Decision

IN THE MATTER OF

NATHAN GLIKSMAN
TRADING AS ATLANTIC TEXTILE COMPANY

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

Docket 7167. Complaint, May 29, 1958—Decision, Oct. 17, 1958

Consent order requiring a manufacturer in Malden, Mass., to cease violating the Wool Products Labeling Act by tagging as "90% Wool 10% Synthetics," woolen stock which contained substantially more than 10 percent of nonwoolen fibers, and by failing in other respects to comply with the labeling requirements of the Act.

Mr. John T. Walker for the Commission.
No appearance for the respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with misbranding certain wool products in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and

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

1. Respondent Nathan Gliksman is an individual, trading as Atlantic Textile Company, with his principal place of business located at 77 Mount Vernon Street, Malden, Mass.

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

ORDER

It is ordered, That respondent Nathan Gliksman, an individual, trading as Atlantic Textile Company, or under any other name, and respondent's representatives, agents or 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 woolen stocks or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

(a) The percentage of the total fiber weight of such wool 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 percentages by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

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

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery

for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That respondent Nathan Gliksman, an individual, trading as Atlantic Textile Company, or under any other name, 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 woolen stocks, or any other wool products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fibers thereof on invoices or other shipping memoranda or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of October 1958, became the decision of the Commission; and, accordingly:

It is ordered, That 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

KULIN WASTE CO. ET AL.

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

Docket 6983. Complaint, Dec. 13, 1957—Decision, Oct. 18, 1958

Consent order requiring a manufacturer in Worcester, Mass., to cease violating the Wool Products Labeling Act by identifying woolen stocks which contained substantial quantities of reprocessed or reused wool, as "90% wool, 5% rayon and 5% other fibers" in invoices and shipping memoranda.

Mr. Daniel T. Coughlin and *Mr. Henry Stringer* for the Commission.

Mr. Samuel Kunen, and *Mr. Sydney Litter,* of Marlboro, Mass., for Kulin Waste Co., Louis Kulin and Abraham Kulin.

INITIAL DECISION AS TO CERTAIN RESPONDENTS BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violating the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, in connection with the sale of wool stock. An agreement for disposition of the proceeding as to all respondents except Michael Silver has now been entered into by such respondents and their attorneys and counsel supporting the complaint. The term "respondents" as used hereinafter will not include Michael Silver.

The agreement provides, among other things, that respondents admit all of the jurisdictional allegations of 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, 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 respondents that they have violated the law as alleged in the complaint.

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

1. Respondent, Kulin Waste Co. (erroneously referred to in the complaint as Kulin Waste Co., Inc.) is a corporation existing and doing business under the laws of the Commonwealth of Massachusetts. Individual respondents, Louis Kulin and Abraham Kulin are president and treasurer, respectively, of said corporation. The office and principal place of business of all respondents is located at 31 Mulberry Street, Worcester, Mass.

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

ORDER

It is ordered, That the respondents, Kulin Waste Co. (erroneously referred to in the complaint as Kulin Waste Co., Inc.), a corporation, and its officers, and Louis Kulin and Abraham Kulin, 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 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 stock or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products by:

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

2. Falsely or deceptively identifying such products as to the character or amount of the constituent fibers contained or in-

cluded therein on sales invoices or shipping memoranda applicable thereto;

3. 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 per centum 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 per centum or more and (5) the aggregate of all other fibers;

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

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

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 18th day of October 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Kulin Waste Co. (erroneously referred to in the complaint as Kulin Waste Co., Inc.), a corporation, and Louis Kulin and Abraham Kulin, 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.

Decision

IN THE MATTER OF

SYDCO INDUSTRIES, INC., ET AL.

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

Docket 7030. Complaint, Jan. 14, 1958—Decision, Oct. 18, 1958

Consent order requiring a jobber in New York City of small household electrical appliances including percolators, blenders, and fryer-cookers, to cease representing falsely in advertising matter, on labels, price tags, and imprinted cartons for purchasers' use in retail sale, that exaggerated and fictitious prices were the usual retail selling prices; through use of the Good Housekeeping seal, that certain of their appliances had been approved or guaranteed by Good Housekeeping Magazine; through prominent use of the names "General Electric" and "Westinghouse," that certain of their products were manufactured by those companies; that their said appliances had been advertised in Life Magazine; and that their percolators and blenders were trimmed in 24 karat "Warranted Gold Plate."

Mr. Ames W. Williams supporting the complaint.
Mr. Morris Rosenzweig, 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 Sydco Industries, Inc., a corporation, Morton Springer, Sam Springer, and Syd Springer, 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 household electrical applicances, including percolators, blenders and fryer-cookers.

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 acting 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 Sydco Industries, 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 622 Broadway, New York, N.Y.

2. Respondents Morton Springer, Sam Springer, and Syd Springer are individuals and officers of the said corporate respondent, serving respectively as president, vice president 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, Sydco Industries, Inc., a corporation, and its officers, and Morton Springer, Sam Springer, and Syd Springer, 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 household electrical appliances including percolators, blenders and fryer-cook-

ers, 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 their merchandise has been advertised in Good Housekeeping Magazine; or has been advertised in any other magazine or publication, unless such is the fact.

(c) 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 Good Housekeeping seal of approval in connection with their merchandise; or representing in any manner that their merchandise has been awarded said seal of approval, or that their merchandise has been approved by any other group or organization, unless such is the fact, provided, however, that this prohibition shall not be construed as prohibiting a truthful statement that a part of an article of merchandise has been approved by a group or organization, when such part is clearly and conspicuously identified.

3. 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 prohibiting 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.

4. Furnishing means or instrumentalities to retailers, distributors or others by or through which they may mislead the public with respect to any of the matter set out in paragraphs 1, 2, and 3 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 18th 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

CHINOOK PACKING COMPANY ET AL.

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

Docket 7147. Complaint, May 8, 1958—Decision, Oct. 18, 1958

Consent order requiring packers of salmon in Chinook, Wash., to cease discriminating in price in violation of Section 2(c) of the Clayton Act by granting discounts or allowances in lieu of brokerage on many sales of canned and fresh salmon products to brokers purchasing for their own account for resale.

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. Respondent Chinook Packing Company, hereinafter sometimes referred to as respondent Chinook, or 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 Chinook, Wash. Respondent Chinook has been for the past several years, and is now, engaged in packing, selling and distributing canned salmon, and to a lesser extent in the sale of fresh salmon at retail, all of which are sometimes hereinafter referred to as sea food products. Respondent Chinook is a substantial factor in the sale and distribution of sea food products, particularly canned salmon.

PAR. 2. Respondent Albion L. Gile is an individual and is president and treasurer of corporate respondent. Respondent Gile, together with his wife, owns a substantial majority of the outstanding capital stock of the corporate respondent. As president and treasurer and as a substantial owner, as described above, respondent Gile exercises authority and control over the corporate respondent and its business activities, including the direction of its sales and distribution policies.

PAR. 3. In the course and conduct of their business, respond-

ents, both corporate and individual, for the past several years, have sold and distributed, and are now selling and distributing, their sea food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, to buyers located in the several states of the United States, other than the state in which respondents are located. Said respondents transport, or cause such sea food products, when sold, to be transported, from their place of business in the State of Washington to buyers, or to the buyers' customers, located in various other States of the United States. There has been at all times mentioned herein a continuous course of trade in commerce in said sea food products across State lines between respondents and the respective buyers of said products.

PAR. 4. Respondents, both corporate and individual, for the past several years, have sold and distributed, and are now selling and distributing, their sea food products in commerce to customers located in the several States of the United States, generally through brokers. When selling through brokers, respondents have paid, granted or allowed them for their services in effecting the sales, a brokerage ranging from 2 to 5 percent of the net selling price of the merchandise sold.

In a substantial number of instances, however, respondents, both corporate and individual, have made sales to some brokers for their own account for resale, on which sales they have paid, granted or allowed these brokers a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof.

PAR. 5. In making payments of commissions, brokerage, or discounts or allowances in lieu thereof, to certain buyers for their own account for resale, as alleged and described hereinabove, the respondents both corporate and individual, have violated 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).

Mr. Cecil G. Miles and *Mr. John J. McNally,* for the Commission.
Mr. Albion L. Gile, for himself and respondent corporation.

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, Chinook Packing Company, a corporation, and Albion L. Gile, 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 25, 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 individual respondent for himself and the corporate respondent and Cecil G. Miles and John J. McNally, counsel supporting the complaint, under date of June 17, 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 Chinook Packing 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 in the city of Chinook, State of Washington.

Respondent Albion L. Gile is an individual and is president and treasurer of Chinook Packing Company, with his principal office and place of business located in the city of Chinook, State of Washington.

2. Pursuant to the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, §13), the Federal Trade Commission, on May 8, issued its complaint in this proceeding against respondents and a true copy was thereafter duly served on respondents.

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

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 a 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 Chinook Packing Company, a corporation, and its officers and Albion L. Gile, individually and as an officer of said corporation, and respondents' agents, representatives, or employees, directly 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 allowing, directly or indirectly, to any

buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of their seafood products to such buyer for his own account.

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 18th day of October 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

SAMUEL MILLER & SONS, INC., ET AL

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

Docket 7164. Complaint, May 28, 1958—Decision, Oct. 18, 1958

Consent order requiring manufacturers in New York City to cease violating the Wool Products Labeling Act by stamping or tagging as "All Wool," interlining materials which contained substantial quantities of nonwoolen fibers, and by failing in other respects to comply with the labeling requirements of the Act.

