 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; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the

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Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the Hearing Examiner and the Commission; the making of findings of fact or conclusions of law; and all 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.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act, the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. Accordingly, the Hearing Examiner finds this proceeding to be in the public interest and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, that respondent Albert Gross Furs, Inc., a corporation, and its officers, and respondent Albert Gross, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device in connection with the introduction or manufacture for introduction, into commerce, or the sale, or offering for sale in commerce, or the transportation or distribution in commerce, of fur products, or in connection with the manufacture for sale, sale, offering for sale, transportation, or distribution of fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by:

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

a. The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed by the Rules and Regulations;

b. That the fur product contains or is composed of used fur, when such is the fact;

- c. That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;
 - d. That the fur product is composed in whole or in substantial part of paws, tails, bellies or waste fur, when such is the fact;
 - e. The name and address of the person issuing such invoice;
 - f. The name of the country of origin of any imported furs contained in the fur product;
 - g. The item number of such fur product as required in Rule 40(a) of the Regulations under the Fur Products Labeling Act;
2. Setting forth on invoices of fur products:
 - a. Information, required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, in abbreviated form.

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 August, 1957, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF
SIBERIAN FUR SHOP, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 6775. Complaint, Apr. 11, 1957—Decision, Aug. 7, 1957*

Consent order requiring a furrier in Greenfield, Mass., to cease violating the Fur Products Labeling Act by advertising in newspapers and by radio which failed to disclose names of animals producing certain furs and to state when furs were artificially colored, and which represented falsely that certain furs were "stock of a business in a state of liquidation"; and by failing in other respects to comply with the advertising, labeling, and invoicing requirements of the Act, and to keep adequate records as a basis for comparative prices and percentage savings claims.

Michael J. Vitale and *Thomas A. Ziebarth, Esqs.*, in support of the complaint.

Levy & Winer, by *Burton Winer, Esq.*, of Greenfield, Mass., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued April 11, 1957, charges the respondents, Siberian Fur Shop, Inc., a corporation, and Abraham J. Levinsky, individually and as an officer of the corporate respondent, with violation of the provisions of the Federal Trade Commission Act and of the Fur Products Labeling Act, in connection with the sale, advertising and offering for sale, transportation and distribution, shipping and receiving in commerce, of fur and fur products, as "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act.

After the issuance and service of said complaint the respondents, on May 16, 1957, filed answer thereto which answer, it was agreed between the parties, should be withdrawn of record because of subsequent developments hereinafter set forth, and permission is hereby granted that said answer be withdrawn and held for naught.

Thereafter, on June 6, 1957, both respondents entered into an agreement with counsel in support of the complaint for a consent order (filed in the proceeding June 18, 1957), disposing of all of the issues in this proceeding, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation of the Federal Trade Commission. It was expressly provided in said agreement that the signing thereof is for settlement purposes

only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement the parties expressly waived a hearing before the Hearing Examiner or the Commission, the making of findings of fact or conclusions of law by the Hearing Examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the Hearing Examiner and the Commission to which the respondents may otherwise, but for the execution of said agreement, be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

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

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

Said agreement recites that respondent, Siberian Fur Shop, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at No. 53 Hayward Street, in the City of Greenfield, State of Massachusetts; that the individual respondent, Abraham J. Levinsky, is President and Treasurer of respondent corporation, and that the address of the individual respondent is the same as that of the corporate respondent.

The Hearing Examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice.

Consonant with the express terms and provisions of said agreement, the Hearing Examiner finds that the Federal Trade Commis-

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sion has jurisdiction of the subject matter of this proceeding and of both respondents named herein, and that this proceeding is in the interest of the public, wherefore he issues the following order:

ORDER

It is ordered, That respondent Siberian Fur Shop, Inc., a corporation, and its officers, and Abraham J. Levinsky individually and as an officer of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the sale, advertising, or offering for sale in commerce; or the transportation or distribution in commerce, of any fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

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

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

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

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

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

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

2. Setting forth on labels attached to fur products:

(a) Non-required information mingled with information that is required under Section 4(2) of the Act and the Rules and Regulations thereunder;

(b) Information required under Section 4(2) of the Act and the Rules and Regulations thereunder in abbreviated form or in handwriting.

B. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

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

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

2. Failing to set forth on invoices the item number of the fur product;

3. Setting forth on invoices information required under Section 5(b)(1) of the Act and the Rules and Regulations thereunder in abbreviated form.

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

1. Fails to disclose:

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

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

2. Sets forth information required under Section 5(a) of the Act and the Rules and Regulations thereunder in abbreviated form;

3. Represents that fur products are being offered for sale from stock of a business in a state of liquidation, when such is not the fact.

D. Making use of price reductions, comparative prices and percentage savings claims in advertising unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 7th day of August, 1957, become the decision of the Commission; and, accordingly:

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

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54 F.T.C.

IN THE MATTER OF
THE BEST FOODS, INC.

MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND THE OLEOMARGARINE AMENDMENT
TO SAID ACT

Docket 6380. Modified order, Aug. 8, 1957

Order modifying the order to cease and desist of Nov. 8, 1955 (52 F.T.C. 446), to conform to the modification requested by the Commission and approved on Jan. 18, 1956, by the Court of Appeals, Third Circuit, in the *Reddi-Spred* case, 229 F. 2d 557.

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. Morton Nesmith for the Commission.
Davis & Gilbert, of New York City, for respondent.

