IN MATTER OF

# THE GUMMED INDUSTRIES ASSOCIATION, INC., ET AL.

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

*Docket 7079. Complaint, Mar. 3, 1958—Decision, Oct. 3, 1958*

Consent order requiring a trade association and six of its seven members, together producing almost 100 per cent of the gummed paper products manufactured in the United States, to cease fixing and maintaining uniform prices and terms of sale for flat gummed paper and differentials for variations in products, or selling at zone delivered prices; and requiring such manufacturer-members to cease quoting or selling their products at prices determined in accordance with a geographical zone delivered price system, and using the Association as a clearing house to exchange price information.

As to the seventh manufacturer respondent, Minnesota Mining and Manufacturing Company, complaint was dismissed without prejudice on Mar. 7, 1959, p. 1409, herein.

By *Earl J. Kolb*, hearing examiner.

*Mr. Andrew C. Goodhope* and *Mr. John Perechinsky* for the Commission.

*Sawyer & Marion*, of New York, N.Y., by *Mr. Albert E. Sawyer*, for The Gummed Industries Association, Inc., and Philip O. Deitsch.

*Mr. William H. Leahy*, of Framingham, Mass., for Dennison Manufacturing Company.

*Nutter, McClennen & Fish*, of Boston, Mass., for Nashua Corporation.

*Covington & Burling*, of Washington, D.C., by *Mr. H. Thomas Austern*, for Ludlow Papers, Inc.

*Frost & Jacobs*, of Cincinnati, Ohio, by *Mr. John C. Egbert*, for The Brown-Bridge Mills, Inc.

*Mr. Homer Crawford*, of New York, N.Y., for The Gummed Products Company.

*MacCoy, Evans & Lewis*, of Philadelphia, Pa., by *Mr. Mark Willcox, Jr.*, for Paper Manufacturers Company.

## INITIAL DECISION AS TO CERTAIN RESPONDENTS

The complaint in this proceeding charges the respondents named therein with having entered into a combination and conspiracy to fix prices in violation of Section 5 of the Federal Trade Commission Act.

After the issuance of the complaint, the respondents, except Minnesota Mining and Manufacturing Company, a corporation, entered into an agreement containing a consent order to cease and desist with counsel supporting the complaint disposing of all the issues in this proceeding.

Said agreement provides, among other things, that said respondents admit 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, said respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; 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 said respondents that they have violated the law as alleged in the complaint.

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

Respondent, The Gummed Industries Association, Inc., is an incorporated trade association organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 11 West 42d Street, New York 36, N.Y.

Respondent Philip O. Deitsch is an individual, and is secretary-treasurer and managing director of said respondent Association. Respondent's address is 11 West 42d Street, New York 36, N.Y.

Respondent Dennison Manufacturing Company is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts with its office and principal place of business located in Framingham, Mass.

Respondent Nashua Corporation (erroneously named in the complaint as a Massachusetts corporation and member of respondent The Gummed Industries Association, Inc.) is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 44 Franklin Street, Nashua, N.H.

Respondent Ludlow Papers, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts with its office and principal place of business located at Needham Heights, Mass.

Respondent The Brown-Bridge Mills, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Ohio with its office and principal place of business located at Water Street, Troy, Ohio.

Respondent The Gummed Products Company is a corporation organized and existing under and by virtue of the laws of the State of Ohio with its office and principal place of business located at South Union Street, Troy, Ohio.

Respondent Paper Manufacturers Company is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 9800 Bustelton Avenue, Philadelphia, Pa.

ORDER

*It is ordered,* That respondent The Gummed Industries Association, Inc., an incorporated trade association, its officers, agents, representatives, and employees; respondent Philip O. Deitsch, individually and as secretary-treasurer and managing director of said association; and the corporate respondents Dennison Manufacturing Company, Ludlow Papers, Inc., The Brown-Bridge Mills, Inc., The Gummed Products Company, and Paper Manufacterers Company, independently and as members of said association, and Nashua Corporation, their respective officers, agents, representatives and employees, in or in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of flat gummed paper, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course

of action, understanding, agreement, combination or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or to perform any of the following things:

1. Establishing, fixing or maintaining uniform and identical prices, terms or conditions of sale for any kind of flat gummed paper, or adhering to any prices, terms or conditions of sale so established, fixed or maintained.

2. Quoting or selling flat gummed paper at prices calculated or determined in whole or in part pursuant to or in accordance with a zone delivered price system, or quoting or selling flat gummed paper pursuant to or in accordance with any other plan or system which results in identical price quotations or prices for flat gummed paper at points of quotation or sale or to particular purchasers by any two or more sellers of flat gummed paper using such plan or system, or which prevents purchasers from finding any advantage in price in dealing with one or more as against another seller.

3. Using in the quotation and sale of flat gummed paper the geographical zones, or the price differentials between such zones heretofore fixed for pricing purposes, or establishing, fixing or maintaining any geographical areas for pricing purposes, or any differentials in price between any such areas for use in quoting or selling flat gummed paper.

4. Exchanging or relaying, directly or through The Gummed Industries Association, Inc., or any other trade association, clearing house or agency, price lists or other information as to prices, discounts, terms or conditions of sale for flat gummed paper for the purpose or with the effect of restraining price competition in the sale and distribution of flat gummed paper.

5. Establishing, fixing or maintaining, in the quotation and sale of flat gummed paper, uniform and identical differentials in price for variations in color, size, weight, trim, type, quantity or packing of flat gummed paper, or adhering to any such differentials so established, fixed or maintained.

*It is further ordered,* That the corporate respondents, Dennison Manufacturing Company, Nashua Corporation, Ludlow Papers, Inc., The Brown-Bridge Mills, Inc., The Gummed Products Company, and Paper Manufacturers Company, their officers, agents, representatives and employees, in or in connection with the offering for sale, sale or distribution of flat gummed paper in commerce, as "commerce" is defined in the Federal Trade Commis-

sion Act, do forthwith cease and desist from quoting or selling flat gummed paper at prices calculated or determined in whole or in part pursuant to or in accordance with a zone delivered price system for the purpose or with the effect of systematically matching the delivered price quotations or the delivered prices of other sellers of flat gummed paper and thereby preventing purchasers from finding any advantage in price in dealing with one or more sellers as against another.

## 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 as to certain respondents of the hearing examiner shall, on the 3d day of October 1958, become the decision of the Commission; and, accordingly:

*It is ordered,* That respondents The Gummed Industries Association, Inc., Philip O. Deitsch, Dennison Manufacturing Company, Nashua Corporation, Ludlow Papers, Inc., The Brown-Bridge Mills, Inc., The Gummed Products Company, and Paper Manufacturers Company 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

# COLE STEEL EQUIPMENT CO., INC.

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

*Docket 7127. Complaint, Apr. 18, 1958—Decision, Oct. 3, 1958*

Consent order requiring manufacturers of steel filing cabinets, with principal place of business in New York City, to cease representing falsely in catalogs and insert sheets furnished to their distributors that certain of their said filing cabinets were used in U.S. Government offices for the protection and preservation of secret and confidential documents and were suitable for such use by the Government and private industry.

*Mr. Frederick McManus* for the Commission.

*Walzer & Walzer*, of New York, N.Y., by *Mr. Martin J. Walzer*, for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued April 18, 1958, charges the respondent Cole Steel Equipment Co., Inc., a corporation, located at 415 Madison Avenue, New York, N.Y., with violation of the provisions of the Federal Trade Commission Act in the manufacture, sale and distribution of steel filing cabinets.

After the issuance of the complaint, said respondent entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by said respondent that it has violated the law as alleged in the complaint.

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

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity

of the order to cease and desist entered in accordance with the agreement.

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

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

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

ORDER

*It is ordered,* That the respondent Cole Steel Equipment Co., Inc., a corporation, and its officers, and its representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of steel filing cabinets in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any of its steel filing cabinets are used by the United States Government, or any of its offices, for the protection or preservation of secret or confidential documents or any of its steel filing cabinets are suitable for use for such purposes by the United States Government, or private industry, unless such is the fact.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 3d day of

October 1958, become the decision of the Commission; and, accordingly:

*It is ordered,* That respondent Cole Steel Equipment Co., 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.

# IN THE MATTER OF

# F. HOLLANDER & SON, INC., ET AL

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

*Docket 7145. Complaint, May 8, 1958—Decision, Oct. 3, 1958*

Consent order requiring manufacturers in New York City to reveal the rayon or acetate content of coverings of their umbrellas.

*Mr. Alvin D. Edelson* supporting the complaint.

*Mr. Walter M. Weisberg*, of New York, N.Y., for respondents.

## INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 8, 1958, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by failing to disclose the rayon and acetate content of umbrellas manufactured and sold by them where the coverings of such umbrellas simulate silk and in certain instances are advertised as "satin." After being served with said complaint respondents appeared by counsel and entered into an agreement, dated July 24, 1958, containing a consent order to cease and desist purporting to dispose of all of 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 facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement 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 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 F. Hollander & Son, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 114–20 West 30th Street, New York, N.Y.

The individual respondents Irving Hollander and Stanley H. Pollinger are officers of the corporate respondent and maintain business residences at 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 Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

*It is ordered,* That respondents F. Hollander & Son, Inc., a corporation, and its officers, and Irving Hollander and Stanley H. Pollinger, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of umbrellas or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Failing to conspicuously disclose by tag or label on the products themselves, and in advertisements and invoices, that their said products are composed, in whole or in part, of rayon or acetate, when such is the fact.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 3d day of October 1958, 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

# THOMAS & NOA 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 7153. Complaint, May 21, 1958—Decision, Oct. 3, 1958*

Consent order requiring a furrier in Lowell, Mass., to cease violating the Fur Products Labeling Act by tagging fur products with names of animals other than those producing the fur, and by failing to comply in other respects with labeling and invoicing requirements.

*Mr. S. F. House* for the Commission.
No appearance for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued May 21, 1958, charges the respondents Thomas & Noa Furs, Inc., a corporation, and Charles Thomas, individually and as an officer of said corporation, located at 25–33 Prescott Street, Lowell, Mass., with violation of the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act in the sale and distribution of fur products.

After the issuance of the complaint, respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation.

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

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

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

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

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

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

ORDER

*It is ordered,* That Thomas & Noa Furs, Inc., a corporation, and its officers, and Charles Thomas, 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, 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 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. Failing to show on labels attached to fur products the item numbers or marks assigned to fur products as required by Rule 40(a) of the Rules and Regulations.

3. Setting forth on labels affixed to fur products:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder which is intermingled with nonrequired information;

(b) The name or names of any animal or animals other than the name or names specified in Section 4(2)(A) of the Fur Products Labeling Act.

B. Falsely or deceptively invoicing fur products by:

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

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

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

2. Setting forth in invoices, information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations 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 3d day of October 1958, become the decision of the Commission; and, accordingly:

*It is ordered,* That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commissioner 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

KRUMHOLZ FIBRE CO., INC., ET AL.