Mr. John T. Walker for the Commission.
No appearance for the respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misbranding certain wool products in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all 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, 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 respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an

adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Samuel Miller & Sons, Inc., is a corporation organized and existing under the laws of the State of New York. Respondents Isidor Goldfarb and Mortimer Miller are president and secretary, and treasurer and vice president, respectively, of the corporate respondent. The office and place of business of all respondents is located at 323 West 37th Street, New York, N.Y.

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

ORDER

It is ordered, That respondent Samuel Miller & Sons, Inc., a corporation, and its officers, and Isidor Goldfarb and Mortimer Miller, individually, and as officers, of the said corporation, and respondents' representatives, agents or 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 interlining materials or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

(a) The percentage of the total fiber weight of such wool 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 percentages by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

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

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

It is further ordered, That respondents Samuel Miller & Sons, Inc., a corporation, and its officers, and Isidor Goldfarb and Mortimer Miller, individually, and as officers of the said corporation, and respondents' representatives, agents or employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of interlining materials, or any other materials, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fibers thereof on invoices or other shipping memoranda or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 18th day of October 1958, become the decision of the Commission; and, accordingly:

It is ordered. That respondents Samuel Miller & Sons, Inc., a corporation, and Isidor Goldfarb and Mortimer Miller, individually and as officers of the 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

AVON PUBLICATIONS, INC., ET AL.

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

Docket 6911. Complaint, Oct. 7, 1957—Decision, Oct. 21, 1958

Consent order requiring three affiliated concerns in New York City to cease selling abridged books or newly titled reprints without disclosing the abridgment and the original title clearly and conspicuously on the front cover and title page in a position readily apparent to the buyer.

Charles S. Cox, Esq., for the Commission.
William Gold, Esq., 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 October 7, 1957, charging them with having violated the Federal Trade Commission Act by misrepresenting the books they sell in commerce. Respondents appeared by counsel and at the conclusion of the case-in-chief 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 further 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. Respondents Avon Publications, Inc., Avon Publishing Co., Inc., and Avon Book Sales Corporation are each a corporation existing and doing business under and by virtue of the laws of the State of New York, except that heretofore on December 13, 1956, Avon Publishing Co., Inc., was duly merged into Avon Publications, Inc. Individual respondents Joseph M. Mann, Harry Rebell and William Gold are vice president, treasurer and secretary, respectively, of each of said corporate respondents. All of said respondents except Harry Rebell and William Gold have an office and principal place of business located at 575 Madison Avenue, in the city of New York, State of New York. Harry Rebell maintains his office at 39 Broadway, New York City, and William Gold maintains his office at 236 East 49th Street, New York City.

2. Subsequent to the issuance of the complaint herein, individual respondent Joseph Meyers departed this life on November 3, 1957, at Cedars of Lebanon Hospital, Los Angeles, Calif. Individual respondent William Gold is an attorney at law and is regularly and actively engaged in the practice of law in New York City. As the attorney for the said corporate respondents, he agreed, at the request of said Joseph Meyers, to serve as secretary to each of said corporate respondents. Furthermore, at no time did said William Gold own any shares of stock or, other financial interest in said corporate respondents, and had no part in the running or operation of the business or in formulating the acts and policies of said corporate respondents. Accordingly, the

parties agreed that the complaint should be dismissed as to individual respondents William Gold and Joseph Meyers.

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 Avon Publications, Inc., a corporation, Avon Publishing Co., Inc., a corporation, and Avon Book Sales Corporation, a corporation, and their officers, and respondents Joseph M. Mann and Harry Rebell, individually and as officers of said corporate respondents Avon Publications, Inc., Avon Publishing Co., Inc., and Avon Book Sales 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 books 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 abridged copy of a book unless one of the following words, "Abridged," "abridgement," "condensed" or "condensation," or any other word or phrase stating with equal clarity that said book is abridged appears in clear conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser;

2. Using or substituting a new title for, or in place of, the original title of the reprinted book unless the original title of the book as previously published appears in clear and conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser.

It is further ordered, That this proceeding be and the same hereby is dismissed as to respondents Joseph Meyers and William Gold.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice,

the initial decision of the hearing examiner shall, on the 21st day of October 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named respondents except respondents Joseph Meyers and William Gold, 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.

Order

IN THE MATTER OF

EDUCATORS MUTUAL INSURANCE COMPANY

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

Docket 6308. Complaint, Mar. 11, 1955—Order, Oct. 22, 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 Lancaster, Pa., with false advertising of its health and accident policies.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Francis C. Mayer for the Commission.

Mr. A. Alvis Layne, Jr. and *Mr. T. S. L. Perlman*, of Washington, D.C., for respondent.

FINAL ORDER

This matter having come on to be heard 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 primarily upon the aforesaid decision of the Supreme Court, which motion is unopposed by counsel supporting the complaint; 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 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

FIREMAN'S FUND INDEMNITY COMPANY

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

Docket 6310. Complaint, Mar. 11, 1955—Decision, Oct. 23, 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 San Francisco, Calif., with false advertising of its health and accident policies.

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

Orrick, Dahlquist, Herrington & Sutcliffe, by *Mr. Christopher M. Jenks*, of San Francisco, Calif., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Counsel for respondent herein has submitted a Motion To Dismiss, based on the Supreme Court's decision of June 30, 1958, in the combined cases of *Federal Trade Commission* v. *National Casualty Company* and *Federal Trade Commission* v. *The American Hospital and Life Insurance Company*, and on the Commission's order of July 29, 1958, in the matter of *North American Accident Insurance Company*, Docket No. 6456, requesting that the complaint herein be dismissed, on the ground of lack of jurisdiction.

Counsel supporting the complaint, answering said motion, states that since the practices here involved are governed by the above-cited decisions of the Supreme Court, he offers no opposition to said Motion to Dismiss.

The hearing examiner is of the opinion that, in view of the circumstances stated, respondent's motion should be granted. Accordingly,

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 23d day of October 1958, become the decision of the Commission.

IN THE MATTER OF

LAURY RICH SPORTSWEAR, INC., ET AL.

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

Docket 7028. Complaint, Jan. 14, 1958—Decision, Oct. 23, 1958

Consent order requiring affiliated manufacturers of ladies' sportswear, with places of business in New York City and Paterson, N.J., to cease violating the Wool Products Labeling Act by labeling as "100% reprocessed wool," interlinings of car coats which contained substantial quantities of fibers other than reprocessed wool, and by failing to comply in other respects with the labeling requirements of the Act.

Mr. John T. Walker for the Commission.

Mr. Howard L. Klein, of *Ellenbogen & Klein,* of New York, N.Y., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On January 14, 1958, the Federal Trade Commission issued its complaint against the above-named respondents charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated under said Wool Products Labeling Act. In lieu of submitting answer to said complaint, respondents Laury Rich Sportswear, Inc., a corporation; Vee Manufacturing Corporation, a corporation; and Seymour Rubinfeld, individually and as officer of said corporations; Shirley Rubinfeld, as officer of Laury Rich Sportswear, Inc.; and Samuel Rosenthal, as officer of Vee Manufacturing Corporation, 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. It was recommended in the agreement that the complaint be dismissed as to Laury Rich Frocks, Inc., and Shirley Rubinfeld and Samuel Rosenthal, individually, but not as officers of Laury Rich Sportswear, Inc., and Vee Manufacturing Corporation, respectively. In support of said recommendation, four affidavits were attached to the agreement and by reference made a part thereof.

The reference to "respondents" herein is only to the corporate respondents Laury Rich Sportswear, Inc., and Vee Manufacturing Corporation, and to Seymour Rubinfeld, individually and as officer of said corporations, Shirley Rubinfeld, as officer of Laury Rich Sportswear, Inc., and Samuel Rosenthal, as officer of Vee Manufacturing Corporation.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Respondents in the agreement 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 they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

It was further provided in said agreement that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the said agreement. It was further agreed that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, 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. 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 Laury Rich Sportswear, 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 formerly located at 44 West 18th Street, New York, N.Y., and now located at 1407 Broadway, New York, N.Y.

Respondent Vee Manufacturing Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 24½ Van Houten Street, Paterson, N.J.

Respondent Seymour Rubinfeld is an individual and is president of corporate respondents Laury Rich Sportswear, Inc., and Vee Manufacturing Corporation. His address is the same as that of respondent Laury Rich Sportswear, Inc.

Respondent Shirley Rubinfeld is secretary-treasurer of corporate respondent Laury Rich Sportswear, Inc., and has the same address as that corporate respondent.

Respondent Samuel Rosenthal is secretary-treasurer of corporate respondent Vee Manufacturing Corporation, and has the same address as that 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 the Wool Products Labeling Act of 1939, and this proceeding is in the interest of the public.

ORDER

It is ordered, That the respondents Laury Rich Sportswear, Inc., a corporation, and Vee Manufacturing Corporation, a corporation, and their officers, and Seymour Rubinfeld, individually and as officer of said corporations, Shirley Rubinfeld, as officer of respondent Laury Rich Sportswear, Inc., and Samuel Rosenthal, as officer of respondent Vee Manufacturing 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 garments or other wool products, as "wool products" are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

A. Misbranding wool products by:

1. Falsely or deceptively stamping, tagging, labeling or other-

wise identifying such products as to the character or amount of their constituent fibers;

2. Failing to affix securely 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 the total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where the percentage of weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

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

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

It is further ordered, That the complaint be, and hereby is, dismissed as to Laury Rich Frocks, Inc., a corporation, and Shirley Rubinfeld, and Samuel Rosenthal, individually, but not as officers of Laury Rich Sportswear, Inc., and Vee Manufacturing Corporation, respectively.