MODIFIED ORDER TO CEASE AND DESIST

The hearing examiner's initial decision entered herein on September 29, 1955, having become the decision of the Commission on November 8, 1955, pursuant to § 3.21 of the Commission's Rules of Practice; and

Counsel in support of the complaint, on July 17, 1957, having filed with the Commission a motion to reopen the proceeding and modify the order to cease and desist contained in said decision; and

The Commission having issued its order granting said motion and directing the issuance of a modified order to cease and desist in conformity therewith:

It is ordered, That the respondent, The Best Foods, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of oleomargarine or margarine, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any statement, word, grade designation, design, device, symbol, sound or any combination thereof which represents or suggests that said product is a dairy product;

Provided, however, That nothing contained in this order shall prevent the use in advertisements of a truthful, accurate and full statement of all of the ingredients contained in said product.

2. Disseminating or causing to be disseminated by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said product any advertisement which contains any of the representations prohibited in paragraph 1 of this order.

IN THE MATTER OF
NEW HAVEN QUILT & PAD CO. OF TEXAS, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket 6756. Complaint, Apr. 2, 1957—Decision, Aug. 8, 1957

Consent order requiring a manufacturer in Dallas, Texas, to cease violating the Wool Products Labeling Act by tagging as "Wool Batting," etc., bed comforters containing substantial amounts of fibers other than wool; by failing in other respects to label such wool products as required by the Act; by furnishing false guarantees that certain of their wool products were not misbranded; and by invoicing batts falsely as to percentage of wool content.

Mr. Michael J. Vitale and Mr. Thomas A. Ziebarth supporting the complaint.

Tobolowsky, Hartt & Schlinger, by Mr. Henry D. Schlinger, of Dallas, Tex., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 2, 1957, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products, furnishing false guarantees that they were not misbranded under the provisions of the Wool Products Labeling Act, and falsely representing the composition of certain batting on sales invoices and shipping memoranda. After being served with said complaint, respondents appeared by counsel and entered into an agreement containing consent order to cease and desist, dated June 4, 1957, purporting to dispose of all of this proceeding as to all parties without hearing. Said agreement, which has been signed by all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint, and have agreed that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. Said agreement

further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with said agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the aforesaid agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent New Haven Quilt & Pad Co. of Texas, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 604 First Avenue, in the City of Dallas, State of Texas. Respondent J. Paul Levine is an individual and Secretary-Treasurer of the corporate respondent, with the same address as that of the corporate respondent.

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

ORDER

It is ordered, That respondents New Haven Quilt & Pad Co. of Texas, Inc., a corporation, and its officers and J. Paul Levine, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is

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defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of bed comforters or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool" or "reused wool" as these terms are defined in said Act, do forthwith cease and desist from:

A. Misbranding such products by:

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

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

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

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

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

B. Furnishing false guarantees that bed comforters or any other wool products or materials are not misbranded under the provisions of the Wool Products Labeling Act, when there is reason to believe that the wool products so guaranteed may be introduced, sold, transported or distributed into commerce.

It is further ordered, That New Haven Quilt & Pad Co. of Texas, Inc., a corporation, and its officers and J. Paul Levine, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of batts or battings or any other products or materials in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

Misrepresenting the constituent fibers of which their products are

composed or the percentages or amounts thereof, in sales invoices, shipping memoranda or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of August 1957, 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
ATLANTIC SEWING STORES, INC., ET AL.

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

Docket 6716. Complaint, Jan. 25, 1957—Decision, Aug. 12, 1957

Order requiring four affiliated concerns in Flushing, N.Y., and their three common officers who also did business under a variety of trade names, to cease, in advertising in newspapers and by television, using "bait" offers made for the purpose of obtaining leads to prospective buyers of sewing machines; to cease pricing fictitiously the models pushed and making deceptive "free gift" offers; and requiring the officers of the companies to cease using the word "Guild" in their trade names.

Mr. Kent P. Kratz for the Commission.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

In this proceeding, the complaint charged the corporate and individual respondents named in the caption hereof with violating the Federal Trade Commission Act (15 U.S.C.A. 45) by the use of so-called "bait" advertising in the sale of sewing machines. The complaint alleged that the individual respondents Aaron Glubo, Robert B. Epstein, and Seymour Exelberth were officers of and directed the policies and activities of each respondent corporation. The complaint further alleged that the individual respondents also engaged in business as copartners under various trade names, including Household Sewing Guild, Consumers Credit Guild, Fiatelli Sewing Machine Company, Atlantic Sewing Stores, and Sew-Mart. The respondents filed an answer admitting that they were engaged in the sewing machine business, in commerce, that they "advertised," but denied the other material allegations set forth in the complaint.¹

The initial hearing convened at 10:00 o'clock A.M. on April 4, 1957, in New York City, as specified in the complaint. At the opening of the hearing, counsel supporting the complaint announced that he was ready to proceed with the hearing. No one appeared on behalf of any respondent. The examiner then announced a recess for a period of thirty minutes. During the recess, the examiner

¹ The answer was signed by each individual respondent but not by each respondent corporation. However, the hearing examiner has considered the answer as being filed on behalf of each respondent, corporate and individual.

was informed that a telephone call had been received from Mr. Seymour Exelberth, an officer of the respondent corporations and an individual respondent, stating that Mr. Exelberth was en route to the hearing room but had been delayed by traffic conditions caused by the heavy snowfall that morning. At approximately eleven o'clock A.M., Mr. Exelberth arrived at the hearing room and the hearing resumed. Mr. Exelberth requested postponement of the hearing for a period of thirty days. Mr. Exelberth stated that a postponement of the hearing for thirty days would give Mr. Exelberth an opportunity to obtain a job so as to earn money with which to pay an attorney toward his fee for representing Mr. Exelberth at the hearing in this proceeding. The examiner did not consider the reasons advanced by Mr. Exelberth sufficient to entitle him to a postponement of the hearing and his request was denied.