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

*Docket 7162. Complaint, May 28, 1958—Decision, Oct. 3, 1958*

Consent order requiring a manufacturer in New York City to cease violating the Wool Products Labeling Act by labeling as "100% reprocessed wool," rolls of batting which contained a substantial percentage of nonwoolen fibers, and by failing to label certain of such wool products as required.

*Mr. Alvin D. Edelson* supporting the complaint.
Respondents, *pro se.*

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 28, 1958, 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 and falsely identifying the constituent fibers thereof. After being served with said complaint, respondents appeared and entered into an agreement containing consent order to cease and desist, dated August 7, 1958, purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all 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 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 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 Krumholz Fibre Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located at 4242 Park Avenue, New York, N.Y.

The individual respondent, William Krumholz is President of the corporate respondent and his business address is the same address as 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, Krumholz Fibre Co., Inc., a corporation, and its officers, and William Krumholz, individually and as an officer of the 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 wool products as "wool prod-

ucts" are defined therein, do forthwith cease and desist from misbranding such products by:

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

## 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 3d day of October 1958, 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

# THERMOID COMPANY

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

*Docket 7032. Complaint, Jan. 14, 1958—Decision, Oct. 4, 1958*

Consent order requiring a manufacturer doing a nation-wide business, with sales in 1956 exceeding $40,000,000, to cease discriminating in price in violation of Section 2(a) of the Clayton Act in the sale of its automotive replacement parts through charging independent jobbers higher prices than their competitors who bought through group organizations, and through favoring its private brand customers—including rubber and oil companies and mail order houses—over both group buying and independent jobbers, and in addition giving certain oil companies free merchandise.

## COMPLAINT

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

PARAGRAPH 1. Thermoid Company, respondent herein, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 500 Whitehead Road, Trenton 6, N.J.

PAR. 2. Respondent is principally engaged in the manufacture and sale of automobile parts, including radiator hose, fan belts, brake lining, brake parts, brake fluid, and clutch facing. Thermoid's total sales in 1956 exceeded $40,000,000.

Respondent manufactures said automobile parts in several plants located in several states and sells and ships such parts to customers located in each of the States of the United States and in the District of Columbia. Respondent, in the sale of said parts, has at all times relevant herein been and is now engaged in commerce, as "commerce" is defined in the amended Clayton Act.

PAR. 3. A principal market for respondent's products is composed of customers who are engaged in the sale and distribution of automobile replacement parts. A substantial portion of that market is made up of automobile replacement parts wholesalers who are commonly known, and referred to in the trade, as jobbers. Such jobbers normally and principally resell to retailers, such as repair garages, car dealers and gasoline filling stations. The respondent sells its products to more than 750 such jobbers and said jobbers, in 1956, purchased in excess of $6,000,000 worth of respondent's products. Among respondent's jobber customers are many who are banded together into organizations commonly referred to as jobber buying groups. Such customers are hereinafter referred to as group jobbers and those not affiliated with a jobber buying group are referred to as independent jobbers.

Another principal segment of the automobile replacement parts market is made up of the major marketing oil companies, the rubber companies, and the mail order companies. Respondent's sales to concerns of this nature in 1956 exceeded $2,000,000. Such customers require that respondent label the products purchased by them with their respective private labels and are sometimes hereinafter referred to collectively as private brand customers.

PAR. 4. In the sale and distribution of its products, respondent is in substantial and continuous competition with other sellers of similar products.

In several trade areas respondent's group jobber customers are in substantial competition with respondent's independent jobber customers.

Each and every one of respondent's jobber customers are in substantial and continuous competition with one or more of respondent's private brand customers.

PAR. 5. In the course and conduct of its business in commerce, the respondent has been and is now, in each of several trade areas, discriminating in price in the sale of its products of like grade and quality by selling them to independent jobber customers at higher prices than it sells them to group jobber customers who are competitively engaged, each with the other, in the resale of said products.

Respondent has effected said discriminations between its independent jobber customers and group jobber customers in the manner and by the methods hereinafter described.

The respondent sells its products to all of its jobber customers

at prices published on its "Warehousing Wholesaler" (blue) price list. When a jobber customer resells to another jobber, respondent, upon receiving proof from the jobber customer that such resales were made, refunds or rebates to the jobber customer a part of the purchase price paid for the goods so resold. Respondent does not, however, pay such refunds or rebates to jobber customers upon their total purchases but only upon a fixed maximum percentage of total purchases regardless of the manner of resale. The percentage rates of rebate and the maximum percentages of a jobber customer's total purchases eligible for such rebates during the years 1951 through 1956 are set out below:

| *Year* | *Refund rate (Percent)* | *Percentage of total purchases eligible* |
|---|---|---|
| 1951 | 12 | 70 |
| 1952 | 12 | 70 |
| 1953 | 12 | 70 |
| 1954 | 12 | 70 |
| 1955 | 12 | 70 |
| 1956 | 15 | 80 |

Respondent discriminates between its group jobber customers and its independent jobber customers by granting the rebates set out in the above table to group jobber customers on goods which they resell to retailers; while independent jobber customers are granted rebates only on goods which they resell to other jobbers and are denied rebates on goods which they resell to retailers.

Respondent further discriminates in favor of at least three of its group jobber customers by disregarding the fixed maximum percentage of total purchases eligible for rebate and grants rebates to the said three group jobber customers on all goods purchased from respondent.

The acts and practices of respondent, as above described, effect discriminations in price in that independent jobber customers are required to pay higher and less favorable prices than group jobber customers for goods purchased from respondent for resale to retailers.

PAR. 6. In the course and conduct of its business in commerce, the respondent has been and is now, discriminating in price in the sale of its products of like grade and quality by selling them to jobber customers at higher prices than it sells them to private brand customers who are competitively engaged, each with the other, in the resale of said products.

Respondent has effected discriminations in price between its jobber customers and its private brand customers in the manner and by the methods hereinafter described:

As aforedescribed, jobber customers are billed and required to pay prices which respondent publishes on its so-called "Warehousing Wholesaler" price list. Said jobber prices are considerably higher than the prices which the private brand customers are charged for goods of like grade and quality. The private brand customers for the most part purchase only fan belts and flexible radiator hose.

Respondent has divided the private brand customers into three groups, rubber companies, mail order companies, and oil companies. The rubber company private brand customers are:

Goodyear Tire & Rubber Company
The B. F. Goodrich Company
United States Rubber Company

These three private brand customers purchase flexible radiator hose from respondent at net prices approximately 34.5 percent below the "Warehousing Wholesaler" list prices.

The mail order company private brand customers are:

Montgomery Ward & Company
Sears Roebuck and Company

These two private brand customers purchase fan belts from respondent at net prices which are approximately 42 percent below the "Warehousing Wholesaler" list prices and purchase flexible radiator hose at net prices which are approximately 25 percent below the "Warehousing Wholesaler" list prices.

The oil company private brand customers are:

Cities Service Oil Company
Esso Standard Oil Company
Gulf Oil Company
Standard Oil Company of California
Standard Oil Company (Indiana)
Standard Oil Company (Kentucky)
Standard Oil Company of Texas
Sun Oil Company
Utah Oil Refining Company

These private brand customers purchase fan belts from respondent at net prices which are approximately 36 percent below the "Warehousing Wholesaler" list prices and purchase flexible radiator hose at net prices which are approximately 21 percent below the "Warehousing Wholesaler" list prices.

An additional discrimination in price is afforded the following oil company private brand customers:

Esso Standard Oil Company
Standard Oil Company of California
Standard Oil Company (Indiana)
Standard Oil Company (Kentucky)
Standard Oil Company of Texas
Utah Oil Refining Company

These companies, since 1953, for varying periods in each year, have been given one free belt or one free piece of flexible radiator hose with each ten belts or ten pieces of hose purchased. During 1956 the named private brand customers received free fan belts and free flexible radiator hose in the following amounts:

| *Customer* | *Free Belts received* | *Free hose received* | *Total value of free items* |
|---|---|---|---|
| Esso Standard Oil Co. | 16,910 | 7,197 | $15,187.41 |
| Standard Oil Co. of Cal. | 9,730 | 0 | 6,129.90 |
| Standard Oil Co. (Ind.) | 14,788 | 9,411 | 15,245.37 |
| Standard Oil Co. (Ky.) | 10,176 | 2,232 | 7,817.04 |
| Standard Oil Co. of Texas | 2,235 | 241 | 1,559.88 |
| Utah Oil Refining Co. | 661 | 371 | 650.16 |

PAR. 7. The effect of respondent's discriminations in price, as above alleged, may be substantially to lessen, injure, destroy, or prevent competition between respondent and competing sellers of similar automobile replacement parts; between and among respondent's independent jobber customers and group jobber customers; and between and among respondent's private brand customers and all jobber customers.

PAR. 8. The acts and practices of respondent as above alleged constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

*Mr. Francis C. Mayer* and *Mr. William W. Rogal* for the Commission.

*Breed, Abbott & Morgan,* of New York, N.Y., by *Mr. Charles H. Tuttle,* for respondent.

## INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued January 14, 1958, charges the respondent Thermoid Company, a corporation, located at 500 Whitehead Road, Trenton, N.J., with violation of the provisions of subsection (a) of Section 2 of the Clayton Act,

as amended by the Robinson-Patman Act, in the sale of automotive replacement parts.

After the issuance of the complaint, respondent entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

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

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

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

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

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

ORDER

*It is ordered,* That Thermoid Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale of automotive replacement parts, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating in price by selling such parts of like grade and quality to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondent's 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 4th day of October 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

# MASSACHUSETTS BONDING AND INSURANCE COMPANY

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

*Docket 6447. Complaint, Nov. 18, 1955—Order, Oct. 6, 1958*

Order dismissing, for lack of jurisdiction, following the ruling of the Supreme Court of the United States in *Federal Trade Commission v. National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company*, 357 U.S. 560, complaint charging an insurance company in Boston, Mass., with false advertising of its health and accident policies.

*Mr. John W. Brookfield, Jr.* for the Commission.

*Gaston, Snow, Motley & Holt*, by *Mr. Joseph P. Rooney* and *Mr. John B. Pierce, Jr.*, of Boston, Mass., and *Mr. Robert Watson*, of Washington, D.C., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding is one brought under the Federal Trade Commission Act as affected and amended by the McCarran-Ferguson Act, 15 U.S.C., §§1011–1015 inclusive, the complaint charging the respondent corporation, in substance, with having transmitted in interstate commerce certain alleged false, misleading and deceptive advertising concerning its individual health-and-accident insurance policies. Group health-and-accident insurance is not involved. The complaint is dismissed herein for lack of jurisdiction by the Commission over the subject-matter thereof, pursuant to the recent decision of the Supreme Court of the United States, relating to that subject.