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 23d day of October 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Laury Rich Sportswear, Inc., a corporation, and Vee Manufacturing Corporation, a corporation, and their officers, and Seymour Rubinfeld, individually and as officer of said corporations, Shirley Rubinfeld, as officer of respondent Laury Rich Sportswear, Inc., and Samuel Rosenthal, as officer of respondent Vee Manufacturing 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

GITTELMAN'S SONS, INC., ET AL.

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

Docket 7161. Complaint, May 27, 1958—Decision, Oct. 29, 1958

Consent order requiring a Philadelphia furrier to cease violating the labeling, invoicing, and advertising provisions of the Fur Products Labeling Act.

Mr. John J. Mathias, for the Commission.

Mr. Nathan L. Posner, of *Fox, Rothschild, O'Brien & Frankel,* of Philadelphia, Pa., 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 with having violated the provisions of both the Federal Trade Commission Act and the Fur Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondents were duly served with process.

On September 11, 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 respondents and the attorneys for both parties, under date of September 8, 1958, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Gittelman's Sons, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1212 Chestnut Street, in the city of Philadelphia, State of Pennsylvania. Respondents Richard Gittelman, Morton Gittelman and William J. Welding are officers of said corporation. These individuals dominate, control and direct

the policies, acts and practices of said corporation. The address of the individual respondents is the same as that of the corporate respondent.

2. Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, the Federal Trade Commission, on May 27, 1958, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on each respondent.

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 "Agree-

ment Containing Consent Order to Cease and Desist," that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated by the Commission under the latter Act, against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding 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 the respondent Gittelman's Sons, Inc., a corporation, and its officers, and respondents Richard Gittelman, Morton Gittelman and William J. Welding, 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, offering for sale, transportation, or distribution of fur products in commerce, or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of fur products which are made in whole or in part of fur which has been shipped or 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, 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, mingled with nonrequired information;

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

3. Failing to set forth an item number or mark assigned to such fur product.

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 person issuing such invoices;

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

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

3. Failing to set forth an 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. Offers fur products at a purported reduction in price when such purported reduction is in fact fictitious;

2. Uses comparative prices and percentage savings claims which are based on a designated time of compared price when the designated time of compared price is not correctly stated.

D. Making use in advertisements of price reduction claims, comparative prices, or percentage savings claims unless full and adequate records are maintained by respondents 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 29th 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

H. P. SELMAN & COMPANY, INC., ET AL.

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

Docket 7173. Complaint, June 11, 1958—Decision, Oct. 29, 1958

Consent order requiring furriers in Louisville, Ky., to cease violating the labeling, invoicing, and advertising provisions of the Fur Products Labeling Act.

Mr. John T. Walker for the Commission.

Greenebaum, Barnett and Wood, by *Mr. S. C. Greenebaum,* of Louisville, Ky., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on June 11, 1958, charging respondents with violating the Fur Products Labeling Act, the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, by misbranding their fur products, in some instances by failing to attach required labels thereto, and in other instances by failing to set forth on labels the required information, by abbreviating such information, mingling it with nonrequired information, or setting it forth on the labels in handwriting, or not separately with respect to each section of fur products composed of two or more sections containing different animal furs. Respondents were further charged with violating said Acts by falsely and deceptively invoicing their fur products with respect to the name of the animal which produced the fur from which such products had been manufactured, and by setting forth such information in abbreviated form, and omitting required item numbers. Further, respondents were charged with violating said Acts by falsely and deceptively advertising their fur products, by failing to disclose, among other things, the name of the animal that produced the fur contained therein, the fact that their fur products were composed of bleached, dyed or otherwise artificially colored fur, and the name of the country of origin of the imported furs contained in such products. Respondents were also charged with violating said Acts by misrepresenting, in their advertisements, the regular and usual prices of their fur products; by the use of fictitious percentage savings claims; by failure to give a designated time of a bona fide com-

pared price when citing comparative prices in their advertisements; and by failure to maintain full and adequate records disclosing the facts upon which such claims and representations were based.

On August 13, 1958, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the director and an acting assistant director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent H. P. Selman & Company, Inc., as a Kentucky corporation, with its office and principal place of business located at 466 South Fourth Street, Louisville, Ky., and individual respondents Joseph Thal, Norman Thal, Gene Thal, and Aaron Thal as president, vice president, treasurer, and secretary, respectively, of the corporate respondent, and having the same address as the corporate respondent.

All parties to the agreement join in recommending that the complaint herein be dismissed as to respondents Joseph Thal, Norman Thal, and Aaron Thal individually, but not as officers of the corporate respondent. In support of such recommendation, there are attached to the agreement, and by reference made a part thereof, three affidavits, as to which the agreement sets forth that no evidence contrary thereto is available.

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.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only

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

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

It is ordered, That the respondents, H. P. Selman & Company, Inc., a corporation, and its officers, and Gene Thal, individually and as officer of said corporation, and Joseph Thal, Norman Thal, and Aaron Thal, as officers of said corporation, and respondents' representatives, agents or employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertisement, offering for sale, or transportation or distribution in commerce of any fur product, or in connection with the sale, advertising, offering 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:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing:

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

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

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

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

(5) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into

commerce, sold it in commerce, advertised, or offered it for sale in commerce, or transported or distributed it in commerce;

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

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

B. Setting forth on labels attached to fur products:

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

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

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

C. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal furs the information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section;

2. Falsely or deceptively invoicing fur products by:

A. Falsely or deceptively identifying any such products as to the name or names of the animal or animals that produced the fur from which such products were manufactured;

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

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

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

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

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

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

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

(7) The item number or mark assigned to the fur product;

C. Abbreviating on invoices information required under

§5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder;

3. 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:

A. 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 said Rules and Regulations;

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

C. Fails to disclose the name of the country of origin of the imported furs contained in fur products;

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

E. Represents, directly or by implication, that the regular or usual price of any fur product is any amount which is in excess of the price at which the respondents have usually and customarily sold such products in the recent regular course of their business;

F. Represents, directly or by implication, that the customary or usual retail price charged by respondents for any fur product in the recent regular course of their business is reduced in direct proportion to the amount of savings stated in the percentage savings claims, when contrary to the fact;

G. Makes use of comparative prices unless such compared prices or claims are based upon a bona fide compared price at a designated time;

4. Making price claims and representations of the types referred to in subparagraphs E, F, and G of paragraph 3 above, unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based.

It is further ordered, That the complaint be, and hereby is, dismissed as to Joseph Thal, Norman Thal, and Aaron Thal, individually, but not as officers of said corporate respondent.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 29th day of October 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents H. P. Selman & Company, Inc., a corporation, and Gene Thal, individually and as an officer of said corporation, and Joseph Thal, Norman Thal, and Aaron Thal, as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

LIBERTY MUTUAL INSURANCE COMPANY

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

Docket 6451. Complaint, Nov. 18, 1955—Order, Oct. 30, 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 with main office in Boston, Mass., with false advertising of its health and accident policies.

Before *Mr. Loren H. Laughlin* and *Mr. Frank Hier*, hearing examiners.

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

Mr. Franklin J. Marryott, of Boston, Mass., and *Hogan & Hartson*, of Washington, D.C., for respondent.

FINAL ORDER

It appearing that an initial decision in this proceeding was filed May 27, 1957, dismissing the complaint herein on the ground of failure of proof and that, by its order of November 12, 1957, the Commission remanded the matter to the hearing examiner; and

The Commission having reconsidered the matter in the light of the United States Supreme Court's ruling in *Federal Trade Commission* v. *National Casualty Company*, 357 U.S. 560 (1958), 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 Commission's order of November 12, 1957, removing this case from the appeal docket and remanding it to the hearing examiner be, and it hereby is, vacated and set aside.

It is further ordered, That the initial decision filed May 27, 1957, be, and it hereby is, vacated and set aside.

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

Decision

IN THE MATTER OF

MID-TEX CORPORATION ET AL.

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

Docket 6788. Complaint, Apr. 30, 1957—Decision, Oct. 30, 1958

Order requiring five affiliated concerns, including two wholesale distributors who sold aluminum storm windows, screens, and doors to three retailers, to cease using bait advertising featuring low-priced merchandise, the true purpose of which was to obtain leads to prospective customers for higher priced products.

A similar consent order was accepted by one respondent corporation on May 8, 1958, 54 F.T.C. 1581.

Mr. Edward F. Downs and *Mr. Thomas A. Sterner* for the Commission.

Nachamie & Benjamin, by *Mr. Max Nachamie* and *Mr. Jay H. Siskin,* of New York, N.Y., for Mid-Tex Corporation, Apex Window Company, Inc., Arnold Semenoff and Sidney Tobinick.

Mr. Marcus Miller, of New York, N.Y., for Martin Austin and Jack Rachell.

SECOND INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint in this proceeding charges that the several respondents have violated the Federal Trade Commission Act through the use of false, misleading and deceptive advertising in connection with the sale and distribution of aluminum storm windows, screens and doors. Specifically, respondents are charged with representing that certain of their products were available to the public and could be procured at various low prices listed in newspaper, radio and television advertisements, whereas, in fact, "respondents were not interested in selling and were not making a bona fide offer to sell" the advertised items, but wanted to obtain leads and information "on persons interested in purchasing" products of better quality and higher price than those advertised.