Counsel supporting the complaint then moved for judgment by default against the individual respondents Aaron Glubo and Robert B. Epstein. This motion was denied. The taking of testimony in support of the allegations in the complaint was begun and continued until the noon recess at approximately 12:45 o'clock P.M. Mr. Exelberth was present and actively participated in the proceedings at this session of the hearing. However, Mr. Exelberth did not appear at the afternoon session of the hearing which convened at two o'clock P.M., nor at any subsequent session of the hearing held on the following day, April 5, 1957.

At the opening of the afternoon session of the hearing which began at two o'clock P.M. on April 4, 1957, counsel supporting the complaint, noting the absence of Mr. Exelberth and the other individual and corporate respondents, then moved for a judgment by default against all respondents. The examiner denied this motion on the basis of Section 3.7(b) of the Rules of Practice which provides, among other things, that, to entitle complainant to a default judgment, respondent must fail to file an answer within thirty days after service of the complaint *and* (underscoring added) the respondent must also fail to appear at the hearing. In the present case, the record shows that the answer filed with the Secretary of the Commission on March 1, 1957, was signed by each individual respondent but not by each separate corporation as stated above. However, the first paragraph of the answer states: "The above-named corporations and persons answering the complaint of the Federal Trade Commission allege" etc. At the morning session of the hearing on April 4, 1957, Mr. Exelberth stated that he actually prepared the answer and it was filed on behalf of each corporate respondent as well as each individual respondent. Under

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such circumstances the examiner considered the answer as being filed on behalf of each corporate and individual respondent and, since each corporate and individual respondent filed an answer to the complaint, the respondents were not in default even though they did not appear at the hearing.

Proposed findings of fact, conclusion of law, and order have been filed by counsel supporting the complaint. None were submitted by respondents. Upon the basis of the entire record herein, the hearing examiner makes the following findings of fact, conclusion, and issues the following order:

FINDINGS OF FACT

1. The respondents, Atlantic Sewing Stores, Inc., Northern Appliance Stores, Inc., Para Specialties, Inc., and Appliance Buyers Corporation, corporations organized and doing business under the laws of the State of New York, with their office and principal place of business located at 144-17 Northern Boulevard, Flushing, New York, and the individual respondents Aaron Glubo, Robert B. Epstein, and Seymour Exelberth, are and have been engaged in the sale of sewing machines to the purchasing public. In the course of their said business, respondents have caused their sewing machines, when sold, to be transported from their place of business in the State of New York to purchasers located in other states of the United States, especially in New Jersey and Connecticut and have maintained a course of trade in said sewing machines in commerce among and between the States of New York, New Jersey, and Connecticut. Their volume of trade in said commerce has been substantial, amounting to approximately one and one-half million dollars during the year 1954. The individual respondents, Aaron Glubo, Robert B. Epstein, and Seymour Exelberth, were and are president, treasurer, and secretary, respectively, of each of the respondent corporations, and they formulate and have formulated and directed the policies and activities of said corporations.

2. In addition to their activities as officers of said corporations, the individual respondents have also engaged in business as co-partners under various trade names, including Household Sewing Guild, Consumers Credit Guild, Fiatelli Sewing Machine Company, Atlantic Sewing Stores, and Sew-Mart. As a means of obtaining "leads" and prospects for the purchase of their sewing machines, respondents have advertised their sewing machines in New York City newspapers which have general circulation in New York City, New York, and the adjacent metropolitan area in the states of New Jersey and Connecticut. Respondents have also advertised their

sewing machines for sale on radio and television broadcasting stations located in New York City and New Jersey.

3. The following is a typical newspaper advertisement:

A SEWING COMBINATION!

1. Singer Sewing Machine Reconditioned by Northern
2. New Queen Ann Console
3. New Sewing Chair

(Picture of sewing machine and chair—all 3 pieces \$29.50)

Round Bobbin	Specials:
Darns, Monograms, Embroiders	New Portable
New AC-DC Motor	Orig. \$49.00 now \$23.50
Free Sewing Instructions	Assorted Reconditioned Consoles from
Free Buttonholer	\$29.50
	Vigorelli Portable orig. \$249.00 now
	\$219.00
	Fiatelli Console orig. \$289.50 now
	\$239.50

CALL NOW:

Manhattan _____INdependence 3-8600 Queens _____INdependence 3-8600
 Suffolk Co. _____IVanhoe 1-5555 Westchester _____YOnkers 5-4175
 New Jersey _____Blgelow 8-1880 Connecticut _____DAvis 3-1119
 Bronx _____INdependence 3-8600 North Jersey _____Gregory 1-3020
 Brooklyn _____INdependence 3-8600 South Jersey _____ELizabeth 3-3040
 Nassau Co. _____IVanhoe 1-5555 Staten Island _____INdependence 3-8600

4. A typical television advertisement was as follows:

This \$5.00 size of Sheer Magic Perfume by Rembrant is yours absolutely free. You don't have to buy anything to get it. In just a moment I will tell you how you can get a bottle for yourself, but now another T.V. first.