The Supreme Court, in one *per curiam* opinion issued on June 30, 1958, decided two cases, entitled *Federal Trade Commission* v. *National Casualty Company* (No. 435) and *Federal Trade Commission* v. *The American Hospital and Life Insurance Company* (No. 436), 357 U.S. 560 (1958). The Supreme Court accepted jurisdiction of these cases on writs of certiorari from the Courts of Appeals for the Sixth and Fifth Circuits, respectively, to review their "interpretation of an important federal statute." It affirmed the judgment of each of such Circuits in setting aside the Commission's cease-and-desist orders against the said respondent insurers. In the course of its opinion, the Supreme Court

rejected all contentions of the Federal Trade Commission purporting to sustain its jurisdiction, and, in affirming the said judgments of said courts of appeals, held that the Commission is prohibited by the McCarran-Ferguson Act from regulating the practices complained of by it within those states having statutes authorizing the regulation of such practices.

With particular pertinence to the case at bar, the Supreme Court, covering in the one case a casualty-insurance company and in the other a life-insurance company, held:

> Respondents, the National Casualty Company in No. 435 and the American Hospital and Life Insurance Company in No. 436, engage in the sale of health and accident insurance. National is licensed to sell policies in all States, as well as the District of Columbia and Hawaii, while American is licensed in fourteen States. Solicitation of business for National is carried on by independent agents who operate on commission. The company's advertising material is prepared by it and shipped in bulk to these agents, who distribute the material locally and assume the expense of such dissemination. Only an insubstantial amount of any advertising goes directly by mail from the company to the public, and there is no use of radio, television, or other means of mass communication by the company. American does not materially differ from National in method of operation.
>
> * * * There is no question but that the States possess ample means to regulate this advertising within their respective boundaries.
>
> * * * Each State in question has enacted prohibitory legislation which proscribes unfair insurance advertising and authorizes enforcement through a scheme of administrative supervision.

In footnote 6 of its opinion, the Supreme Court said:

> At the time the complaints were filed thirty-six States had enacted the "Model Unfair Trade Practices Bill for Insurance." Eight others had statutes essentially the same in effect as the "Model Bill."

The opinion of the Supreme Court is sweeping and general in its language. It does not attempt to cite the numerous statutes of the several States which constitute the entire regulatory plan of each of such States. And to do so herein is wholly unnecessary; suffice it to say that official notice is taken that all States, by statute, provide for the licensing and regulation of all types of insurance agents; that all the States now have legislative acts providing more or less specifically for the regulation of life-insurance companies' business of health-and-accident insurance, including the advertising thereof; and that, with respect to the business of casualty-insurance companies, nearly all of the States have specific regulatory statutes, but in each of the remaining few, the general regulatory powers of the Insurance Department are sufficiently broad, when coupled with the criminal and other

statutes of the State, to provide a system of regulation of any unfair advertising by such companies and their agents, which the Supreme Court apparently deems adequate to regulate such business in such States. It holds, in effect, that under the McCarran-Ferguson Act each State is given latitude to enact such laws and provide such regulatory processes as each State deems proper within its own jurisdiction, and that the degree of actual law enforcement, if any, in the several States is wholly immaterial.

In the instant proceeding, the complaint was issued on November 18, 1955. Respondent subsequently joined issue, and, among other pleas, adequately raised the issue of the Commission's jurisdiction over the subject-matter. The record is fairly voluminous, but, in view of the conclusion reached herein, only a few undisputed facts need be stated. While at the conclusion of the proceeding each of the parties submitted extensive and detailed proposed findings of fact as well as conclusions of law, and a proposed order, some of which proposed findings and conclusions are quite proper, for brevity all such proposals have been rejected.

The respondent is a stock casualty insurance company duly organized, existing and doing business under the laws of the Commonwealth of Massachusetts, with its office and principal place of business in Boston, Mass. The respondent and its agents, respectively, were licensed in all of the forty-nine States of the United States (including the newly admitted State of Alaska), the District of Columbia and the Territory of Hawaii. During the time covered by this proceeding respondent casualty company never sent any advertising by mail directly from its home office to the public generally, and did not use radio, television or other mass media of communication to the public. Its advertising activity was confined to the preparation of advertising circulars and their distribution to its agents, who then distributed them locally at their own expense.

This proceeding, therefore, falls squarely within the principles enunciated by the Supreme Court in its said decisions. Accordingly,

*It is ordered,* That the complaint herein be, and the same hereby is, dismissed for lack of jurisdiction.

FINAL ORDER

The date on which the hearing examiner's initial decision would have become the decision of the Commission having been extended by order issued September 10, 1958, 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 duly providing for dismissal of this proceeding for lack of jurisdiction be, and it hereby is, adopted as the decision of the Commission.

IN THE MATTER OF

# GUARANTEE TRUST LIFE INSURANCE COMPANY

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

*Docket 6244. Complaint, Oct. 14, 1954—Order, Oct. 7, 1958*

Order dismissing, for lack of jurisdiction, following the ruling of the Supreme Court of the United States in *Federal Trade Commission v. National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company*, 357 U.S. 560, complaint charging a Chicago insurance company with false advertising of its health and accident policies.

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

*Mr. Frederick McManus* for the Commission.

*Mr. Zachary D. Ford, Jr.* and *Walkins & Meyers*, of Chicago, Ill., for respondent.

## FINAL ORDER

This matter having come on to be heard by the Commission upon respondent's appeal from the hearing examiner's initial decision filed prior to the *per curiam* opinion of the United States Supreme Court in the combined cases of *Federal Trade Commission* v. *National Casualty Company* and *Federal Trade Commission* v. *The American Hospital and Life Insurance Company*, 357 U.S. 560 (decided June 30, 1958) ; and

The Commission having considered respondent's appeal and the record, and having concluded that this proceeding should be dismissed on jurisdictional grounds upon the authority of said ruling of the Supreme Court:

*It is ordered*, That the initial decision herein, filed April 26, 1957, be, and it hereby is, vacated and set aside.

*It is further ordered*, That the complaint herein be, and it hereby is, dismissed.

IN THE MATTER OF

# PROFESSIONAL INSURANCE CORPORATION

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

*Docket 6279. Complaint, Dec. 28, 1954—Order, Oct. 7, 1958*

Order dismissing, for lack of jurisdiction, following the ruling of the Supreme Court of the United States in *Federal Trade Commission v. National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company*, 357 U.S. 560, complaint charging an insurance company in Jacksonville, Fla., with false advertising of its health and accident policies.

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

*Mr. Francis C. Mayer, Mr. Eugene Kaplan* and *Mr. Franklin A. Snyder*, for the Commission.

*Strasburger, Price, Kelton, Miller & Martin*, by *Mr. Royal H. Brin, Jr.*, and *Mr. H. W. Strasburger*, of Dallas, Tex., for respondent.

## FINAL ORDER

This matter having been considered by the Commission upon its review of the hearing examiner's initial decision dismissing the complaint on the grounds of (1) lack of jurisdiction in the Commission, and (2) discontinuance of the practices alleged to be unlawful; and

The Commission having concluded that the proceeding should be dismissed solely on jurisdictional grounds on the authority of the Supreme Court's *per curiam* opinion in the combined cases of *Federal Trade Commission* v. *National Casualty Company* and *Federal Trade Commission* v. *The American Hospital and Life Insurance Company*, 357 U.S. 560 (decided June 30, 1958), and that oral argument of the matter, as requested by the respondent, is not necessary:

*It is ordered*, That respondent's request for oral argument be, and it hereby is, denied.

*It is further ordered*, That the initial decision filed herein on May 19, 1958, be, and it hereby is, vacated and set aside.

*It is further ordered*, That the complaint in this proceeding be, and it hereby is dismissed.

Order

IN THE MATTER OF

# INTER-OCEAN INSURANCE COMPANY

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

*Docket 6392. Complaint, July 18, 1955—Order, Oct. 7, 1958*

Order dismissing, for lack of jurisdiction, following the ruling of the Supreme Court of the United States in *Federal Trade Commission v. National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company*, 357 U.S. 560, complaint charging an insurance company in Cincinnati, Ohio, with false advertising of its health and accident policies.

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

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

*Mr. Richard W. Barrett* and *Mr. William L. Blum* of *Dinsmore, Shohl, Sawyer and Dinsmore*, of Cincinnati, Ohio, and *Mr. Brooks Trueblood*, Associate Counsel of Respondent, all appearing for the respondent.

*Mr. James C. Jay*, of Indianapolis, Ind., Special Counsel for the State of Indiana and the Insurance Department of the State of Indiana, appearing herein as *amicus curiae*.

FINAL ORDER

This matter having come on to be heard upon the appeal of counsel in support of the complaint from the initial decision of the hearing examiner dismissing the complaint on the ground of a lack of public interest in the proceeding; and

The Commission having determined that this matter is governed by the decision of the Supreme Court of the United States in the combined cases of *Federal Trade Commission* v. *National Casualty Company* and *Federal Trade Commission* v. *The American Hospital and Life Insurance Company*, 357 U.S. 560 (decided June 30, 1958), and that the complaint herein should be dismissed solely on the basis of the aforesaid authority:

*It is ordered*, That the initial decision of the hearing examiner be, and it hereby is, vacated and set aside.

*It is further ordered*, That the complaint in this proceeding be, and it hereby is, dismissed.

IN THE MATTER OF

# WORLD INSURANCE COMPANY

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

*Docket 6455. Complaint, Nov. 18, 1955—Order, Oct. 7, 1958*

Order dismissing, for lack of jurisdiction, following the ruling of the Supreme Court of the United States in *Federal Trade Commission v. National Casualty Company* and *Federal Trade Commission v. The American Hospital and Life Insurance Company*, 357 U.S. 560, complaint charging an insurance company in Omaha, Nebr., with false advertising of its health and accident policies.

Before *Mr. Frank Hier*, hearing examiner.
*Mr. William A. Somers* for the Commission.
*Mr. J. W. Marer*, of Omaha, Nebr., for respondent.

FINAL ORDER

This matter having come on to be heard by the Commission upon respondent's appeal from the hearing examiner's initial decision filed prior to the *per curiam* opinion of the United States Supreme Court in the combined cases of *Federal Trade Commission* v. *National Casualty Company* and *Federal Trade Commission* v. *The American Hospital and Life Insurance Company*, 357 U.S. 560 (decided June 30, 1958) ; and

Counsel for respondent additionally having filed a motion to dismiss the complaint, based upon the aforesaid decision of the Supreme Court; and

The Commission, having considered respondent's motion to dismiss and the record, and having concluded that this proceeding should be dismissed on jurisdictional grounds upon the authority of said ruling of the Supreme Court:

*It is ordered*, That the initial decision herein, filed October 22, 1956, be, and it hereby is, vacated and set aside.

*It is further ordered*, That the complaint herein be, and it hereby is, dismissed.

IN THE MATTER OF

# D. H. HOLMES COMPANY, LTD.

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

*Docket 7172. Complaint, June 9, 1958—Decision, Oct. 7, 1958*

Consent order requiring a furrier in New Orleans, La., to cease violating the Fur Products Labeling Act by labeling fur products falsely with respect to the names of animals producing the fur and by failing to comply with other labeling requirements; by deceptive invoicing; and by advertising in newspapers which failed to disclose the names of animals producing certain fur or the country of origin of imported furs or that some furs contained artificially colored or cheap or waste fur, or which contained the names of animals other than those producing certain furs.