All of the respondents, excepting Dolph Greene and Herbert Armstrong, were duly served with summons and a copy of the complaint. Answers were filed by Famous Window Company of Pennsylvania, a corporation, and by Harold Brown and Jesse Kessler individually and as officers of said corporation; Arnold Semenoff, Sidney Tobinick, Mid-Tex Corporation, Apex Window

Company, Inc., Jack Rachell, and Martin Austin. On February 26, 1958, an agreement containing consent order to cease and desist, signed by Famous Window Company of Pennsylvania, a corporation, and Harold Brown and Jesse Kessler, individually and as officers of said corporation, was submitted to the hearing examiner, and an initial decision based thereon has heretofore been issued. In the same decision the complaint was dismissed without prejudice as to Dolph Greene and Herbert Armstrong, who had not been served.

After hearings at which evidence in support of the allegations of the complaint was received, duly recorded and filed in the office of the Commission, respondents Martin Austin and Jack Rachell, individually and as copartners trading as Martin Window Company, Arnold Semenoff, Sidney Tobinick, Mid-Tex Corporation and Apex Window Company, Inc., waived further hearings and consented the said proceeding be closed insofar as the reception of evidence was concerned. Counsel in support of the complaint and counsel for Apex, Mid-Tex, Arnold Semenoff and Sidney Tobinick submitted proposed findings and presented oral argument before the hearing examiner. Respondents Famous Window Co., Inc., a corporation; Oscar J. Reiss and Sam Spector, individually and as officers of said corporation; Ace Window Company of Missouri, Inc., a corporation; and Albert H. Nadler, individually and as an officer of said corporation, were and are in default for answer and appearance, and as to them, under the rules of the Commission, the hearing examiner, without further notice, is authorized to find the facts to be as alleged in the complaint.

Upon the basis of the entire record the following findings of fact and conclusions are made, applicable to the respondents who were in default and to those by whom the allegations of the complaint were contested:

1. (a) At all times involved in this proceeding, respondent Mid-Tex Corporation was a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Its office and principal place of business, was, at the time of hearings, located at 2608 Coney Island Avenue, Brooklyn, N.Y.; respondent Apex Window Company, Inc., was a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and its office and principal place of business was also at 2608 Coney Island Avenue, Brooklyn; respondents Arnold Semenoff and Sidney Tobinick were officers of both of said corporations, and formulated, directed and

controlled the policies thereof; their address was the same as that of said corporate respondents.

(b) Apex and Mix-Tex were wholesale distributors, engaged in the business of buying storm windows, doors and screens from manufacturers and selling them to the retail-operating respondents named in the complaint and to others.

(c) Respondents Martin Austin and Jack Rachell were copartners trading as Martin Window Company, a partnership organized, existing and doing business under and by virtue of the laws of the State of New York, with offices and principal place of business also at 2608 Coney Island Avenue, Brooklyn, N.Y.

(d) Respondent Famous Window Co., Inc., was a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 12065 Wyoming Avenue, Detroit, Mich. Respondents Oscar J. Reiss and Sam Spector were officers of said corporation, and managed its operations. Their address was the same as that of said corporation.

(e) Respondent Ace Window Company of Missouri, Inc., was a corporation organized, existing and doing business under the laws of the State of Delaware. Its office and principal place of business was located at 1518 McGee Street, Kansas City, Mo. Respondent Albert H. Nadler was an officer of said corporation, and participated in the management of its operations. His business address was the same as that of said corporation.

(f) Respondents Arnold Semenoff and Sidney Tobinick, in cooperation and conjunction with the other individual respondents named herein, formulated, directed and controlled the policies, acts and practices of the respective named corporate respondents and the partnership. All were engaged in commerce in the sale and distribution of aluminum combination storm windows, screens and doors. Their total sales, severally and collectively, were substantial. For the fifteen months, February 1955 through April 1956, Apex sales amounted to $2,440,000. The April 1956 sales were less than 10 percent of the sales for March 1956. Mid-Tex records for the nine months' period from August 1955 through April 1956 show total sales of over $695,000. Its April 1956 sales amounted to only $7,604, a marked decrease from the March 1956 sales, which totaled $112,825. About that time or shortly thereafter, the record shows, respondents went out of business. However, there is no evidence that the several companies were ever dissolved.

2. In the course and conduct of their business, respondents were engaged in competition in commerce with other corporations, firms and individuals who likewise sold combination storm windows, screens, doors, and other related products.

3. In the course and conduct of their business respondents named in paragraph 1, above, caused their said products, when sold, to be transported from the State of New York, or other places where they were manufactured or sold, to purchasers thereof located in various other States of the United States, and have maintained a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. Respondents, in the course and conduct of their business, and for the purpose of inducing the sale of their products, advertised the same by means of newspapers of general circulation, and by broadcasts over radio and television stations. Typical of statements used by the respondents in newspaper and magazine advertisements, but with varying prices ranging from $7.50 to more than $10.00 per window, are the following, taken from the February 27, 1956, issue of *Life* Magazine:

* * * On Sale Nationally! Sale Price
Minimum 6 Windows Double Hung type
$7.50 all sizes up to and including Giant 40" x 80"
Normal INSTALLATION INCLUDED First payment May 1956 then up to 3 YEARS TO PAY * * *.

A variation of this advertisement, sponsored by respondent Martin Window Company, appeared in *Pictorial TView*, Sunday, May 6, 1956, the pertinent parts of which were as follows:

* * * Nation-Wide SALE * * * New 1956 Model Triple-Insert 100% All Aluminum Screen & Storm Windows * * * All Sizes up to and including GIANT 40" x 80" Double-Hung Type * * * $7.50 per window for immediate delivery. Normal Installation Included. No payments till Aug. Then pay only 50C a WEEK * * *.

A somewhat similar Martin advertisement had appeared in the Sunday News, December 18, 1955, the price there stated being $7.77. Statements of the same or similar import were used by respondents in radio and television advertisements, the only substantive difference being in the price of the products advertised.

5. By and through the use of the aforementioned statements in their advertising, and other statements of the same or similar import not set out herein, respondents represented, contrary to fact, that they were making a bona fide offer to sell to the public

the advertised storm windows and screens for prices stated in the advertisements, providing, in some instances, that a minimum number were purchased.

6. Actually respondents were not interested in selling and were not making a bona fide offer to sell the advertised products at the advertised prices. The advertisements were for the purpose of obtaining leads and information as to persons to whom higher-priced combination storm windows and doors could be sold. This conclusion is amply warranted by the record.

7. Approximately twenty individuals, customers, prospective customers, or investigators of Martin Window Company, Famous Window Company, Inc., and Famous Window Company of Pennsylvania, were witnesses in New York, Detroit and Pittsburgh. All testified substantially alike—that they had been contacted by salesmen of one of the named respondent companies; that the advertised window was shown and briefly described; that in many cases a purchase contract was signed and deposit made; that thereafter the salesman began to deprecate the window, and exerted much effort to, and in many cases did, sell a much higher-priced product; that in such cases the original order was destroyed; that in some instances where sale of the higher-priced window was not consummated, delivery of the cheaper windows was not made. The testimony of the customer-witnesses who appeared at the Detroit hearing is typical.

8. One, an elevator operator, heard and saw a television commercial pertaining to a combination storm window and screen which was offered for $7.88. He called the telephone number given. A salesman from Famous Window Company, Inc., came out, inquired as to how many windows were needed, showed the advertised window, "talked and talked and talked" about the window, then said, " 'Look,' he says, 'Gordon,' [the witness name] he says, 'I got a good window here,' referring to a better window he had with him. 'Now you take this window, this is a better window. It will not pit, it wouldn't corrode, and you wouldn't have half as much trouble, plus you're getting a free door.' " The salesman, who was there at least a couple of hours, stated that the advertised window was a good window, but that it would pit and corrode, and would have to be cleaned with steel wool a couple of times a month. The witness eventually signed an order for some fourteen of the better windows for a total of approximately $507.00.

9. Another witness, a Hamtramck food inspector, saw a tele-

vision commercial, advertising storm windows and screens, first for $10.00, then for $9.00, then about a week later for $7.88. He called the number given—Famous, Inc. and a salesman came, bringing an advertised window sample. The witness said he didn't want to sign a contract, but the salesman told him it was the last day, so he signed a contract for eighteen windows at $7.88 each. Then the salesman said, "But wait a minute, I didn't tell you. This window is not as good," adding that it would corrode and had to be cleaned with steel wool. The witness refused to buy the better window which was then offered him, and said he would still take the cheaper one, whereupon the salesman said, "I will be honest with you. We're all out. We don't have any more of this kind of windows." Later some lady from Famous called the witness and reiterated that they were all out of the cheap window, but had the better-quality ones. The witness told her then to cancel the order and send back his deposit, which later was done.

10. Another witness, a housewife, saw the windows advertised on television for $10.00. A Famous, Inc., salesman came in response to her telephone call, and after some discussion a contract was signed by her and her husband for eight windows at $10.00 each; $40.00 was paid down. Then the salesman said, "Well, could I show you my better windows?" During the hour which followed, the salesman said the advertised windows would have to be steel-wooled every three months to keep them from corroding; that eventually the rubber around the window would crack; that if they didn't fit just right the workmen would have to do certain types of work which would cost extra; that he wouldn't want to live in a house which had that type of storm windows. As a result of this talk, "we ended up tearing up the contract and the check."