THE HOUSEHOLD SEWING GUILD—TELEVISION'S FIRST SEWING MACHINE DISCOUNT HOUSE offers you the world's renowned Vigorelli, selling nationally at \$249.00—now reduced to \$219.50. The amazing Fiatelli—regular list price \$289.50—now \$239.50; and the world famous Free-Arm FRIDOR, which normally sells for \$289.00—the Household Sewing Guild Discount House price is \$199.50. Thanks to the Household Sewing Guild's tremendous buying power they have been able to cut the price down on famous brands, so that now everybody can afford to own a sewing machine.

Here is another example of how the Household Sewing Guild Discount House saves you money. Here is a complete three-piece sewing outfit, which includes a beautiful Queen Ann console of your choice of finishes—a top grade sewing chair with its own big storage compartment, and brand new 1955 model electric round bobbin sewing machine, featuring the exclusive Magic Stitcher, which performs many different sewing operations without additional attachments.

Here is another terrific feature of this 1955 model. It is convertible; it is a console, as you can see it here, and the portable—it is a lightweight, yet sturdy portable, ready to go anywhere, any time you want it to go, in this beautiful hand-rubbed portable carrying case, that incidentally doubles as the perfect overnight bag.

Take this machine wherever you go; sew with it in any room; the console makes a beautiful piece of extra furniture in your home; and the full and complete price of this complete three-piece outfit, is just \$29.50.

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You can pay it out on easy terms; \$5.00 down, \$1.00 per week. For your protection, the Guild gives you a five-year parts guaranty. Seeing is believing. I would like you to see this machine in your own home. Sew on it. Give it every test. If you want it, it is yours, complete for \$29.50. If you don't like it, it costs you nothing.

If you are among the first 100 to call now and decide to get the machine—after you see it you will receive as our bonus gift, this beautiful sewing kit, plus a pair of pinking shears. If you don't want the machine, you still get the Sheer Magic Perfume.

Call now—in New Jersey—Bigelow 2-6300.

In the five Boros of New York, and upstate New York, In. 3-8600; and in Long Island, Ivanhoe 1-5555; and in Connecticut, Stamford 3-1119; or write to MAGIC STITCHER, WATV, Newark 1, New Jersey, but for fast action, call now—(telephone numbers repeated).

5. Most of the persons answering the advertisements were interested in purchasing rebuilt sewing machines at the advertised price of \$29.50. Upon receipt of such an inquiry, it was respondents' practice to dispatch a "lead" man to call on the prospect at his or her residence. Most of the persons answering respondents' advertisements were women. The "lead" man would call at the prospect's home and accept a \$5.00 deposit from the customer as a down payment on the \$29.50 machine and give the person a receipt therefor. The machine was to be delivered later. Several days or weeks later a "closer" or BF man would call at the customer's residence ostensibly to deliver the \$29.50 sewing machine. However, the "closer" or BF man would disparage and criticize the \$29.50 machine during the demonstration thereof. Invariably, the machine had been previously "rigged,"² causing the thread to break on each movement of the needle during the demonstration.

6. The "closer" or BF man would then attempt to induce and did induce most customers to purchase a different or more expensive sewing machine, usually a Fiatelli or Vigorelli, manufactured in Japan. However, the "closer" or BF man would not tell the prospect the country of origin nor did the customer inquire. The public witnesses who testified at the hearing were not concerned with the country of origin of the machines. The "closer" or BF man would tell the prospect that the regular price was \$289.50 but was reduced to \$239.50. If the prospect had a trade-in, she would receive credit for an additional \$40.00, thus reducing the price to \$199.00. The "closer" or BF man did not have a set price at which he would sell the more expensive Fiatelli or Vigorelli machines but sold them at the highest price he could obtain from the particular customer, pro-

² The "rigging" was accomplished by attaching a metal cross-piece to the bobbin in such a position as to cause it to wiggle in and out, thus breaking the thread each time the machine was operated.

vided the selling price was not below \$79.00 for the portable and \$109.00 for the console. Before selling the machine at a supposedly "reduced" price, some of the "closers" or BF men would telephone the office of respondents to obtain "permission" to make the sale at a "reduced" price. In the presence of the customer or within hearing, the "closer" or BF man would telephone the office and ask for Mr. "Hold," a code which was the signal for the person in respondents' office who had answered the telephone to press a button on the telephone which would disconnect the call, leaving the "closer" or BF man talking into a dead line, unknown to the prospect. The "closer" or BF man would then continue his "conversation" until he obtained "permission" from the office to sell the machine at the "reduced" price.

7. By and through the use of the aforementioned statements in their advertising, the respondents represented directly or by implication that they were making a bona fide offer to sell reconditioned sewing machines for \$29.50; and that any person requesting a free home demonstration or 30-day free trial, or purchasing a sewing machine would receive a free gift of a sewing basket, pinking shears, or encyclopedia; and that the usual and customary selling price of a Fiatelli Console was \$289.50 and the portable \$199.50; and that the usual and customary selling price of the Vigorelli Portable was \$249.00. However, said representations were false, misleading and deceptive. The offers to sell reconditioned electric sewing machines for \$29.50 were not genuine nor bona fide offers but were made for the purpose of obtaining leads as to persons interested in purchasing sewing machines. Furthermore, respondents did not deliver the free gifts as advertised. The prices of \$289.50 for the Fiatelli Console and \$199.50 for the portable were fictitious and greatly in excess of the prices at which said products were usually and customarily sold at retail. The advertised price of \$249.00 for the Vigorelli Portable was also in excess of the price at which said machine usually and customarily sold at retail.