*Mr. Thomas A. Ziebarth* supporting the complaint.

*Mr. Leon Sarpy* of *Chaffe, McCall, Phillips, Burke & Hopkins* of New Orleans, La., for respondent.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on June 9, 1958, charging it with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act by misbranding, falsely invoicing and falsely advertising certain fur products. After being served with the complaint respondent entered into an agreement, dated July 28, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the Assistant Director and the Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondent waives all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions

of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

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

1. Respondent D. H. Holmes Company, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana with its office and principal place of business located at 819 Canal Street, New Orleans, La.

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

ORDER

*It is ordered,* That respondent, D. H. Holmes Company, Ltd., a corporation and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of fur products, or in connection with the sale, advertising, offering for sale, trans-

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

A. Misbranding fur products by:

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

2. Failing to affix labels to fur products showing:

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

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

g. The item number of such fur product.

3. Setting forth on labels attached to fur products:

a. Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder mingled with nonrequired information;

b. Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder in handwriting.

4. Failing to show on labels affixed to fur products all the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder, on one side of such labels.

B. Falsely or deceptively invoicing fur products by:

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

a. The name or names of the animal or animals producing the fur or furs contained in the fur 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.

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 product as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

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

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

d. The name of the country of origin of any imported furs contained in the fur product.

2. Contains the name or names of an animal or animals other than those producing the fur contained in the 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 shall, on the 7th day of October 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

# HOWE SEWING CENTERS, INC., ET AL.

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

*Docket 7156. Complaint, May 26, 1958—Decision, Oct. 8, 1958*

Consent order requiring sellers in St. Paul, Minn., to cease using bait advertising to sell rebuilt sewing machines and vacuum cleaners, representing falsely that such products were guaranteed in writing, and representing fictitiously high prices as regular retail prices.

*Mr. Charles W. O'Connell* supporting the complaint.

*Mr. Jack L. Prescott,* of Minneapolis, Minn., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On May 26, 1958, the Federal Trade Commission issued a complaint alleging that Howe Sewing Centers, Inc., a corporation, Royal Appliance Stores, Inc., a corporation, Joseph B. Peters, Jack L. Prescott, Thomas S. Peters, and Emogene Peters, individually and as officers of said corporations, had violated the provisions of the Federal Trade Commission Act by making false and misleading representations by means of radio broadcasts, advertisements in newspapers and statements on postcards sent through the United States mails, in connection with the sale and distribution of sewing machines and vacuum cleaners.

After issuance and service of the complaint, the respondents Howe Sewing Centers, Inc., Royal Appliance Stores, Inc., Joseph B. Peters, individually and as an officer of said corporations, and Jack L. Prescott, Thomas S. Peters, and Emogene Peters, individually, hereinafter referred to as respondents, their attorney and counsel supporting the complaint, entered into an agreement for a consent order. It was agreed that the complaint be dismissed as to Jack L. Prescott, Thomas S. Peters and Emogene Peters as officers of said corporations since neither is an officer of either of said corporations.

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; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions 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.

The undersigned 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. Respondents Howe Sewing Centers, Inc., and Royal Appliance Stores, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with their office and place of business located at 2705 Highway 55, St. Paul, Minn. The former address of said corporate respondents was 919 Rice Street, St. Paul, Minn.

2. The office and place of business of Joseph B. Peters, presently secretary and treasurer of said corporations, and Emogene Peters are the same as that of the corporate respondents. The present business address of Jack L. Prescott is 3402 University Avenue SE, Minneapolis, Minn., and the address of respondent Thomas S. Peters is 1075 Glenhill Road, St. Paul, Minn.

3. 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 Howe Sewing Centers, Inc., a corporation, and its officers, and Royal Appliance Stores, Inc., a corporation, and its officers, and Joseph B. Peters, individually and as an officer of said corporations, Jack L. Prescott, Thomas S. Peters, and Emogene Peters, individually, 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 sewing machines and vacuum cleaners or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That certain merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered.

2. That any merchandise sold or offered for sale by respondents is guaranteed unless guarantees are furnished and unless the nature and extent of the guarantee and the manner in which respondents will perform thereunder are clearly set forth in the guarantee and in the advertising.

3. That any amount is respondents' retail price of merchandise when such amount is in excess of the price at which such merchandise is regularly and usally sold by respondents at retail.

*It is further ordered,* That the complaint herein be dismissed as to Jack L. Prescott, Thomas S. Peters, and Emogene Peters as officers of said corporations.

## 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 October 1958, become the decision of the Commission; and, accordingly:

*It is ordered,* That the respondents Howe Sewing Centers, Inc., a corporation and its officers, and Royal Appliance Stores, Inc., a corporation, and its officers, and Joseph B. Peters, individually and as an officer of said corporations, Jack L. Prescott, Thomas S. Peters, and Emogene Peters, 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

# ALAN NELSON ET AL.
# TRADING AS ROYALTY JEWELRY COMPANY

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

*Docket 6868. Complaint, Aug. 20, 1957—Decision, Oct. 9, 1958*

Order requiring manufacturers in New York City to cease stamping "14 K" on gold chains of only 13½ karat fineness.

*Mr. S. F. House*, supporting the complaint.
*Mr. Heinz A. L. Hellmold*, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

## PRELIMINARY STATEMENT

On August 20, 1957, the Federal Trade Commission issued a complaint charging Alan Nelson and Armin Feiger, individually and as copartners trading as Royalty Jewelry Company, hereinafter referred to as respondents, with violation of the Federal Trade Commission Act by reason of their stamping the phrase "14K" on gold chains which they manufacture, sell and distribute, whereas, they contain gold of a fineness substantially less than 14 carat.

Respondents answered the complaint, admitting some and denying other allegations. Respondents say, among other things, that the stamping "14K" on their gold chains does not constitute a representation to the public that such chains are manufactured from gold of exactly 14 carat fineness, and "14K" may denote any fineness between 13 and 14 carat.

Hearings have been held and counsel for both parties have filed proposed findings of fact, conclusions, and order. All proposed findings of fact and conclusions of law submitted by respective counsel not specifically found or concluded herein are rejected. Upon the basis of the entire record the hearing examiner makes the following findings of fact and conclusions and issues the following order:

## FINDINGS OF FACT

1. Respondents Alan Nelson and Armin Feiger are individuals and copartners trading under the firm name of Royalty

Jewelry Company with their office and principal place of business at 15 West 47th Street, New York, N.Y.

2. Respondents are now, and for sometime last past have been, engaged in the business of manufacturing, distributing and selling gold chains to wholesalers and retailers for resale to the purchasing public.

3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their gold chains, when sold, to be transported from their place of business in the State of New York to wholesalers and retailers located in various other States of the United States for resale to the general public. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said gold chains in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States.

4. In the course and conduct of their business and for the purpose of inducing the purchase of said gold chains, respondents have sold and distributed, and do now sell and distribute in commerce, as aforesaid, gold chains with the phrase "14K" appearing thereon. By means of said marking, respondents represent, directly and by implication, that said gold chains marked "14K" are manufactured from gold of 14 carat fineness. In truth and in fact said gold chains are not manufactured from gold of 14 carat fineness but are manufactured from gold of substantially less than 14 carat fineness, to wit, 13⅛ carat.

5. In the course and conduct of their business respondents are in direct and substantial competition with other corporations, firms and individuals engaged in the sale, in commerce, of gold chains. The practice of respondents, as aforesaid, in selling and distributing the above-described gold chains in commerce with the phrase "14K" appearing thereon has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said gold chains are manufactured from gold of 14 carat fineness and into the purchase of substantial quantities of said gold chains because of such mistaken and erroneous belief.

6. A substantial portion of the gold chains which respondents manufacture, sell and distribute to wholesalers, jobbers and retail dealers in interstate commerce are stamped "14K," whereas the gold in said chains contains a fineness of only 13⅛ carat.

7. The National Stamping Act (15 U.S.C. Sec. 294, et seq.)

provides that the actual fineness of gold (shipped or transported and delivered in "commerce") "shall not be less by more than one-half of one carat than the fineness indicated by the mark stamped" * * * thereon. Admittedly, respondents' acts in knowingly stamping chains "14K" when they contain gold of a fineness of only 13⅛ carat is a violation of the above-named act. Proof of such violations are competent evidence that they are to the prejudice and injury of the public and of competitors and constitute unfair and deceptive acts and practices and unfair methods of competition within the meaning of the Federal Trade Commission Act. Also, the circumstance, as alleged by respondents, that some manufacturers stamp their products "14K," when, in fact, their products contain gold of a fineness of only 13⅛ carat and respondents merely followed this alleged "custom" is no excuse or justification for respondents to violate the law.

8. Respondents have questioned the accuracy of the assay of one of respondents' chains made on behalf of the Federal Trade Commission and respondents claim that the volume of their business in interstate commerce is negligible. A preponderance of the evidence shows that the assay was performed by a reputable firm of assayers and respondents' trade in "interstate commerce" is substantial. The hearing examiner has considered each of the other contentions raised by counsel for respondents and they are without merit.

CONCLUSION

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

ORDER

*It is ordered,* That respondents Alan Nelson and Armin Feiger, individually and as copartners trading as Royalty Jewelry Company, or any other name, their agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of any articles composed in whole or in part of gold or an alloy of gold in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Stamping, branding, engraving, or marking any article with

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission, by order issued September 19, 1958, having placed this case on its own docket for review, and having considered the matter, has concluded that for purposes of clarification certain modifications hereinafter specified should be made in the hearing examiner's initial decision herein:

*Accordingly, it is ordered,* That the title "Conclusions" immediately preceding the paragraph numbered 7 of the initial decision be stricken and that, in lieu thereof, the word "Conclusion" be inserted immediately preceding the paragraph numbered 9 of said initial decision.

*It is further ordered,* That the paragraph numbered 7 of the initial decision be modified to read as follows:

"7. The National Stamping Act (15 U.S.C. Sec. 294, et seq.) provides that the actual fineness of gold (shipped or transported and delivered in 'commerce') 'shall not be less by more than one-half of one carat than the fineness indicated by the mark stamped' * * * thereon. Admittedly, respondents' acts in knowingly stamping chains '14K' when they contain gold of a fineness of only 13⅛ carat is a violation of the above-named Act. Proof of such violations are competent evidence that they are to the prejudice and injury of the public and of competitors and constitute unfair and deceptive acts and practices and unfair methods of competition within the meaning of the Federal Trade Commission Act. Also, the circumstance, as alleged by respondents, that some manufacturers stamp their products '14K,' when, in fact, their products contain gold of a fineness of only 13⅛ carat and respondents merely followed this alleged 'custom' is no excuse or justification for respondents to violate the law."

*It is further ordered,* That the initial decision, as so modified, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered,* That the respondents, Alan Nelson and

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

IN THE MATTER OF

# BASKIN 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 7158. Complaint, May 27, 1958—Decision, Oct. 11, 1958*

Consent order requiring furriers in Washington, D.C., to cease violating the labeling, invoicing, and advertising requirements of the Fur Products Labeling Act.