11. Still another witness from Van Dyke, Mich., saw the $10.00 television commercial, and was visited by a salesman who sold her and her husband a better window after disparaging the advertised product. "He told us we would have to, every three months, take them off from the house, be sanded and then waxed with a simonize, and he said if not, they would rust and be no good." He added that he had a better window "which we bought at $29.95 or $29.75 each."

12. In January or February of 1956 an inquiry in response to a $7.88 television advertisement was made by an assistant vice-president of a Detroit bank, and a Famous salesman called,

bringing with him the cheap window, which he did not seem to be "particularly eager to sell." The salesman said the window was not good; they would not recommend it; it would turn black, and no bank would finance it. He then brought in a better window which he priced at $46.00, but said, "if I'd take ten I could have them at $30.00." When the witness insisted on taking the cheaper window, the salesman said he would take an order, but 50% would have to be paid cash in advance; that the deal would have to be closed immediately; and that it would be at least six weeks before the windows could be delivered. No contract was signed.

13. In Detroit and New York the operations of respondents were checked by the Better Business Bureaus. A Bureau representative in Detroit testified that in the latter part of 1955 he saw the windows advertised over television for $10.00, completely installed. Pursuant to his telephone call, he and his wife were visited on October 25, 1955, by a Famous, Inc. salesman, who brought with him a sample of the advertised window, demonstrated it and praised it as being a very good window. Upon being told that they liked the windows, the salesman wrote up the contract, all except the price. Then he asked, "Do you know how to maintain these windows?", and added that the windows would pit and corrode and that "every so often" they would have to be rubbed down with steel wool. He praised a higher-priced window, a piece or corner of which he had with him—said it was an inset window, custom made, would fit better, and was guaranteed for approximately ten years. The price was $30.00 per window. When unable to sell the better windows, he wrote up a contract at the advertised price, accepted a $10.00 downpayment, and promised delivery in about five weeks. When the windows did not come, the purchasers contacted Mr. Harwood, Famous, Inc. sales manager, and received correspondence that there would be further delay. Later, in February 1956, Harwood told them the windows would never be delivered, nor would the initial payment be returned. However, a refund check was later received, dated June 28, 1956, mailed in Brooklyn, and signed by Arnold Semenoff and Oscar J. Reiss. In the meantime a false-advertising warrant against Famous Windows, Inc. had been issued in Detroit, and some financial difficulties had arisen between Famous, Inc., and Tobinick and Semenoff.

14. The Detroit Bureau respresentative arranged for another Famous, Inc. salesman to call upon his mother-in-law at a time when he could be present. This salesman demonstrated the ad-

vertised window, said it was a good buy, then added, "I don't think these are the windows you want. You have * * * on the house wooden storm windows. * * * These advertised windows would have to be maintained, they would have to be steel-wooled, * * * (O)therwise, they would pit and corrode, * * * last maybe four or five years." He then demonstrated the higher-priced windows, which he said were sold by the square foot and would cost about $50.00 apiece. He offered an allowance of $60.00 for a storm door if the full order was signed, and finally reduced his price to approximately $30.00 per window. The Detroit Bureau representative also sent in an inquiry based on the Apex advertisement in Life Magazine, quoted in paragraph 4 above, using the name of another Better Business Bureau employee upon whom another Famous, Inc. salesman called, on March 14, 1956, saying that "Famous is Apex and Apex is Famous. There is no difference." A tape recording was taken of his statements. He said the advertised windows were cheap windows; would pit, corrode, have to be rubbed down with steel wool, and were not guaranteed. The better windows were then described but no sale developed, so a contract was signed for six of the advertised windows, accompanied by a deposit of $20.00. These windows were delivered and installed some time after the false-advertising action had been started in Detroit against Famous, Inc.

15. In New York an experienced private investigator working for the Better Business Bureau called upon Martin Window Company in response to an advertisement for salesmen, talked to Martin Austin, and was hired. He received instructions and with another salesman made two calls on prospects. In one case, husband and wife both being present, an order for ten of the advertised windows was taken at $7.77 per window, and a downpayment of $8.00 accepted. As they were about to leave, the accompanying salesman told the customers he was supposed to give them a booklet about the care of the windows, but had forgotten it. He then told them it would be necessary to wipe off the outside of the window frames every week or ten days, otherwise they would get black and pit; that he had a better window outside in the car, which he would like to demonstrate. During the demonstration, he said that the advertised windows were of poor-grade aluminum, spot welded so the panes of glass could not be removed, making it necessary to buy frame and all if a pane were broken. The glass in the better windows, he said, was readily replaceable at small cost. He told them that if he were permitted

to put up a small sign in the yard for a month, he could give them a special price on the better windows—that the ten windows ordinarily would sell for $530.00, but he could give them a special price of $299.44. After further discussion, this offer was accepted, a new contract signed, and the original deposit made applicable to it. Over two hours were spent on this sale. On the second prospect call, practically the same procedure was followed, an order was written up at the $7.77 price, then the better window was brought in and demonstrated. A "special price" of $249 was made for six windows on the promise that when more windows were needed, they would be bought from the same salesman. The regular price was quoted as $460. A contract for the better windows was procured. Substantially the same statements were made in both cases.

16. In discussing selling price and commissions, respondent Martin Austin told this investigator that their windows were advertised at $7.77 or $9.79, depending on the medium used, but that they had a better window priced from $28 to $46. On the better window, the salesman's commission would be $1 on each window sold at $28; on each window sold for more than $28, commission would be $1 plus 50 percent of the amount over $28 for which the window was sold. For example, if the window were sold for $40, the salesman would get a total of $7—$1 plus 50 percent of the $12 overage. As to the advertised window, the witness was told there would be very little commission—from 15 cents to 25 cents per window; and that he could not expect to make a living selling it, "because there was next to nothing in it."

17. Respondents Apex, Mid-Tex, Semenoff and Tobinick claim that they had nothing to do with the management, operation or control of the retail organizations whose practices have just been described and who are referred to by them as customers. The nature of the relationship, however, is disclosed by the terms of written contracts, by joint participation in advertising matters, and by other conduct. The individuals who became partners in, or officers of, the scattered retail organizations had prior thereto been employed by Semenoff and Tobinick directly or through one of the companies which they controlled. Between Semenoff and Tobinick or one of their companies and each separate retail organization there existed a formal contract.

18. Between the partnership, Martin Window Company, and Mid-Tex there was a contract dated September 16, 1955, in which Mid-Tex was referred to as seller and Martin Company as buyer.

Among other things the contract recited that the seller had advanced "substantial credit" for use of the buyer and would make available to the buyer "various lists of customers, trade secrets and information of a confidential nature." It was agreed that (1) the seller would furnish the entire requirements of the buyer, who would buy exclusively from the seller all storm windows and doors needed; (2) the buyer would "purchase from the Seller all advertising obtained by the Seller" appertaining to the New York area; (3) the seller should have the "sole right to purchase advertising in newspapers, radio, and other advertising media to promote the sale of the Buyer's products"; (4) the buyer would pay the seller all the cost thereof plus an additional service charge of 15 percent; (5) the price of storm doors and windows to the buyer would be seller's cost plus shipping expenses and overhead plus $1, but in no event less than $12 per window; (6) neither partner, Rachell or Austin, would, during the term of the contract or within three years after its termination, engage in the same or any similar line of business within a radius of 100 miles from New York; (7) the contract could not be assigned by the buyer without written consent of seller; (8) the buyer would "reimburse the seller for expenses in connection with services rendered to the Buyer, the sum of $200 per week"; and (9) the seller could assign the agreement "to a corporation providing the stockholders [Semenoff and Tobinick] comprising the Seller are the principal stockholders of such corporation."

19. There was a contract between Best Window Company, described therein as a copartnership consisting of Arnold Semenoff and Sidney Tobinick, as seller, and Famous Window Company of Pennsylvania, a corporation, and Harold Brown and Jesse Kessler, individually, as buyers, entered into in July of 1955 or earlier, which was almost identical in terms to that described in paragraph 18, except that the provision restricting operations of the individual signers during or after termination of the contract applied to the Pittsburgh area, and the contract contained a further provision that at any time within six years from the date of the contract the sellers could, at their option, purchase all the stock owned by Brown and Kessler, the name, goodwill and trade secrets of the company to be included, but all the assets of the company were to be transferred to Brown and Kessler, less any outstanding liability of the company. Under the contract the stock originally issued to Brown and Kessler could not be resold by them "save with the joint consent" of Tobinick and

Semenoff. Although this contract was originally with Best, the clause relating to reimbursement provided that the buyers were to reimburse Apex at the rate of $200 per week "for office expenses incurred in connection with the services rendered to the Buyers." In July of 1955, this contract was transferred by Best to Apex.

20. On July 26, 1955, Best entered into a contract, with Ace Window Company of Missouri and its individual officers, only slightly different from the contract between Best and Famous of Pennsylvania. The restrictive provisions were applicable to the Kansas City area; the six-year option to purchase stock provided for the payment to the three Ace officers, Herbert Armstrong, Albert H. Nadler and Dolph Greene, of an amount equal to the original price paid by them. This contract also was assigned by Best to Apex. There was a similar contract between Best or Semenoff and Tobinick, in one of their other capacities, as seller, and Famous Window Company, Inc., a Michigan corporation, and its officers individually, as buyer. The voting stock in each of the retailing corporations was held by Semenoff and Tobinick, the participating but nonvoting stock being held by the individuals serving as officers.