8. The individual respondents, Aaron Glubo, Robert B. Epstein, and Seymour Exelberth, through the use of the word "guild" as a part of the name under which they have traded, such as Household Sewing Guild and Consumers Credit Guild, have represented that their businesses conducted under such names are associations or guilds of consumers having common interests and aims and formed for mutual aid and protection. In truth and in fact, the Household Sewing Guild and Consumers Credit Guild are not associations or guilds but are partnerships conducted for private profit, to wit, the sale of sewing machines. The use by respondents of the foregoing

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false, misleading, and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations were and are true.

9. Among the allegations in the complaint is an allegation that the respondents, through the use of the words "Vigorelli" and "Fiatelli" as brand names for sewing machines in their advertisements, have thereby represented that said machines were manufactured in Italy. A preponderance of the reliable, probative, and substantial evidence introduced at the hearing does not support such allegation. Therefore, it is found that such allegations have not been established.

CONCLUSION

All of the acts and practices found herein to have been indulged in by respondents were, and are, to the prejudice and injury of the public and to respondents' 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 the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Atlantic Sewing Stores, Inc., a corporation, Northern Appliance Stores, Inc., a corporation, Para Specialties, Inc., a corporation, Appliance Buyers Corporation, a corporation, Aaron Glubo, Robert B. Epstein, and Seymour Exelberth, officers of the above-named corporations, and individually or as co-partners trading under any name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machines or related products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That certain sewing machines or other related products are offered for sale when such offer is not a bona fide offer to sell such sewing machines or other related products.

2. That certain amounts are the usual and regular retail prices of their sewing machines or other related products when such amounts are in excess of the prices at which such sewing machines or other related products are usually and regularly sold at retail.

3. That any article of merchandise or anything else of value is given free to anyone unless such merchandise or other thing of value is actually tendered or delivered.

It is further ordered, That respondents Aaron Glubo, Robert B. Epstein, and Seymour Exelberth, their agents, representatives and employees in connection with the offering for sale, sale, or distribution of sewing machines or related products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the word "guild" as a part of a trade or corporate name or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The date on which the hearing examiner's initial decision herein otherwise would have become the decision of the Commission having been extended by order issued July 18, 1957, until further order of the Commission; and

The Commission having now determined that said initial decision is adequate and appropriate in all respects:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the corporate respondents, Atlantic Sewing Stores, Inc., Northern Appliance Stores, Inc., Para Specialties, and Appliance Buyers Corporation, and the individual respondents, Aaron Glubo, Robert B. Epstein, and Seymour Exelberth, 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 contained in said initial decision.

IN THE MATTER OF
JOEL S. WORKMAN TRADING AS
JOEL WORKMAN COMPANY

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

Docket 6776. Complaint, Apr. 16, 1957—Decision, Aug. 14, 1957

Consent order requiring a furrier in New York City to cease violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements.

Mr. S. F. House for the Commission.

Mr. Joel S. Workman, of New York, N.Y., *pro se*.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on April 16, 1957, issued its complaint herein under the Federal Trade Commission Act, and the Fur Products Labeling Act against the above-named respondent Joel S. Workman, an individual trading as Joel Workman Company. The complaint charges respondent with having violated in certain particulars the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act. The respondent was duly served with process. By letter dated May 7, 1957, treated as an answer by the Commission, respondent admitted the allegations of the complaint and asked for consent settlement. Therefore, pursuant to Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, the hearing examiner by order dated June 19, 1957, canceled the initial hearing as set forth in the "Notice" portion of the complaint. Respondent having requested, in substance, by letter dated June 4, 1957, leave to withdraw his said letter of May 7, 1957, Commission's counsel being agreeable thereto, and for good cause shown, it is ordered that said letter so treated as an answer be considered as withdrawn and the "Agreement Containing Consent Order To Cease And Desist," hereinafter referred to, together with the complaint, shall constitute the entire record herein for the purposes of this initial decision.

On June 27, 1957, there was filed with the hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between the said respondent Joel S. Workman and S. F. House, counsel supporting the complaint, under date of

June 19, 1957, and subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by the Director and Assistant Director of the Commission's Bureau of Litigation.

On due consideration of the said "Agreement Containing Consent Order To Cease And Desist," the hearing examiner finds that said agreement both in form and content is in accord with Section 3.25 of the Rules of Practice and Procedure of the Commission and that by said agreement the parties have specifically agreed that:

1. Respondent Joel S. Workman is an individual trading as Joel Workman Company, with his office and principal place of business located at 259 West 30th Street, in the City of New York, State of New York.

2. Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, the Federal Trade Commission, on April 16, 1957, issued its complaint in this proceeding against respondent, and a true copy was thereafter duly served on respondent.

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

4. This agreement disposes of all of this proceeding as to said respondent.

5. Respondent waives:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. 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.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

The parties have further specifically agreed that the proposed order to cease and desist included in said agreement may be entered in this proceeding by the Commission without further notice to respondent; that when so entered it shall have the same force and

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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.

Upon due consideration of the complaint herein filed and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. The hearing examiner finds that the Commission has jurisdiction of the subject matter of this proceeding and of the person of the respondent herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated by the Commission under the latter Act, against respondent both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding, such order to become final only if and when it becomes the order of the Commission; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered. That the respondent Joel S. Workman, an individual trading as Joel Workman Company, or any other trade name, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution of fur products in commerce, or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

(a) Failing to affix labels to fur products showing:

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

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

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

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

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

(6) The name of the country of origin of any imported furs used in the fur product;

(7) The item number or mark assigned to a fur product.