*Frederick McManus,* Esq., for the Commission.
*Webster Ballinger,* Esq., of Washington, D.C., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 27, 1958, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by misbranding and falsely representing their fur products. Respondents appeared by counsel and entered into an agreement, dated August 7, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with §3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said

agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

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

1. Respondent Baskin Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Individual respondents Emanuel Baskin and Sylvia Baskin Vogel are president and secretary-treasurer, respectively, of said corporation and cooperate in formulating, directing and controlling the acts, practices and policies of the corporate respondent. The address and principal place of business of both the corporate respondent and the individual respondents is located at 719 G Street, NW., Washington, D.C. The corporate respondent sometimes trades as Baskin Furs.

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, Baskin Furs, Inc., a corporation, and its officers, and Emanuel Baskin and Sylvia Baskin Vogel, 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 introduction into commerce, or manufacture for introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the

transportation or distribution in commerce of fur products, or in connection with the manuacture 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 product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

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

2. Failing to affix labels to fur products showing:

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

(b) That the fur product contains or is composed of used fur, when such is 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, or transported or distributed it in commerce;

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

3. Setting forth on labels attached to fur products:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder in abbreviated form;

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder mingled with nonrequired information;

4. Failing to show on labels attached to fur products all of the information required under section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder on one side of the label.

B. Falsely or deceptively invoicing fur products by:

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

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

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

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

2. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations thereunder in abbreviated form;

3. Using the term "blended" to describe the pointing, bleaching, dyeing or tip-dyeing of furs.

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 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 bleached, dyed or otherwise artificially colored fur, when such is the fact;

(c) 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. Contains the name or names of any animal or animals other than the name or names specified in Section 5(a)(1) of the Fur Products Labeling Act;

3. Contains the term "blended" to describe the pointing, bleaching, dyeing or tip-dyeing of furs;

4. Represents, directly or by implication:

(a) That the regular or usual price of any fur product is any

amount which is in excess of the price at which the respondents have usually and customarily sold such products in the recent regular course of their business;

(b) That the regular or usual price charged by respondents for any fur product in the recent regular course of their business is reduced in direct proportion to the amounts of savings stated in percentage savings claims, when contrary to fact;

(c) That any such products are the stock of a business in a state of liquidation, unless such is the fact;

(d) That the sources of fur products are other than the true sources thereof;

(e) That the prices at which fur products are offered for sale are wholesale prices or are less than wholesale cost, unless such is the fact.

D. Making claims and representations in advertisements respecting comparative prices, percentage savings claims, claims that prices are reduced from regular or usual prices or that fur products are offered at wholesale prices, unless respondents maintain 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 shall, on the 11th day of October 1958, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF

# JOSEPH J. PINKUS DOING BUSINESS AS PRACTICAL RESEARCH COMPANY, ETC.

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

*Docket 7177. Complaint, June 27, 1958—Decision, Oct. 11, 1958*

Consent order requiring the distributor of "K–12" reducing preparation to cease representing falsely in advertising in newspapers, magazines, etc., that such product was safe to use by all obese persons and enabled them to lose weight without dieting and to lose a certain number of pounds in a given period.

*Mr. Morton Nesmith* and *Mr. Berryman Davis* for the Commission.

*Fast & Fast*, by *Mr. Herman L. Fast*, of Newark, N.J., for respondent.

## INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On June 27, 1958, the Federal Trade Commission issued its complaint against the above-named respondent, charging him with the use of an unfair and deceptive act and practice in commerce in violation of the provisions of the Federal Trade Commission Act in the dissemination of false advertisements of a drug preparation designated "K–12." In lieu of submitting answer to said complaint, the respondent entered into an agreement for consent order with counsel supporting the complaint disposing of all the issues in this proceeding in accordance with Section 3.25 of the Rules of Practice and Procedure of the Commission, which agreement has been duly approved by the Bureau of Litigation.

By the terms of said agreement, the respondent admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Respondent in the agreement expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all 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. It was further provided that said agreement, together with the complaint,

shall constitute the entire record herein; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that said agreement is for settlement purposes only and does not constitute an admission by the respondent that he has violated the law as alleged in the complaint. The agreement also provided that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

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

1. Respondent Joseph J. Pinkus is an individual doing business as Practical Research Company and as Practical Research K–12 Company, with his office and principal place of business located at 403 Market Street, Newark, N.J.

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

ORDER

*It is ordered,* That respondent, Joseph J. Pinkus, and individual doing business as Practical Research Company and as Practical Research K–12 Company, or under any other trade name or names, and respondent's representatives, agents or employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation K–12, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertise-

ment by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or indirectly:

(a) That said preparation is safe to use by all obese persons;

(b) That obese persons can lose weight by the use of said preparation without dieting and while consuming the same kinds and amounts of food as they ordinarily consume;

(c) That any predetermined weight reduction can be achieved by the taking or use of said preparation for a prescribed period of time.

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

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 11th day of October 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

# LA BELLE SILVER COMPANY, INC., ET AL.

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

*Docket 7031. Complaint, Jan. 14, 1958—Decision, Oct. 14, 1958*

Consent order requiring a manufacturer of small electrical appliances in Glendale, L.I., N.Y., to cease representing falsely in advertising matter and on labels, price tags, and cartons disseminated for use in the retail sale of its percolators and blenders, that grossly exaggerated prices were the retail selling prices, that certain of their percolators were trimmed in 24 karat "Warranted Gold Plate," and—through prominent use of the words "General Electric"—that its said products were manufactured by the General Electric Company.

*Ames W. Williams* supporting the complaint.
*Lillian L. Poses*, of New York, N.Y., for respondents.

## INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On January 14, 1958, the Federal Trade Commission issued a complaint alleging that La Belle Silver Company, Inc., a corporation, Simon Cantor, Armand Weinberger, Eugene Singer, and Harry Orol, individually and as officers of said corporation, hereinafter referred to as respondents, had violated the provisions of the Federal Trade Commission Act by making false, misleading and deceptive statements and representations concerning their products, small electrical appliances, including percolators and blenders, which they manufacture and offer for sale.

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; the record herein shall consist solely of the

complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions 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.

The undersigned 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. Respondent La Belle Silver Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Cooper Avenue and 80th Street, Glendale, Long Island, N.Y.

2. Respondents Simon Cantor, Armand Weinberger, Eugene Singer, and Harry Orol are individuals and officers of the said corporate respondent, serving respectively as president, vice president, treasurer and secretary, with their office and principal place of business located at the same place as that of the corporate respondent.

3. 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, La Belle Silver Company, Inc., a corporation, and its officers, and Simon Cantor, Armand Weinberger, Eugene Singer, and Harry Orol, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of small electrical appliances, including percolators or blenders, or any other products, in commerce as "commerce"

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

1. Representing, directly or indirectly:

(a) That any stated price, which is in excess of the price at which such products are regularly and usually sold at retail, is the retail price of such products.

(b) That merchandise is gold plated, unless it has a surface plating of gold or gold alloy applied by a mechanical process provided, however, that a product or part thereof, on which there has been affixed by an electrolytic process a coating of gold, or a gold alloy of not less than 10 karat fineness, the minimum thickness of which is equivalent to seven one-millionths of an inch of fine gold, may be marked or described as gold electroplate or gold electroplated.

2. Using the name of any company in connection with merchandise which has not been manufactured in its entirety by said company; or representing, directly or indirectly; that merchandise not manufactured in its entirety by a specified company, was so manufactured, provided, however, that this prohibition shall not be construed as preventing a truthful statement that a part of an article of merchandise has been manufactured by a specific company when such part is clearly and conspicuously identified.

3. Furnishing means or instrumentalities to retailers, distributors or others by or through which they may mislead the public with respect to any of the matters set out in the paragraphs above.

## 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 14th day of October 1958, 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

RICH'S, INC.

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

*Docket 7159. Complaint, May 27, 1958—Decision, Oct. 14, 1958*

Consent order requiring a furrier in Atlanta, Ga., to cease violating the invoicing and advertising requirements of the Fur Products Labeling Act.

*Thomas A. Ziebarth*, Esq., for the Commission.

*Parker and Parker*, by *Benjamin M. Parker*, Esq., of Atlanta, Ga., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on May 27, 1958, charging it with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by misbranding and falsely representing its fur products. Respondent appeared by counsel and entered into an agreement, dated August 15, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with §3.25 of the Rules of Practice of the Commission.

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

becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

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

1. Respondent Rich's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 41–45 Broad Street, SW., Atlanta, Ga.

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

ORDER

*It is ordered,* That respondent, Rich's, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of fur products, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur 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 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 person issuing such invoice;

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

(g) The item number or mark assigned to a fur product;

2. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations thereunder in abbreviated form.

3. Setting forth on invoices the name of a country of origin other than the name of the country of origin of the animal that produced the fur.

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

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

2. Fails to disclose that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

3. Contains the name or names of any animal or animals other than the name or names permitted under Section 5(a)(1) of the Fur Products Labeling Act;

4. 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 respondent has usually and customarily sold such products in the recent regular course of its business;

5. Represents, directly or by implication, through percentage

savings claims, that the regular or usual retail prices charged by respondent for fur products in the recent regular course of respondent's business were reduced in direct proportion to the amount of savings stated, when contrary to the fact;

6. Represents, directly or by implication, that a sale price enables purchasers of fur products to effectuate any savings in excess of the difference between the sale price and the price at which respondent has usually and customarily sold such fur products in the recent regular course of its business.

C. Making price claims or representations in advertisements respecting comparative prices, percentage savings claims, or claims that prices are reduced from regular or usual prices, unless respondent maintains full and adequate records disclosing the facts upon which such claims or representations are based.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of October 1958, become the decision of the Commission; and, accordingly:

*It is ordered,* That respondent Rich's, 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.

Decision

## IN THE MATTER OF

## NEVIUS BROTHERS, INC., ET AL.

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

*Docket 6957. Complaint, Nov. 25, 1957—Decision, Oct. 15, 1958*

Consent order requiring a furrier in Trenton, N.J., to cease violating the Fur Products Labeling Act by tagging fur products with fictitious prices and failing to comply with other labeling and invoicing requirements; by advertising in newspapers which failed to disclose that certain products contained artificially colored fur and to set out other required information, represented sale prices as reduced from regular prices which were in fact fictitious, and misrepresented percentage reductions; and by failing to keep adequate records as a basis for such pricing claims.

*John T. Walker*, Esq., in support of the complaint.
*Scott Scammell, II.*, Esq., of Trenton, N.J., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued November 25, 1957, charges the respondents above-named with violation of the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act and the Rules and Regulations promulgated under the last-named 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 the designations "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act.

After issuance and service of said complaint, respondents Nevius Brothers, Inc., and George Nevius entered into an agreement for a consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding as to them, which agreement was duly approved by the director and assistant director of the Bureau of Litigation. It was provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by the signatory respondents that they have violated the law as alleged in the complaint.