21. Respondents Semenoff and Tobinick, either personally or through one of the companies which they owned and controlled, engaged an advertising agency to prepare and arrange for the publication and broadcasting of advertisements of storm windows, screens and doors, and assumed the obligation of paying for the same. However, pursuant to the terms of the various contracts, the cost was allocated among and charged to the various retail organizations who benefited thereby. For example, the Life advertisement included a list of telephone numbers in the metropolitan areas of New York, Detroit, Kansas City, Pittsburgh, Boston, Chicago, and Indianapolis, through which one of the retailing organizations could be contacted by prospective customers, but was charged to and paid for by Semenoff and Tobinick, who in turn, after adding 15 percent for their own services, allocated the cost among the various benefiting retailing organizations and presumably collected from them. The handling of local advertising was similar. The record shows a billing dated July 15, 1955, from Apex to Famous of Pennsylvania for 26 one-minute spot Famous advertisements carried over WBBW during the week of July 12, 1955 to July 17, 1955, the charge amounting to $208.40, of which $181.22 was the station's charge and $27.18

was Semenoff and Tobinick's 15 percent service charge. Illustrative of another phase of the operation is a billing of the advertising agency to Mid-Tex, dated January 18, 1956, in the amount of $579.78 for newspaper and agency service charge covering a Martin advertisement in the New York Daily Mirror, Sunday, January 15, 1956.

22. The participation of Semenoff and Tobinick in the advertising program was described by a representative of the advertising agency who said the general advertising was arranged for, approved and paid for by Semenoff and Tobinick; that as to local advertising, the several retail organizations were consulted, and frequently conferences were held in which Semenoff and Tobinick and representatives of the local organizations sat down and discussed with the advertising agency representative the various matters involved. One typical conference, held in Pittsburgh, was described as follows, the advertising agency representative being on the witness stand: "Mr. Semenoff, Mr. Tobinick, one of my account executives and myself, Mr. Brown, Mr. Kessler had more or less a round-table discussion with the pros and cons and so forth with my so-called expert opinion thrown in between." Thus an advertising program was agreed upon.

23. From all the circumstances, it is found that Apex and Mid-Tex, through their officers, and Semenoff and Tobinick individually, actively participated in the formulation, direction and control of the policies, acts and practices of the several retailing corporations and partnerships named, particularly including policies, acts and practices relating to advertising.

CONCLUSION

(a) The advertising, and other acts and practices hereinabove delineated, are false, misleading and deceptive, and had and have the capacity and tendency to mislead and deceive the purchasing public, inducing them to purchase substantial quantities of respondents' products. As a result thereof, trade in commerce has been unfairly diverted to the respondents from their competitors and injury has been done to the public.

(b) The aforesaid acts and practices of the respondents were and are to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute unfair and deceptive acts and practices and unfair methods of com-

petition in commerce, within the intent and meaning of the Federal Trade Commission Act.

(c) This proceeding is in the public interest. Accordingly,

It is ordered, That respondents Mid-Tex Corporation, a corporation; Apex Window Company, Inc., a corporation, and Arnold Semenoff and Sidney Tobinick, individually and as officers of said corporations; Martin Austin and Jack Rachell, individually and as copartners trading as Martin Window Company; Famous Window Co., Inc., a corporation, and Oscar J. Reiss and Sam Spector, individually and as officers of said corporation; Ace Window Company of Missouri, Inc., a corporation, and Albert H. Nadler, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of storm doors, windows, screens, or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication, that such storm doors, windows, screens or other products are offered for sale, when such offer is not a *bona fide* offer to sell such products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having issued its decision on May 8, 1958, in disposition of this proceeding with respect to the respondents therein designated and the hearing examiner having filed an initial decision on May 13, 1958, disposing of the charges of the complaint insofar as they relate to certain of the respondents additionally named as parties to this proceeding, and the Commission on June 27, 1958, having stayed until further order the date on which that initial decision would otherwise become the decision of the Commission pursuant to the provisions of §3.21 of the Commission's Rules of Practice; and

It appearing that said initial decision fails to dispose in any manner of the charges of the complaint insofar as they relate to respondents Dolph Greene and Herbert Armstrong, as to whom service of the complaint in this proceeding could not be effected, but the Commission having further determined that said initial decision is adequate and appropriate in all respects to dispose of this proceeding as to the respondents named in the order contained in the initial decision:

It is ordered, That the charges of the complaint be, and they hereby are, dismissed insofar as they relate to respondents Dolph Greene and Herbert Armstrong, such action being without prejudice to the right of the Commission to reopen this proceeding or to take such other action in the future respecting them as may be warranted by then existing circumstances.

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

It is further ordered, That respondents Mid-Tex Corporation, Apex Window Company, Inc., Arnold Semenoff, Sidney Tobinick, Martin Austin, Jack Rachell, Famous Window Co., Inc., Oscar J. Reiss, Sam Spector, Ace Window Company of Missouri, Inc., and Albert H. Nadler 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

SPERRY RAND CORPORATION

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

Docket 6701. Complaint, Dec. 27, 1956—Decision, Nov. 3, 1958

Consent order requiring the largest producer of electric shavers in the United States, with sales volume for 1955 approximating $44,000,000, to cease discriminating in price by selling its "Remington" electric shavers to any purchaser at net prices higher than those charged its competitors, and by paying advertising or other allowances in varying amounts to some customers but not to their competitors or in amounts not equal to the same percentage of the latter's net purchases; and to cease fixing and maintaining minimum wholesale and retail resale prices for its customers competing with its own wholly owned branches and its retail or service stores.

COMPLAINT

The Federal Trade Commission, having reason to believe that Sperry Rand Corporation has violated, and is now violating, the provisions of subsections (a) and (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13), and has been, and is now, using unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public the Commission hereby issues its complaint charging as follows:

Count I

Charging violation of subsection (a) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Respondent Sperry Rand Corporation 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 30 Rockefeller Plaza,, New York, N.Y.

PAR. 2. Respondent Sperry Rand Corporation is the successor by consolidation or merger of Remington Rand, Inc., and the Sperry Corporation, which consolidation or merger became effective on June 30, 1955.

Respondent Sperry Rand Corporation is made up of two principal divisions, the Sperry division and the Remington Rand

division. The Remington Rand Electric Shaver division, hereinafter sometimes referred to as the Electric Shaver division, is a division of the Remington Rand division of respondent corporation. The Electric Shaver division, both prior to and since the consolidation or merger of respondent corporation, has, to a considerable extent, operated independently, making its own policies and procedures, including its sales and advertising policies. The Remington Electric Shaver division accounts for the entire production and distribution of the Remington Electric Shaver. This division has its principal office and place of business located at 60 Main Street, Bridgeport, Conn.

Respondent also has approximately 26 branches and 130 service stores, located in major cities throughout the United States, which are engaged in the sale and distribution of respondent's electric shavers sold under the trade name of "Remington." Respondent has approximately 1,600 wholesale distributors, and between 35,000 and 70,000 retail dealers. Respondent's branches sell direct to a substantial number of these retail dealers in competition with its wholesale distributors. Respondent's service stores' major functions are to service and repair electric shavers, but they are also engaged, to a substantial degree, in the sale of respondent's electric shavers to the consuming public, in competition with respondent's retail dealers in the various cities in which these service stores are located.

Respondent is the largest producer of electric shavers in the United States, with a sales volume for the year 1955 of approximately $44,000,000.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent is now engaged, and for the past several years has been engaged, in commerce as "commerce" is defined in the aforesaid Clayton Act, as amended, having sold and distributed its electric shavers manufactured in its plant in Bridgeport, Conn., and transported, or caused the same to be transported, from its place of business in Connecticut to purchasers located in other States of the United States and other places under the jurisdiction of the United States. Said shavers were, and are, sold for use, consumption, or resale within the various States of the United States and other places under the jurisdiction of the United States, and at least one or more of the sales in each discrimination in price alleged herein were in interstate commerce.

PAR. 4. Since the merger of the Sperry Corporation and Remington Rand, Inc., on June 30, 1955, respondent corporation

has been and is now, engaged in the business of manufacturing, selling, and distributing electric shavers and related products, hereinafter sometimes referred to as shavers. For many years prior to June 30, 1955, this business was conducted in a similar manner by Remington Rand, Inc. Said shavers have been, and are now, marketed by respondent through its Electric Shaver Division located in Bridgeport, Conn., and through its approximately 26 branches and 130 service stores operated by said division in the various major cities throughout the United States, by three separate methods as follows:

(1) By selling to wholesale distributors, who resell to retail dealers;

(2) By selling direct to retail dealers in competition with its wholesale distributors located in the same trade area; and

(3) By selling to consumers, through its service stores, in competition with the above retail dealers located in the same cities.

It sells to its wholesale distributors at 50 percent off retail list price, and these wholesale distributors resell to retail dealers generally at 40 percent off retail list price. In selling direct to its retails dealers, respondent sells to some retail chains, or large retailers with more than one outlet, at the wholesale distributor's discount of 50 percent off retail list price, while selling its merchandise of like grade and quality at only 40 percent off said list price to other retail customers who compete with these favored retail chains.

PAR. 5. In the course and conduct of its business of selling its electric shavers of like grade and quality as aforesaid, respondent for some time past has been and is now discriminating in price, between its competing retail customers to whom it allows a 50 percent discount off the retail list price and those to whom it allows only a 40 percent discount off the retail list price of said shavers. This includes retail customers purchasing indirectly from respondent through its wholesale distributors at only 40 percent off said list price, where these customers compete with said retail customers purchasing direct from respondent at 50 percent off. The effect of such discrimination in price has been and may be substantially to lessen competition in the lines of commerce in which respondent or its purchasers are engaged, and to injure, destroy or prevent competition between respondent's favored and nonfavored customers, as alleged and described herein.