2. Falsely or deceptively invoicing fur products by:

(a) Failing to furnish purchasers of fur products invoices showing:

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

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

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

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

(5) The name and address of the person issuing such invoice;

(6) The name of the country of origin of any imported furs contained in a fur product;

(7) The item number or mark assigned to a fur product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 14th day of August, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Joel S. Workman, an individual trading as Joel Workman Company, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

M & A INC. TRADING AS PHILIPSON'S
AND MRS. GLENNA RICECONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 6766. Complaint, Apr. 8, 1957—Decision, Aug. 15, 1957

Consent order requiring a furrier in Dallas, Tex., to cease violating the Fur Products Labeling Act by labeling certain fur products with fictitious prices; by invoicing which abbreviated required information; by advertising in newspapers, etc., which failed to disclose that certain fur products were artificially colored or composed of cheap or waste fur, and which misrepresented prices; and by failing to maintain adequate records as the basis for the claims of savings.

Mr. John J. Mathias and *Mr. Morton Nesmith* supporting the complaint.

Donalson, Bullard & Kucera, by *Mr. E. F. Kucera*, of Dallas, Tex., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 8, 1957, charging them with having violated the Fur Products Labeling Act and the Rules and Regulations issued thereunder, and the Federal Trade Commission Act, through the misbranding of certain fur products and the false and deceptive invoicing and advertising thereof. After being served with said complaint, respondents appeared by counsel and subsequently entered into an agreement, dated May 29, 1957, containing a consent order to cease and desist purporting to dispose of all this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making

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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 such agreement. It has been agreed 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 and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent M & A Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, and trading as Philipson's at 1907 Elm Street, Dallas, Texas. The home office of the corporate respondent is c/o Marie Antoinette, 504 Congress Avenue, Austin, Texas.

Respondent Mrs. Glenna Rice is the store manager at Philipson's and, acting in cooperation with the corporate respondent, formulates, directs and controls all of the policies and acts of the aforesaid Philipson's. The address of said individual respondent is the same as that of Philipson's.

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

ORDER

It is ordered, That respondents M & A Inc., a corporation, trading under its own name, or as Philipson's or under any other name or names, and its officers, and Mrs. Glenna Rice, individually and as manager of Philipson's and respondents' agents, representatives and employees, directly or through any corporate or other device in

connection with the introduction, into commerce, or the sale, advertising or offering for sale, transportation or distribution of fur products in commerce, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur products," are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by setting forth on labels attached to fur products prices represented to be the regular or usual price of any fur products which are in excess of the prices at which the respondents have usually or customarily sold such fur products in the recent regular course of their business;

B. Falsely or deceptively invoicing fur products by:

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

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

b. That the fur contains or is composed of used fur, when such is the fact;

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

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

e. The name and address of the person issuing such invoice;

f. The name of the country of origin of any imported fur contained in a fur product.

2. Setting forth required information in abbreviated form.

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

1. Fails to disclose:

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

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

2. Represents, directly or by implication that the regular or usual price of any fur product is any amount which is in excess of the price at which the respondent has usually and customarily sold such products in the recent regular course of its business.

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3. Makes use of comparative prices or percentage savings claims unless such compared prices or claims are based upon the current market value of the fur product or upon a bona fide compared price at a designated time.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did on the 15th day of August 1957, 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
JOSEPH H. SOMLO DOING BUSINESS AS L'ARGENE
PRODUCTS CO.

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

Docket 6686. Complaint, Dec. 11, 1956—Decision, Aug. 21, 1957

Consent order requiring a seller in New York City to cease representing falsely in advertising in circulars and magazines and on the labels of his perfume products that fictitious and excessive prices were the usual retail prices; that the perfumes were compounded in France and that he manufactured them; and to cease advertising falsely that they were nationally advertised on television.

Mr. Kent P. Kratz for the Commission

Mr. Jacob Cottin, of New York, N.Y., for Respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of the Federal Trade Commission Act in connection with the sale of perfume products. An agreement has now been entered into by counsel supporting the complaint and respondent which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; 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 he has violated the law as alleged in the complaint.

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

1. Respondent Joseph H. Somlo is an individual doing business as L'Argene Products Co., with his office and principal place of business located at 11 East 48th Street, New York, New York.

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

ORDER

It is ordered, That respondent Joseph H. Somlo, individually and trading as L'Argene Products Co., or trading under any other name, his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of perfumes, colognes or any other related product, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said products, which advertisement:

(a) Contains or lists prices or amounts when such prices or amounts are in excess of the prices at which the products are usually and customarily sold at retail.

(b) Uses the words "From Paris To You" or a picture of the Eiffel Tower or any picturization indicative of France in connection with any products not manufactured or compounded in France, or otherwise representing, directly or by implication, that such products are manufactured or compounded in France.

(c) Uses any French name or word as a corporate or trade name or as a part thereof or any name, word, term or depiction indicative of French origin in connection with products manufactured or compounded in the United States, unless it is clearly and conspicuously revealed in immediate connection and conjunction therewith that such products are manufactured or compounded in the United States.

(d) Represents, directly or by implication, that respondent manufactures the products sold by him.

(e) Represents, directly or by implication, that the products sold by him are advertised on television or in any other manner that is not in accordance with the facts.

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 of respondent's products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in Paragraph 1 of this order.

It is further ordered, That respondent Joseph H. Somlo, individually and trading as L'Argene Products Co., 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 perfumes, colognes, or any other related product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Setting out prices or amounts on the labels or in the labeling of his products, when such prices or amounts are in excess of the prices at which such products are usually and customarily sold at retail.