Attached to said agreement, and forming an integral part of same for the purposes of the record, are two affidavits:

(1) that of respondent George Nevius which recites in sub-

stance that he is president of the corporate respondent but that his primary responsibility is the management of corporate respondent's store in New Brunswick, N.J., (the alleged violations having taken place in corporate respondent's store in the city of Trenton, N.J.), wherefore affiant-respondent had no knowledge, and was not aware, of the alleged violations; and

(2) that of the named respondent, Harvey C. Voorhees, which recites in substance that his correct name is Harvey C. Voorhees, (incorrectly referred to in the complaint as Harvey M. Voorhees), and that his duties consist of managing and controlling the accounts payable and receivable of the corporate respondent without control, responsibility or managerial direction of the corporate activities forming the basis of the charges of the complaint.

On the basis of the foregoing, and counsel in support of the complaint conceding there is no available evidence to contravene the averments set forth in said affidavits, it was agreed that the complaint shall be dismissed as to George Nevius individually, (but not as an officer of the corporate respondent), and shall also be dismissed as to Harvey C. Voorhees, both as an individual and as an officer of said corporate respondent, all of which is accomplished by the order hereto attached and as in said agreement contained.

By the terms of said agreement, the signatory 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 respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

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

It was further provided that said agreement, together with the

complaint, shall constitute the entire record herein; that the complaint 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 for other orders of the Commission.

Said agreement recites that respondent Nevius Brothers, Inc., trading as Nevius-Voorhees, and other names, is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 131–135 East State Street, (inadvertently designated in the complaint as 131–135 State Street), in the city of Trenton, State of N.J.

Respondent George Nevius is president of said corporate respondent and has the same address as said 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, without further notice to respondents, is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein; that this proceeding is in the interest of the public, and issues the following order:

ORDER

*It is ordered,* That respondents, Nevius Brothers, Inc., a corporation, trading under the name of Nevius-Voorhees, or under any other name, and its officers (excepting Harvey C. Voorhees, assistant treasurer), and George Nevius, as president 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, 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 are 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. Representing on labels affixed to the fur products or in any other manner, that certain amounts are the regular and usual prices of fur products when such amounts are in excess of the prices at which respondents usually and customarily sell such products in the recent regular course of their business.

2. Failing to affix labels to fur products showing:

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

(b) That the fur product contains or is composed of used fur, when such is 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, or transported or distributed it in commerce;

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

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

3. Setting forth on labels affixed to fur products:

(a) Information required under Section 4 (2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting;

(b) Information required under Section 4 (2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with nonrequired information.

B. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

2. Fails to set out all the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in close proximity with each other and in type of equal size and conspicuousness.

3. 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 such products were sold in the recent regular course of their business;

4. Represents directly or by implication through percentage savings claims that the regular or usual retail prices charged by respondents for fur products in the recent regular course of their business are reduced in direct proportion to the amounts of savings stated, when contrary to fact.

D. Making price claims or representations in advertisements respecting reduced prices, comparative prices or percentage savings, unless there is maintained by respondents, full and adequate records disclosing the facts upon which such claims and representations are based.

*It is further ordered,* That the complaint be, and hereby is, dismissed as to respondent George Nevius, individually, and as to Harvey C. Voorhees, individually and as an officer of the corporate respondent Nevius Brothers, Inc.

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 15th day of October 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

# REUBEN POMERANTZ JEWELRY CO., INC., ET AL.

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

*Docket 6869. Complaint, Aug. 20, 1957—Decision, Oct. 16, 1958*

Order requiring manufacturers in New York City to cease representing falsely, by stamping "14K" on gold spiral chain bracelets and chokers manufactured from gold wire of only 13⅛ karat fineness, that such products were of 14 karat fineness.

*Mr. S. F. House* supporting the complaint.

*Mr. George Landesman,* of New York City, for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

## PRELIMINARY STATEMENT

Reuben Pomerantz Jewelry Co., Inc., Reuben Pomerantz, and Hyman Pomerantz, individually and as officers of said corporation, hereinafter referred to as respondents, are charged with violating the provisions of the Federal Trade Commission Act by misrepresenting the gold content of gold spiral chain bracelets and chokers which they manufacture, sell and distribute to jobbers and retailers for resale to the general public.

The complaint alleges that respondents stamp the phrase "14K" on their gold spiral chain bracelets and chokers which, in fact, are manufactured from gold of less than 14 carat fineness. Respondents admitted some and denied other allegations of the complaint and hearings thereon have been completed. Proposed findings of fact, conclusions and proposed order have been submitted by respective counsel. All findings of fact and conclusions of law proposed by respective counsel not hereinafter specifically found or concluded are rejected. Upon the basis of the entire record, the hearing examiner makes the following findings of fact, conclusions, and issues the following order:

## FINDINGS OF FACT

1. The respondent Reuben Pomerantz Jewelry Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business at 800 Eighth Avenue, New York,

N.Y. Individual respondents Reuben Pomerantz and Hyman Pomerantz are the president and secretary-treasurer, respectively, of said corporate respondent; they formulate, direct and control the policies, acts and practices of said corporate respondent. Said individual respondents have their office at the same place as the corporate respondent.

2. Respondents are now, and for some time last past have been engaged in the business of manufacturing, selling, and distributing gold spiral chain bracelets and chokers, to distributors, jobbers and retailers for resale to the general public. In the course and conduct of their business respondents are in direct and substantial competition with other corporations, firms and individuals engaged in the distribution and sale, in commerce, of gold jewelry including spiral chain bracelets and chokers.

3. In the course and conduct of their business, respondents now cause and for some time last past have caused their said bracelets and chokers, when sold, to be transported from their place of business in the State of New York to distributors and jobbers, located in various other States of the United States, for resale to the general public. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States.

4. In the course and conduct of their business and for the purpose of inducing the purchase of said products, respondents have sold and distributed and do now sell and distribute, in commerce, as aforesaid, spiral chain bracelets and chokers with the phrase "14K" appearing thereon. In truth and in fact said products are not manufactured from gold of 14 carat fineness, but are manufactured from gold of substantially less than 14 carat fineness, to wit, 13⅛ carat fineness.

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

6. Although the respondents admit, and the hearing examiner

finds, that the spiral chain bracelets and chokers which respondents manufacture, sell and distribute are stamped with the phrase "14K" imprinted thereon, whereas, said products are manufactured from gold wire of a fineness of only 13⅛ carat fineness, respondents contend that, since they sell and distribute their products to distributors, jobbers and retailers who are cognizant that said products contain gold of a fineness of only 13⅛ carat, respondents have not deceived anyone.

7. Respondents also contend that there is no privity between respondents and the purchasing public and there is no fraud or deception in the sale of said products to department stores and other wholesale outlets by reason of the fact that the actual amount of gold contained in said products, to wit, 13⅛ carat, is known to said department stores and wholesalers.

8. The circumstance that respondents do not sell their products direct to the general public does not relieve respondents of responsibility in falsely and deceptively stamping their products. The stamping of "14K" on their products when, in truth and in fact, said products actually contain gold of a fineness of only 13⅛ carat, is an unfair method of competition as against manufacturers of spiral chain bracelets and chokers who stamp their products truthfully. When misstamped chain bracelets and chokers attract customers by means of fraud which the false stamping perpetuates, trade is diverted from the producer of truthfully marked bracelets and chokers. In *F.T.C.* v. *Winsted Hosiery*, 258. U.S. 483, the Supreme Court stated "that a person is a wrongdoer who so furnishes another with the means of consummating the fraud has long been a part of the law of unfair competition." Nor does the practice cease to be unfair because the falsity of the manufacturers' representation is so well known to the trade that dealers, as distinguished from consumers, are no longer deceived.

9. The National Stamping Act (15 U.S.C. Sec. 294, et seq.) provides that the actual fineness of gold (shipped or transported and delivered in "commerce") "shall not be less by more than one-half of one carat than the fineness indicated by the mark stamped" * * * thereon. Admittedly, respondents' acts in knowingly stamping chains "14K" when they contain gold of a fineness of only 13⅛ carat is a violation of the above-named Act. Proof of such violations are competent evidence that they are to the prejudice and injury of the public and of competitors and constitute unfair and deceptive acts and practices and unfair methods of competition within the meaning of the Federal Trade

Commission Act. Also, the circumstance, as alleged by respondents, that some manufacturers stamp their products "14K," when, in fact, their products contain gold of a fineness of only 13⅛ carat and respondents merely followed this alleged "custom" is no excuse or justification for respondents to violate the law.

CONCLUSIONS

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

ORDER

*It is ordered,* That respondents, Reuben Pomerantz Jewelry Co., Inc., a corporation, and its officers, and Reuben Pomerantz and Hyman Pomerantz, individually and as officers 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 any articles composed in whole or in part of gold or an alloy of gold in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission, by order issued September 23, 1958, having placed this case on its own docket for review, and having considered the matter, has concluded that for purposes of clarification certain modifications hereinafter specified should be made in the hearing examiner's initial decision herein:

*Accordingly, it is ordered,* That paragraphs 9 and 10 be deleted and the following substituted therefor as paragraph 9:

"9. The National Stamping Act (15 U.S.C. Sections 294, et

seq.) provides that the actual fineness of gold (shipped or transported and delivered in 'commerce') 'shall not be less by more than one-half of one carat than the fineness indicated by the mark stamped' * * * thereon. Admittedly, respondents' acts in knowingly stamping chains '14K' when they contain gold of a fineness of only 13⅛ carat is a violation of the above-named Act. Proof of such violations are competent evidence that they are to the prejudice and injury of the public and of competitors and constitute unfair and deceptive acts and practices and unfair methods of competition within the meaning of the Federal Trade Commission Act. Also, the circumstance, as alleged by respondents, that some manufacturers stamp their products '14K,' when, in fact, their products contain gold of a fineness of only 13⅛ carat and respondents merely followed this alleged 'custom' is no excuse or justification for respondents to violate the law."

*It is further ordered,* That the initial decision, as so modified, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered,* That the respondents, Reuben Pomerantz Jewelry Co., Inc., a corporation, and Reuben Pomerantz and Hyman Pomerantz, 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 contained in the initial decision as modified.

IN THE MATTER OF

# F. A. GOSSE COMPANY ET AL.

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

*Docket 7099. Complaint, Mar. 27, 1958—Decision, Oct. 16, 1958*

Consent order requiring a Seattle broker of canned salmon and other sea food products, to cease making illegal brokerage payments to favored customers, in violation of Section 2(c) of the Clayton Act through (1) selling at net prices less than the amount accounted for to the packer-principals; (2) granting price reductions, a part or all of which were not charged back to the packer-principals; and (3) taking reduced brokerage on sales involving price concessions.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have been and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. The respondent F. A. Gosse Company, hereinafter sometimes referred to as corporate respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1800 Exchange Building, Seattle, Wash.