Said discriminations in price constitute violation of subsection (a) of Section 2 of the aforesaid Clayton Act, as amended.

Count II

Charging violation of subsection (d) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PAR. 6. Paragraphs 1 through 3 of Count I hereof are hereby set forth by reference and made a part of this Count as fully and with the same effect as if quoted here verbatim.

PAR. 7. In the course and conduct of its business in commerce, as aforesaid, respondent has paid or authorized payment of money, goods, or other things of value to or for the benefit of some of its customers as compensation in consideration for services and facilities furnished or agreed to be furnished by or through such customers in connection with the processing, handling, sale or offering for sale of respondent's electric shavers and respondent has not made or contracted to make such payments, allowances, or considerations available on proportionally equal terms to all its other customers competing in the sale and distribution of such electric shavers.

Specifically, respondent during the past two years:

(1) Paid advertising or other allowances in varying amounts to some customers, but has not done so or offered to do so in any amount to other competing customers;

(2) In paying such advertising and other allowances, has done so to competing customers in amounts not equal to the same percentage of such competing customer's net purchases and not proportionally equal by any other test; and did not offer or otherwise accord or make available such allowances to all such competing customers in amounts equal to the largest of such percentages, or proportionally equal by any other test.

Such allowances in most instances were arbitrarily determined by individual negotiations between respondent and such retail customers direct; or between respondent, and the retail customers, through its wholesale distributors.

PAR. 8. The acts and practices as alleged in paragraph 7 above are in violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as amended.

Count III

Charging violation of Section 5 of the Federal Trade Commission Act, the Commission alleges:

PAR. 9. Paragraphs 1 and 2 of Count I are hereby set forth by reference and made a part of this Count as fully and with the same effect as if set forth here verbatim.

PAR. 10. In the course and conduct of its business, respondent Sperry Rand Corporation has been for some time past, and is now, engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that it has sold and distributed its electric shavers manufactured in its plant in Bridgeport, Connecticut, and transported, or caused the same to be transported, from its place of business in Connecticut to purchasers located in other States of the United States and other places under the jurisdiction of the United States.

PAR. 11. In the course and conduct of its said business in commerce, respondent has been and is now in competition with persons, firms, and other corporations likewise engaged in the manufacture, sale and distribution in commerce of electric shavers and related products. Many of the wholesale distributors to whom respondent sells such electric shavers and related products were, and are, in competition, some in commerce, with each other and with respondent's wholly owned and controlled branches which sell to retail dealers in competition with said wholesale distributors. Many of the retail dealers to whom respondent sells its electric shavers direct and also through its wholesale distributors were, and are, in competition, some in commerce, with each other and with respondent's wholly owned and controlled retail outlets or service stores, in the resale of respondent's electric shavers.

PAR. 12. Respondent has entered into contracts and agreements with a substantial number of its wholesale distributors whereby it has fixed and maintained, and now fixes and maintains, minimum resale prices at which such wholesale distributors shall sell respondent's electric shavers to retail dealers, with a further provision that said wholesale distributors are to request retailers to whom they sell not to sell or offer to sell any of respondent's products coming under this agreement for less than the minimum retail selling price fixed by respondent.

Respondent has also entered into contracts and agreements with many of its retail dealers to whom it sells its electric shavers direct, whereby respondent has fixed and maintained, and now fixes and maintains, the minimum prices at which such retail dealers or customers shall resell said shavers to the public.

Respondent has compelled many of its retail dealers who offer for sale and sell its electric shavers, and who have not entered into any contracts or agreements with respondent regarding sale prices, to observe the minimum resale prices fixed by respondent for said shavers.

Respondent has and does now further maintain the observance of the fixed resale prices of its electric shavers and related products by prohibiting in connection with the resale thereof the offering or giving of any article of value, or the offering or making of any other concession or privilege which has the practical result of reducing the selling price of such products below the minimum resale price fixed by respondent.

PAR. 13. The said products for which respondent has fixed and maintained, and now fixes and maintains, the prices at which same are to be resold by both wholesale distributors and retail stores, have been and are now sold in competition with said wholesale distributors and retail stores by respondent's wholly owned and controlled branches, and retail or service stores.

PAR. 14. The contracts and agreements entered into by respondent with both its wholesale distributor customers and its retail dealer customers whereby it fixes and maintains the resale prices of its electric shavers and related products are illegal in that some of the said wholesale distributors and retail dealers are in competition with respondent's wholly owned and controlled branch outlets which sell in competition with its wholesale distributors and its wholly owned and controlled service stores which sell in competition with its retail dealers.

PAR. 15. The acts, practices, methods, and agreements of respondent, as hereinabove alleged and described, are all to the prejudice of the public, have a dangerous tendency to unduly hinder competition and create a monopoly in respondent in the sale of electric shavers, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. William H. Smith and *Mr. James R. Fruchterman* for the Commission.

Mr. Francis J. McNamara, of New York, N.Y., and *Mr. G. A. Chadwick, Jr.*, of Washington, D.C., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondent, in connection with the sale and distribution in commerce of Remington Rand Electric Shavers, has discriminated in price between its competing retailer customers, in violation of §2(a) of the Clayton Act, as amended; has paid advertising or other allowances to certain of its customers, which were not made available on proportionally equal terms to all other of its customers competing in the resale

of its electric shavers, in violation of §2(d) of said Act; and has entered into agreements with both its wholesale distributor customers and its retail dealer customers, whereby it fixes and maintains the resale prices of its electric shavers and related products, in violation of §5 of the Federal Trade Commission Act, in that the respondent's wholly owned and controlled branches are in competition with some of respondent's said wholesale and retail customers.

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

Respondent Sperry Rand Corporation is identified in the agreement as a Delaware corporation, with its office and principal place of business located at 30 Rockefeller Plaza, New York, N.Y.

The agreement provides, among other things, that 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 it 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 it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of §2(a) and §2(d) of the Clayton Act as amended by the Robinson-Patman Act (U.S.C.,

Title 15, §13), and of §5 of the Federal Trade Commission Act (U.S.C., Title 15, §45). Accordingly, the Hearing Examiner finds this proceeding to be in the public interest and accepts the agreement containing consent order to cease and desist [1] as part of the record upon which this decision is based. Therefore,

It is ordered, That the allegations contained in Count I of the complaint to the extent that such charge the respondent with violating Section 2(a) of the Clayton Act, as amended, by reason of the fact that the customers of respondent's wholesaler-purchasers are alleged to be purchasers of respondent be, and they hereby are, dismissed, without prejudice, however, to the right of the Commission to take such further or other action against respondent at any time in the future as may be warranted by the then existing circumstances; provided that nothing herein shall be construed as limiting the meaning of the term "purchaser" in the order to cease and desist in this matter from its full meaning under Section 2(a) of the Clayton Act, as amended.

It is further ordered, That Sperry Rand Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of electric shavers and related products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any purchaser at net prices higher than the net prices charged any other purchaser competing in fact with such unfavored purchaser in the resale and distribution of such products.

It is further ordered, That respondent Sperry Rand Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in the course of its business in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of any customer acquiring respondent's electric shavers and related products from respondent, from wholesalers, or from any other source, any payment of anything of value as compensation or in consideration for any advertising or other services or facilities furnished by or through such customer, in connection with the handling, resale, or offering for resale of such products manufactured, sold, or offered for sale by respondent, unless such payment

[1] Published as corrected by commission order of Dec. 18, 1958.

or consideration is made available on proportionally equal terms to all other such customers competing in fact with such favored customers in the resale or distribution of such products.

It is further ordered, That respondent Sperry Rand Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of electric shavers and related products, in commerce, as "commerce" is defined in the aforesaid Federal Trade Commission Act, do forthwith cease and desist from:

Fixing, establishing or maintaining by, or in accordance with the terms or conditions of, any contract, agreement or understanding, the prices, terms or conditions of sale at which its electric shavers or related products produced, distributed, or sold, directly or indirectly by respondent are to be resold by any wholesaler or retailer when such products are being sold or offered for sale in competition with any branch, retail or service store, establishment, or business owned or controlled by any means or method, by respondent.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The hearing examiner, on July 9, 1958, having filed an initial decision in this proceeding based on an agreement containing a consent order to cease and desist theretofore executed by respondent and counsel in support of the complaint, and the Commission, on August 25, 1958, having extended, until further order, the date on which said initial decision would otherwise become the decision of the Commission; and

It appearing that the aforesaid agreement is subject to the condition that an initial decision based thereon shall not become the decision of the Commission until and unless the Commission issues an order to cease and desist under Counts I, II, III and IV in the matter of *Schick Incorporated, et al.,* Docket No. 6892, and under Counts II and III in the matter of *North American Philips Company, Inc.,* Docket No. 6900, and that, such orders being issued in the aforementioned matters simultaneously with this action, the condition is met; and

It further appearing that subsequent to the filing of the said initial decision, counsel in support of the complaint, with the concurrence of respondent, filed in their own behalf and in behalf of the respondent a motion requesting modification of the initial decision (1) by dismissing without prejudice such parts

of the complaint as are specified in the motion, and (2) by correcting a typographical error in the order, changing the word "favored" to "unfavored" in the indented portion of the first paragraph thereof; and

The Commission having determined that the requested modification of the initial decision is appropriate, the motion of counsel supporting the complaint in behalf of the parties to the proceeding is granted hereby:

Accordingly, it is ordered, That the said initial decision of the hearing examiner be, and it hereby is, modified by substituting the following for the first paragraph of the order:

It is ordered, That the allegations contained in Count I of the complaint to the extent that such charge the respondent with violating Section 2(a) of the Clayton Act, as amended, by reason of the fact that the customers of respondent's wholesaler-purchasers are alleged to be purchasers of respondent be, and they hereby are, dismissed, without prejudice, however, to the right of the Commission to take such further or other action against respondent at any time in the future as may be warranted by the then existing circumstances; provided that nothing herein shall be construed as limiting the meaning of the term "purchaser" in the order to cease and desist in this matter from its full meaning under Section 2(a) of the Clayton Act, as amended.