2. Using the words "From Paris To You" or a picture of the Eiffel Tower or any picturization indicative of France in connection with any products not manufactured or compounded in France, or otherwise representing, directly or by implication, that such products are manufactured or compounded in France, on the labels or in the labeling.

3. Using any French name or word as a corporate or trade name or as a part thereof or any name, word, term or depiction indicative of French origin, on the labels or in the labeling of products manufactured or compounded in the United States, unless it is clearly and conspicuously revealed in immediate connection and conjunction therewith that such products are manufactured or compounded in the United States.

4. Representing, directly or by implication, on the labels or in the labeling that respondent manufactures the products sold by him.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 21st day of August, 1957, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF
MORSE SALES, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket 6613. Complaint, Aug. 20, 1956—Decision, Aug. 22, 1957

Order requiring sellers in Chicago to cease selling and distributing electrical appliances, housewares, and other articles of merchandise by means of push cards and supplying push cards for use in such sale.

Mr. William A. Somers for the Commission.

Berkson & Spitzer, by *Mr. Jerome Berkson*, of Chicago, Ill., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

THE PROCEEDING

On August 20, 1956, complaint herein was issued against respondents charging them with unfair acts and practices in commerce in violation of the Federal Trade Commission Act by selling merchandise in commerce by means of games of chance, gift enterprises or lottery schemes. The individual respondent was alleged to control and direct the policies of the corporate respondent. The answers of the respondents admit corporate existence and description, the officership of the individual respondent, deny his control or direction of the corporate respondent, admit the sale of merchandise in commerce, deny the same to be by chance or lottery, or that respondents have supplied others with the means of conducting games of chance in the sale of merchandise. Three hearings were held resulting in 64 pages of transcript and nine exhibits, all offered in support of the charges. At the first hearing, individual respondent appeared in response to a subpoena, but declined to answer any questions after stating his name and address because his counsel was not present and under the Fifth Amendment to the United States Constitution. Subsequently, at a hearing for the reception of respondents' evidence the individual respondent did appear and testify in his own defense. The taking of evidence was completed January 31, 1957, and subsequently proposed findings and conclusions were filed by counsel supporting the complaint on consideration of which, and the entire record herein, the hearing examiner finds that this proceeding is

brought in a clear and substantial public interest and makes the following.

FINDINGS OF FACT

1. Respondent Morse Sales, Inc., is a corporation organized in December 1955 under the laws of the State of Illinois, and doing business thereunder and since at 1222 West Morse Avenue, Chicago, Illinois. Respondent Leo R. Fox is an individual and president of the corporate respondent, and although he does not own a majority of the stock of the corporate respondent, he directs and controls its policies and sales activities, the remainder of its stock being owned by his niece and his sister.

2. Respondents are now and have been, since January 1956, engaged in the sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of electrical appliances, housewares, and other merchandise.

3. Some of this merchandise is sold over the counter at respondents' place of business and some by mail, pursuant to local advertisements. These sales are not involved in this proceeding.

4. However, to sell and distribute a substantial amount of their merchandise, respondents have had printed circular letters, order blanks, push cards and pictorial pieces which they send to a mailing service. The latter, for a fee, furnishes mailing lists and uses them to mail out broadside across the nation, respondents' mailing pieces, consisting of a circular letter describing respondents' selling plan, a push card, an order blank and a descriptive piece of the merchandise, such as an automatic electric frying pan, electric coffee set, or a "television electric clock lamp." Thus, in the first four months respondents were in business 120,000 mailings were made, from which 450 orders were received.

5. The push card, enclosed with the circulars, etc., in each mailing, which is the key, of course, to the "merchandising plan" and is the typical lottery device, has up to 75 partially perforated discs, each bearing a feminine given name. One of these names is the lucky one, the purchaser of the punch with that name getting the appliance merely by chance and for the price of his punch, which will vary from 1¢ to 39¢ or some other lower amount. The purchasers of the other punches are, of course, out of pocket the cost of their punch and receive nothing. The name of the lucky punch is concealed under a master disc which is not torn off until all the punches are sold. The recipient of respondents' mailing piece who chooses to enter into the plan, and peddles the punches on the push card,

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Findings

remits the amount received from selling the punches to respondents and thereupon receives from them by parcel post the prize to be delivered to the lucky punch purchaser, and also the same article for himself as compensation for selling the punches.

6. The push card for the automatic electric fry pan, for instance, shows the following:

LUCKY NAME UNDER SEAL RECEIVES
 N E W *Fryall*
 [Depiction of Pan]
 AUTOMATIC ELECTRIC
 FRY PAN

[Depiction
 of 3
 ash trays]

Nos. 7 and 19
 each receive 3
 beautiful
 ASH TRAYS

No. 1 pays 1¢
 No. 7 pays 7¢
 No. 12 pays 12¢
 No. 19 pays 19¢
 No. 26 pays 26¢
 All others pay
 39¢
 NONE HIGHER
 [Master Seal]

Nothing like it! You'll love your Fryall at first sight. Prepares an entire meal with ease—saves you loads of time and work! You cook and serve the most delicious meals right at your table with this amazing Fryall. 110-120 volt A.C. operation. Easy washing like any quality electrical appliance. Complete with High Dome, Self-basting cover and 6-foot heavy duty cord.
 FULL 1 YEAR GUARANTEE!
 PUSH OUT WITH PENCIL

The reverse side of the card bears the feminine name of each punch with a line to write in the name of the person purchasing the punch.