Respondent Frederick A. Gosse is an individual and is president of the corporate respondent, and owns all or substantially all of its capital stock. As president and owner, he formulates, directs and controls the acts, practices and policies of the said corporate respondent, including its sales and distribution policies.

PAR. 2. Respondents, both corporate and individual, are now and for many years past have been engaged in the business of selling and distributing food products, including canned salmon, all of which are hereinafter sometimes referred to as food products. Respondents distribute as primary brokers, negotiating sales for the account of a number of their packer-principals. Respondents are a substantial factor in the seafood industry, particularly in the sale and distribution of canned salmon.

PAR. 3. Respondents sell and distribute their food products generally through field brokers, located in the various marketing areas, to buyers located throughout the United States. Respondents have, directly or indirectly, shipped or transported, or caused said food products, when sold, to be shipped or transported from the canning plants of their various packer-principals, or from their warehouses, to buyers located in various states of the United States other than the state or territory of origin of such food products. Thus respondents, both corporate and individual, are now and for the past several years have been engaged in a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended.

PAR. 4. Respondents, both corporate and individual, are usually compensated for their services in arranging for the sale and distribution of such food products by deducting a brokerage fee or commission of 5% of the net sales price from the proceeds in their account of sales to their packer-principals. When field brokers are utilized in making the sale, they are customarily compensated for their services by receiving from respondents as primary brokers a brokerage fee or commission in the amount of 2½% of the net selling price of the food products sold.

PAR. 5. In the course and conduct of their business in commerce as primary brokers for various packer-principals, respondents, both corporate and individual, have made grants, allowances or rebates in substantial amounts in lieu of brokerage, or price concessions which reflect brokerage, to certain buyers of said food products, a part or all of which were not charged back to their various packer-principals but, on the contrary, were taken from the brokerage earnings of respondents. In some instances, these allowances, rebates or price concessions made to buyers were shared by the primary and the field broker out of their brokerage earnings on the particular transactions.

Among and including, but not necessarily limited to, the methods or means employed by respondents in so doing are the following:

(a) Selling to certain buyers at net prices which were less than the amount accounted for to their packer-principals.

(b) Granting to certain buyers deductions from prices, by way of allowances or rebates, a part or all of which were not charged back to their packer-principals.

(c) Taking reduced brokerage on sales which involved price concessions to certain buyers.

PAR. 6. The acts and practices of respondents, both corporate and individual, as hereinabove alleged and described, constitute violations of the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

*Mr. Cecil G. Miles* and *Mr. John J. McNally* for the Commission.

*Jones & Grey*, by *Mr. Hargrave Garrison*, of Seattle, Wash., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents, F. A. Gosse Company, a corporation, and Frederick A. Gosse, individually and as an officer of said corporation, with having violated the provisions of §2(c) of the Clayton Act, as amended (U.S.C. Title 15, §13). The respondents were duly served with process and the initial hearing canceled pending negotiations for settlement between the parties.

On August 19, 1958, 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 the respondents and their attorney, and Cecil G. Miles and John J. McNally, counsel supporting the complaint, under date of August 18, 1958, subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by that Bureau.

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 accordance with §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 F. A. Gosse Company is a corporation existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 1813 (formerly 1800) Exchange Building, in the city of Seattle, State of Washington.

Respondent Frederick A. Gosse is an individual and is President of respondent corporation, with his office and principal place of business located at 1813 (formerly 1800) Exchange Building, in the City of Seattle, State of Washington.

2. Pursuant to the provisions of §2(c) of the Clayton Act, as

amended (U.S.C., Title 15, §13), the Federal Trade Commission on March 27, 1958, 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.

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.

9. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified, or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

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

Clayton Act as amended, 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 as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

ORDER

*It is ordered,* That F. A. Gosse Company, a corporation, and its officers and directors, and Frederick A. Gosse, individually and as an officer of said respondent corporation, and respondents' agents, representatives, or employees, directly or indirectly, or through any corporate or other device, in connection with the sale of seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying, granting, or passing on, either directly or indirectly, to any buyer or to anyone acting for or in behalf of or subject to the direct or indirect control of such buyer, brokerage earned or received by respondents on sales made for their packer-principals, by allowing to buyers lower prices which reflect all or any part of such brokerage, or by granting them allowances or rebates which are in lieu of such brokerage, or by any other method or means.

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 16th day of October 1958, become the decision of the Commission; and, accordingly:

*It is ordered,* That respondents F. A. Gosse Company, a corporation, and Frederick A. Gosse, 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.

## ARNOLD CONSTABLE CORP.

*Docket 7106. Order, Oct. 16, 1958.*

Order dismissing certain paragraphs of complaint, since it appeared that respondent, in composing the questioned advertisements, relied on advice from the Chief, Division of Wool and Fur Labeling, of the Commission.

This matter having been heard on the respondent's motion for recision of the complaint insofar as it charges the respondent with having falsely advertised the prices of certain fur products as reductions from the prices at which said products were usually sold by the respondent, in violation of Section 5(a)(5) of the Fur Products Labeling Act, and Rule 44(a) of the Rules and Regulations promulgated thereunder, which motion was, on September 12, 1958, certified to the Commission by the hearing examiner; and

It appearing that the ground for the motion is that the respondent in composing the questioned advertisements relied upon advice contained in certain communications it had received from the Chief, Division of Wool and Fur Labeling, of the Commission's Bureau of Investigation, copies of which communications are in the record as Respondent's Exhibits 2, 3, and 4; and

It further appearing that while the aforesaid communications did not purport to construe the respondent's advertisements in relation to the provisions of Rule 44(a) of the Rules and Regulations, which Rule prohibits, among other things, the use in advertising of claimed reductions from prices which are, in fact, "fictitious," such communications did clearly imply that the only questions with respect to the propriety of the advertisements were whether the higher prices mentioned therein were the "current market prices" of the products described, the affirmative of which, it was stated, is required by Rule 44(b) in support of "comparative prices and percentage savings" claims made in advertisements which do not otherwise specify the time of the compared prices, and whether the respondent had adequate records to disclose the fact upon which such claims were based, as required by Rule 44(e); and

The Commission being of the opinion that while the foregoing does not constitute a defense to any unlawful activity in which the respondent may have engaged, principles of equity and ordinary fair dealing do militate against the further prosecution of

the complaint insofar as it charges the respondent with the use of fictitious pricing claims:

*Accordingly, it is ordered,* That paragraphs 7, 8 and 9 of the complaint be, and they hereby are, dismissed, it being understood, however, that this action shall be without prejudice to the right of the Commission to institute a new proceeding against the respondent or to take such other action as may be warranted in the event the practices alleged to be unlawful are continued or resumed.

Decision

IN THE MATTER OF

# LEON SEVILLA TRADING AS WORLD ARTS AUCTION GALLERY

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

*Docket 7124. Complaint, Apr. 17, 1958—Decision, Oct. 16, 1958*

Consent order requiring a furrier in San Francisco, Calif., to cease violating the labeling, invoicing, and advertising requirements of the Fur Products Labeling Act.

*Mr. John J. McNally* for the Commission.

*Mr. Leonard A. Worthington,* of San Francisco, Calif., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent with misbranding and with falsely and deceptively invoicing and advertising certain of his fur products, in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

After the issuance of the complaint, respondent, his counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and acting assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement identifies respondent Leon Sevilla as an individual trading as World Arts Auction Gallery, with his office and principal place of business located at 314 Sutter Street, San Francisco, Calif.

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

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

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

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 Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

*It is ordered,* That respondent Leon Sevilla, an individual, doing business as World Arts Auction Gallery, or under any other trade name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertisement, offer for sale, transportation or distribution in commerce of any fur product, or in connection with the sale, advertisement, offer for sale, transportation, or distribution of any fur product which is 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. Setting forth on labels attached thereto fictitious prices or any false representation as to the value of such products, either directly or by implication;

2. Failing to affix labels to fur products showing:

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

(b) That the fur product contains or is composed of used fur, when such is 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, or transported or distributed it in commerce;

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

(g) The designations "used fur" and "second-hand used fur" where required by Rules 21 and 23 of the Rules and Regulations;

(h) The item number or mark assigned to a fur product;

3. Setting forth on labels affixed to fur products information required under §4(2) of the Fur Products Labeling Act, and the Rules and Regulations promulgated thereunder mingled with non-required information;

B. Falsely or deceptively invoicing fur products by:

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

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

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

(g) The designations "used fur" and "second-hand used fur" where required by Rules 21 and 23 of the Rules and Regulations;

C. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or

indirectly, in the sale or offering for sale of fur products, and which:

1. Fails to disclose:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur 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) The name of the country of origin of any imported furs contained in the fur product;

(e) The designations "used fur" and "secondhand used fur" where required by Rules 21 and 23 of the Rules and Regulations;

2. Represents, directly or by implication, that any of said fur products are from sources other than the actual sources of such 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 16th day of October 1958, become the decision of the Commission; and, accordingly:

*It is ordered,* That respondent Leon Sevilla, an individual, doing business as World Arts Auction Gallery, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

RONAY 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 7155. Complaint, May 26, 1958—Decision, Oct. 16, 1958*

Consent order requiring a furrier in Dallas, Tex., to cease violating the labeling, invoicing, and advertising requirements of the Fur Products Labeling Act.

*Mr. Brockman Horne* supporting the complaint.
Respondents, *pro se.*

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On May 26, 1958, the Federal Trade Commission issued a complaint charging Ronay Furs, Inc., a corporation, and William C. Mullen, individually and as an officer of said corporation, hereinafter referred to as respondents,with misbranding, falsely and deceptively invoicing and advertising fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

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 acting assistant director of the Bureau of Litigation. The agreement disposes of the matters complained about.

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; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions 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.

The undersigned 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. Respondent Ronay Furs, 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 112 South Ervay Street, Dallas, Tex.

2. Individual respondent William C. Mullen is president of said corporate respondent and controls, directs, and formulates its policies, acts, and practices. His address is the same as that of the corporate respondent.

3. 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 Ronay Furs, Inc., a corporation, and its officers, and William C. Mullen, 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 fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce as "commerce," "fur" and "fur 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 products for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale, 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) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder in handwriting.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder mingled with nonrequired information.

B. Falsely or deceptively invoicing fur products by:

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

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

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

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 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 bleached, dyed, or otherwise artificially colored 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 respondents have usually and customarily sold such products in the recent regular course of their business.

D. Makes use of comparative pricing claims or claims that prices are reduced from regular or usual prices unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based as required by Rule 44(e) of the Rules and Regulations.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 16th day of October 1958, 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.

Decision

IN THE MATTER OF

# UNITED STATES ASPHALT CORPORATION ET AL.

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

*Docket 7181. Complaint, July 11, 1958—Decision, Oct. 16, 1958*

Consent order requiring distributors in New York City to cease misrepresenting the availability and price of their "Neva-Leak Asbestos Roof Coating" by advertising letters advising prospects falsely of "substantial discounts" offered on purported overages from shipments to other purchasers in a particular locality.

*Garland S. Ferguson,* Esq., for the Commission.
*Breed, Abbot & Morgan,* of New York, N.Y., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on July 11, 1958, charging them with having violated the Federal Trade Commission Act by misrepresenting the availability and regular prices of their product. Respondents appeared by counsel and entered into an agreement dated August 25, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with §3.25 of the Rules of Practice of the Commission.

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

for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

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

1. Respondent, United States Asphalt Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York. Its office is located at 576 Fifth Avenue, New York, N.Y. Individual respondents Stanley Legum and Alvin Legum are officers of said corporation. They formulate, direct and control the policies and practices of the corporate respondent. The address of Alvin Legum is the same as that of the corporate respondent. The address of Stanley Legum is 418 Timothy Avenue, Norfolk, Va.

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

ORDER

*It is ordered,* That respondents United States Asphalt Corporation, a corporation, and its officers, and Stanley Legum and Alvin Legum, individually and as officers of said corporate respondent, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of roofing material or any other products in commerce, as "commerce" is defined

by the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That a certain sale of their product has been made to a purchaser in a specific locality, unless such is the fact;

2. That respondents have an overage or surplusage of their product in a certain area as a result of a certain sale, unless such is the fact;

3. That any amount is respondents' regular price for a product when such amount is in excess of the price at which respondents sell such product in their normal and usual course of business;

4. That any amount is a reduced price for a product unless it is less than the price at which respondents sell their product in their normal and usual course of business.

## 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 16th day of October 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

# SKYE PUBLISHING COMPANY, INC., ET AL.

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

*Docket 7197. Complaint, July 18, 1958—Decision, Oct. 16, 1958*

Consent order requiring publishers of magazines in New York City to cease selling reprinted publications and magazine articles without clearly disclosing that they had been previously published.

*Mr. Michael J. Vitale,* counsel supporting the complaint.
Respondents, *pro se.*

## INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on July 18, 1958, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by failing to adequately disclose that certain of their magazines or articles therein are reprints of earlier editions of one or more of their magazines or of articles which have appeared in earlier editions of such magazines. After being served with said complaint, respondents appeared and entered into an agreement, dated August 29, 1958, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents and by counsel supporting the complaint, and approved by the director and acting 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 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 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 of 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, Skye Publishing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 16 East 55th Street, New York, N.Y.

Individual respondents Arthur Bernhard, Alan Sills, and Robert Salomon are president, vice-president and secretary, respectively, of the corporate respondent, and have 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 Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

*It is ordered,* That respondent Skye Publishing Company, Inc., a corporation, and its officers, and Arthur Bernhard, Alan Sills, and Robert Salomon, 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 of magazines or any other publications in commerce, as "commerce" is defined in the

Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling any reprinted magazine or other publication, unless the word "reprinted" or any other word or phrase stating with equal clarity that said magazine or other publication is a reprint, appears in clear, conspicuous type upon the front cover and upon the title page of the magazine or other publication, either in connection with the name of the magazine or in another position adapted readily to attract the attention of a prospective purchaser.

2. Offering for sale or selling any magazine or other publication which contains reprints of articles previously published, unless a statement which reveals that the article has been previously published, appears in clear, conspicuous type upon the title page of the magazine or other publication and upon the page where the article appears or in another position adapted readily to attract the attention of a prospective purchaser.

## 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 16th day of October 1958, become the decision of the Commission; and, accordingly:

*It is ordered,* That the respondents herein shall with 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

# GUILD MOCCASIN ET AL.

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

*Docket 6860. Complaint, Aug. 13, 1957*[1]*—Decision, Oct. 17, 1958*

Consent order requiring manufacturers in Los Angeles, Calif., to cease representing factory-made moccasins and handbags falsely as Indian products and, through use of the word "Guild" in their corporate and trade names, that their business was an association of Indian craftsmen.

*Mr. Kent P. Kratz* for the Commission.
*Mr. Casimir A. Miketta,* of Los Angeles, Calif., for respondents.

## INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The amended complaint, which was substituted for the original complaint by order of the hearing examiner, alleges that respondents have used, in various advertising media, certain false, misleading and deceptive statements, symbols and depictions, representing directly and by implication that their moccasins, handbags and other related items were Indian products made by Indians.

The amended complaint further alleges that respondents, by the use of the word "Guild" as part of the corporate name and of the names under which they have traded, and in their advertising, have falsely represented that their business is an association or guild.

The amended complaint charges that the use by respondents of said false and misleading representations constitutes unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of the Federal Trade Commission Act (15 U.S.C. 41, et seq.; more specifically, 15 U.S.C. 45).

After the issuance of the amended 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 an assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement identifies respondents as follows:

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[1] Amended Nov. 8, 1957.

Respondent Guild Moccasin is a California corporation, with its office and principal place of business located at 219–227 South Central Avenue, Los Angeles, Calif. This corporation also trades under the name Guild Moccasin Corporation.

Individual respondent Lewis Podus is, and has been for several years last past, president of the corporate respondent, and has, and has had, complete or a substantial degree of control and direction over the affairs, policies, acts and practices of said corporation. He is also, and has been for several years last past, a partner trading under the name of Podus of California.

Individual respondent Morris Podus was for several years, immediately prior to January 1956, an officer of respondent corporation. During that period he had substantial control and direction over the affairs, policies, acts and practices of said corporation. Also, for several years immediately prior to April 1954, he was a partner trading under the name of Podus of California.

Individual respondent William Podus is, and has been for several years last past, a partner trading under the name of Podus of California. He is not now nor has he ever been an officer of corporate respondent Guild Moccasin.

Individual respondent Henry Podus was for several years, immediately prior to April 1955, a partner trading under the name of Podus of California.

For the purposes of the agreement, the address of individual respondents is the same as that of the corporate respondent.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the amended 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 amended complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the amended 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 amended 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.

The agreement states that the term "Indian" as used in the amended complaint and in the order hereinafter set forth refers to the American Indian.

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 amended complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

*It is ordered,* That Guild Moccasin, a corporation, its officers, and Lewis Podus, individually, as an officer of Guild Moccasin, and as a partner trading under the name Podus of California, or trading under any other name, Morris Podus, individually and as a former officer of Guild Moccasin and as a former partner trading under the name Podus of California, or trading under any other name, and William Podus and Henry Podus, individually and as partners or former partners trading under the name Podus of California, or trading under any other name, respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of moccasins, handbags, or any other similar or related products, do forthwith cease and desist from:

(a) Representing, through the use of tribal or Indian names, derivations of Indian names, Indian symbols or Indian illustrations, or in any manner, directly or by implication, that their products are Indian products or Indian made;

(b) Representing, through use of the word "Guild," or otherwise, that their products are products of a Guild, or that their business is anything other than a commercial enterprise organized for profit; provided, however, that this shall not be construed as proscribing use of the word "Guild" as part of the name "Guild Moccasin Corporation" so long as the word "Guild" is of the same type as, and is given no greater prominence than, the other words in said name and the said name, wherever used, is accompanied

by a clear disclosure that the products are machine made or factory made.

*It is further ordered,* That the complaint hereby be and is dismissed as to William Podus as a former officer of Guild Moccasin.

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 October 1958, become the decision of the Commission; and, accordingly:

*It is ordered,* That the above-named respondents except William Podus as a former officer of Guild Moccasin 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

ATLAS ENTERPRISES, INC., ET AL.

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

*Docket 7122. Complaint, Apr. 16, 1958—Decision, Oct. 17, 1958*

Consent order requiring sellers in Hopkins, Minn., of vending machines for cigarettes and other products, to purchasers including disabled, retired, and inexperienced individuals, to cease making, in newspaper advertising and by their agents, purported offers of employment to develop leads for sales; and to cease representing falsely the net profits to be expected by purchasers, and help given in locating and securing profitable locations, disposing of machines for dissatisfied customers, etc.

*Mr. Brockman Horne* supporting the complaint.
*Mr. Eugene C. Wann,* of New Prague, Minn., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 16, 1958, charging them with having violated the Federal Trade Commission Act as set forth in said complaint.

After being served with the complaint respondents entered into an agreement, dated August 20, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the director and acting assistant director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall

consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

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

1. Respondent Atlas Enterprises, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 420 East Excelsior Boulevard, Hopkins, Minn. It sometimes trades as G. & E. Placement Service and as D.A.V. Distributors, Inc.

2. Individual respondents Gil R. Zaun and Edward R. Zaun, Sr., are president and vice-president, respectively, of said corportion, and they formulate, direct and control its policies, acts and practices. Their business address is the same as that of the corporate respondent, and their home addresses are: Gil R. Zaun, 1837 Edgewood Avenue, Minneapolis, Minn., and Edward R. Zaun, Sr., 1600 Hillsboro South, St. Louis Park, Minn.

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

ORDER

*It is ordered,* That respondents Atlas Enterprises, Inc., a corporation, and its officers, and Gil R. Zaun and Edward R. Zaun,

Sr., individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of vending machines, 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 any offer is an offer of employment when, in fact, the real purpose is to obtain purchasers of their machines.

2. That the purchase price of respondents' machines is secured, other than by the machines themselves.

3. That net profits in any specific amount will be realized by a purchaser of such machines, unless based upon known profits which are customarily earned by the operator of vending machines in the locality of the purchaser, taking into consideration the experience of the purchaser in operating vending machines and the character of locations to be secured by respondents.

4. That surveys have been made to determine locations which would prove profitable for the installation of such machines.

5. That profitable locations will be secured for a purchaser's machines.

6. That, should a location for a purchaser's machine prove to be unprofitable, said machine will be relocated by respondents.

7. That locations secured will be within a reasonable distance of the purchaser.

8. That no selling or soliciting is required of the purchaser in the operation of such machines.

9. That purchased machines will be delivered without undue delay.

10. That a satisfactory credit-rating, employment stability or car ownership is required before the machines will be sold.

11. That the business of operating cigarette or any other vending machines is a stable one, or remains profitable during a depression, under all circumstances and conditions.

12. That respondents will resell or otherwise dispose of the machines sold by them in the event the purchaser becomes dissatisfied with the profit derived therefrom.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision herein, filed September 2, 1958, wherein the hear-

ing examiner accepted an agreement containing a consent order to cease and desist theretofore executed by the respondents and counsel in support of the complaint and entered his order in conformity therewith; and

It appearing that through inadvertence said initial decision recites that the complaint states a cause of action against the respondents under the Fur Products Labeling Act as well as under the Federal Trade Commission Act; and

The Commission being of the opinion that this clerical error should be corrected:

*It is ordered,* That the initial decision be, and it hereby is, modified by striking from paragraph "3" of the findings, for jurisdictional purposes, the words "Fur Products Labeling Act and the."

*It is further ordered,* That the initial decision, as so modified, shall, on the 17th day of October 1958, become the decision of the Commission.

*It is further ordered,* That the respondents, Atlas Enterprises, Inc., a corporation, and Gil R. Zaun and Edward R. Zaun, Sr., individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this decision, 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 the aforesaid initial decision.