7. Sales of respondents' merchandise by means of said push cards are made in accordance with the above-described legend or instructions, and said prizes or premiums are allotted to the customers or purchasers from said card in accordance with the above legend or instructions. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and the amount to be paid for the merchandise or the chance to receive said merchandise, are thus determined wholly by lot or chance. The articles of merchandise have a value substantially greater than the price paid for each chance or push.

8. Respondents furnish and have furnished various other push cards accompanied by order blanks, instructions and other printed matter for use in the sale and distribution of their merchandise by means of games of chance, gift enterprises or lottery schemes. The

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sales plans or methods involved in the sale of all of said merchandise by means of said other push cards are the same as that hereinabove described, varying only in detail as to the merchandise distributed and the prices of chances and the number of chances on each card.

9. The persons to whom respondents furnish and have furnished said push cards use the same in selling and distributing respondents' merchandise in accordance with the aforesaid sales plans. Respondents thus supply to and place in the hands of others the means of conducting games of chance, gift enterprises or lottery schemes in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their merchandise and the sales of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice which is contrary to an established public policy of the Government of the United States.

10. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondents and the element of chance involved therein and thereby are induced to buy and sell respondents' merchandise.

11. The use by respondents of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise is contrary to the public interest and constitutes an unfair act and practice in commerce within the intent and meaning of the Federal Trade Commission Act.

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

CONCLUSION

Respondents' sale of push cards contemplates and inevitably involves the use of a lottery or game of chance, and the placing by respondents in the hands of others, lottery devices for use in the sales of his merchandise. Such a merchandising operation is violative of the established public policy of the Government of the United States, is to the prejudice of the public and constitutes unfair acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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ORDER

It is ordered, That the respondents, Morse Sales, Inc., a corporation, its officers, agents, employees or representatives, and Leo R. Fox, individually and as an officer thereof, his agents, employees or representatives, 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 lottery devices, either with merchandise or separately, which are designed or intended to be used in the sale or distribution of respondents' 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 GWYNNE, Chairman:

The complaint, filed under the Federal Trade Commission Act, charges respondents with selling merchandise in commerce by means of games of chance, gift enterprises or lottery schemes. After a hearing, the initial decision and order was filed directing respondents to cease and desist from:

1. Supplying to, or placing in the hands of others pull cards, push cards, or any other lottery devices, either with merchandise or separately, which are designed or intended to be used in the sale or distribution of respondents' 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.

The appeal of respondents was presented by written briefs without oral argument.

Respondent Morse Sales, Inc. is a corporation located in Chicago, Illinois, and engaged in the sale and distribution of electrical appliances, housewares and other merchandise. A portion thereof is distributed by means of push cards. The description of such cards and the method of operation is set out in Paragraph 5 of the initial decision as follows:

5. The push card, enclosed with the circulars, etc., in each mailing, which is the key, of course, to the "merchandising plan" and is the typical lottery device, has up to 75 partially perforated discs, each bearing a feminine given name. One of these names is the lucky one, the purchaser of the punch with that name getting the appliance merely by chance and for the price of his punch,

which will vary from 1¢ to 39¢ or some other lower amount. The purchasers of the other punches are, of course, out of pocket the cost of their punch and receive nothing. The name of the lucky punch is concealed under a master disc which is not torn off until all the punches are sold. The recipient of respondents' mailing piece who chooses to enter into the plan, and peddles the punches on the push card, remits the amount received from selling the punches to respondents and thereupon receives from them by parcel post the prize to be delivered to the lucky punch purchasers, and also the same article for himself as compensation for selling the punches.

Respondents employ a mailing service to distribute these push cards, order blanks and other explanatory and advertising materials to persons whose names and addresses have been secured from brokers who make a business of preparing such lists. The material is sent out on a nationwide basis. The first four months of respondents' operation, 120,000 mailings were made, from which 450 orders were received.

The hearing examiner found that respondents, by placing in the hands of others the means of conducting games of chance and lottery schemes in the sale of respondents' merchandise, were acting contrary to an established public policy of the Federal Government and in violation of the Federal Trade Commission Act. These findings and legal conclusions are clearly supported by the evidence and by many cases decided by the courts, which need not be cited here.

Respondents further argue that the evidence is insufficient to justify the order against Leo R. Fox, individually and as an officer of Morse Sales, Inc.

Respondent Fox was called as a witness by the Commission and refused to testify. Counsel supporting the complaint then introduced the testimony of an investigator for the Commission as to statements made to him by respondent Fox. From this and other evidence, it appears that: respondent Morse Sales, Inc. is a family corporation, of which respondent Fox is president; his niece is secretary and his sister is vice-president; the majority of the stock is held by the niece. Checks are signed by the respondent Fox and the auditor, Mr. Turner. In the early part of 1956, checks were signed by Fox as president and his niece as secretary-treasurer. The investigator for the Commission testified that respondent Fox told him that he (Fox) was the only active officer of the corporation,—a statement not denied by Mr. Fox when he later took the stand.

It seems clear from the evidence that respondent Fox is the dominant influence in the corporation and, in fact, controls its policies and sales activities as found by the hearing examiner.

The findings, conclusions and order of the hearing examiner are adopted as the findings, conclusions and order of the Commission.

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The appeals of respondents are denied and it is directed that an order issue accordingly.

FINAL ORDER

Counsel for the respondents having filed appeal from the initial decision of the hearing examiner and the matter having been heard on briefs, no oral argument having been requested; and the Commission having rendered its decision denying the appeals of the respondents and adopting the initial decision as the decision of the Commission:

It is ordered, That respondents Morse Sales, Inc., a corporation, and Leo R. Fox, individually and as an officer thereof, 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 said initial decision.