It is further ordered, That Sperry Rand Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of electric shavers and related products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any purchaser at net prices higher than the net prices charged any other purchaser competing in fact with such unfavored purchaser in the resale and distribution of such products.

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

It is further 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 contained in the said initial decision, as modified.

Commissioner Kern not participating.

IN THE MATTER OF

SCHICK INCORPORATED AND SCHICK SERVICE, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND OF SECS. 2(a), 2(d), AND 2(E) OF THE CLAYTON ACT

Docket 6892. Complaint, Sept. 24, 1957—Decision, Nov. 3, 1958

Consent order requiring a major producer of electric shavers, with net sales in 1956 in excess of $27½ million, along with its corporate sales and service agent, to cease discriminating in price by selling its electric shavers to certain purchasers at net prices higher than those charged their competitors at wholesale and retail sale, by paying advertising or other allowances in varying amounts to some customers but not to their competitors or in amounts not equal to the same percentage of the competitors' net purchases, and by furnishing to certain customers but not to their competitors, demonstrators to give free shaves and to repair and clean shavers brought in by customers; and to cease fixing and maintaining minimum resale prices for its customers with whom they were in competition in the wholesale and retail sale, and representing falsely that purchasers of the man's shaver known as "Schick 25" would receive a "Lady Schick."

COMPLAINT

The Federal Trade Commission, having reason to believe that Schick Incorporated and Schick Service, Inc., have violated, and are now violating, the provisions of subsection (a) and that Schick Incorporated has violated, and is now violating, the provisions of subsections (d) and (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13), and that Schick Incorporated and Schick Service, Inc., have been, and are now, using unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be to the public interest the Commission hereby issues its complaint charging as follows:

Count I

Charging violation of subsection (a) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Respondents named herein are Schick Incorporated and Schick Service, Inc.

Respondents are corporations organized and existing under and by virtue of the laws of the State of Delaware. Respondents' principal offices and place of business are located at 216 Greenfield Road, Lancaster, Pa.

PAR. 2. Respondent Schick Incorporated is a major producer and seller of electric shavers in the United States, which it manufactures at its factory located at Lancaster, Pa., and sells under the trade name "Schick."

PAR. 3. Respondent Schick Service, Inc., is a wholly owned subsidiary of respondent Schick Incorporated, by which it is controlled and dominated. Said respondent is an instrumentality of its parent, and to all intents and purposes is operated as a division or department of respondent Schick Incorporated.

Respondent Schick Service, Inc., is engaged in the business of servicing and repairing electric shavers manufactured by respondent Schick Incorporated. Said respondent sells electric shavers which it obtains from its parent, respondent Schick Incorporated, and repair parts, replacement parts, and accessories therefor. Respondent Schick Service, Inc., maintains its headquarters on the premises occupied by its parent company, respondent Schick Incorporated, at Lancaster, Pa., and maintains about 65 service branches located in principal cities of the United States.

The consolidated net sales of respondent Schick Incorporated and its wholly owned subsidiaries, including respondent Schick Service, Inc., for the year 1956 amounted to $27,512,830.

PAR. 4. Respondents Schick Incorporated and Schick Service, Inc., sell electric shavers of like grade and quality to a large number of purchasers located throughout the United States for use, consumption, or resale therein.

Electric shavers sold by respondents to such purchasers are shipped either from the factory of respondent Schick Incorporated at Lancaster, Pa., from the stores of respondent Schick Service, Inc., or from points of storage located throughout the United States where such shavers may be temporarily stored or kept in anticipation of sale and shipment.

PAR. 5. In the course and conduct of their business respondents are now and for many years past have been shipping "Schick" electric shavers from the state or states where such products are manufactured, kept, or stored to customers located in other States and in the District of Columbia in a constant current of commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 6. In the course and conduct of their business in com-

merce respondents have been and are now in competition with persons, firms, and other corporations likewise engaged in the manufacture, sale, and distribution in commerce of electric shavers and related products. Many of respondents' purchasers are in competition with one another at their respective levels of trade.

Respondents sell "Schick" electric shavers to wholesalers, retailers, and consumers. Sales are made to wholesalers, retail chain stores, large department stores, mail order houses, and a number of other retail outlets direct from the factory of respondent Schick Incorporated at Lancaster, Pa. Other sales are made to retailers and consumers from the various stores and shops of respondent Schick Service, Inc.

The wholesaler-purchasers of respondent Schick Incorporated resell Schick electric shavers to retailers. It is alleged that such retailers are purchasers of respondent Schick Incorporated within the meaning of the Clayton Act, as amended. As illustrative of such relationship, respondent Schick Incorporated recognizes retailers buying through its wholesaler-purchasers by personally soliciting them through its own sales force, by drop shipping shavers to them ordered by wholesalers, by making effective its price policies and schedules as applied to its wholesaler-purchasers and their retailer-customers wherever the same are legal, and by dealing directly with such retail customers with respect to its advertising programs promoting the sale of "Schick" shavers and accessories.

Many of the direct purchasers of respondent Schick Incorporated who purchase said respondent's electric shavers represent themselves to said respondent as being wholesalers, and are granted wholesaler's discounts when in truth and in fact said purchasers are retailers and not wholesalers, and are therefore competing purchasers with said respondent's indirect retailer-purchasers and with direct buying retailer-purchasers of respondent Schick Service, Inc., as hereinbefore described. In many instances this is accomplished by the use of dummy or fictitious buying devices or instrumentalities often in the form of commonly owned or controlled corporations, subsidiaries, instrumentalities, or affiliates of large retail chains representing themselves to said respondent as doing a legitimate wholesale business, when in truth and in fact their only business is to buy at wholesale for the particular retail chain with which they are so affiliated and identified.

PAR. 7. In the course and conduct of its business in commerce,

respondent Schick Incorporated has discriminated in price in the sale of "Schick" electric shavers by selling such shavers of like grade and quality at different prices to different and competing purchasers.

Illustrative of such sales at discriminatory prices are the following pricing practices of said respondent:

During the year 1956 respondent Schick Incorporated sold electric shavers to its direct retailer-purchasers at discounts of 49% and 50% from list and to competing indirect retailer-purchasers who bought through wholesalers at discounts of about 40% from list. Wholesalers were sold at list less 50%. Beginning in January 1957 said respondent sold electric shavers to its direct retailer-customers at discounts from list of approximately 48%, and to competing indirect retailer-purchasers who bought through wholesalers at discounts from list substantially less than the 48% granted to competing direct retailer-purchasers. The price to wholesalers was list less 48%.

PAR. 8. Both respondent Schick Incorporated and Schick Service, Inc., have discriminated in price in the sale of electric shavers between retail dealer-purchasers buying from the various service stores and shops operated by respondent Schick Service, Inc., at 35 to 40% from list, and direct retail competing dealer-purchasers buying electric shavers of like grade and quality from the factory of respondent Schick Incorporated at 49% and 50% from list.

PAR. 9. The effect of said discriminations in price by respondents in the sale of "Schick" electric shavers has been or may be to lessen, injure, destroy, or prevent competition:

1. Between respondents and their competitors in the manufacture, sale, and distribution of electric shavers.

2. Between direct buying purchasers of respondent Schick Incorporated who are retailers in fact and competing indirect buying retailers of said respondent who purchase through wholesalers.

3. Between direct buying purchasers of respondent Schick Incorporated who are retailers in fact and competing retailer purchasers buying from the stores and shops of Schick Service, Inc.

PAR. 10. The discriminations in price as herein alleged are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Count II

Charging violation of subsection (d) of Section 2 of the Clayton Act as amended:

PAR. 11. Paragraphs 1 through 6 of Count I hereof are hereby set forth by reference and made a part of this count as fully and with the same effect as if quoted here verbatim.

PAR. 12. In the course and conduct of its business in commerce as aforesaid, respondent Schick Incorporated has paid or authorized payment of money, goods, or other things of value to or for the benefit of some of its direct and indirect customers as compensation in consideration for services or facilities furnished or agreed to be furnished by or through such customers in connection with the handling, sale, or offering for sale of respondent's electric shavers and respondent has not made or contracted to make such payments, allowances, or consideration available on proportionally equal terms to all of its other direct and indirect customers competing in the sale and distribution of such electric shavers.

As illustrative of such practices respondent has:

(1) Paid advertising or other allowances in varying amounts to some customers, direct and indirect, but has not done so or offered to do so in any amount to other direct and indirect competing customers;

(2) In paying such advertising and other allowances, has done so to competing direct and indirect customers in amounts not equal to the same percentage of such competing direct and indirect customer's net purchases and not proportionally equal by any other test; and did not offer or otherwise accord or make available such allowances to all such competing direct and indirect customers in amounts equal to the largest of such percentages, or proportionally equal by any other test.

Such allowances in most instances are determined by individual selections or negotiations by or between respondent and its direct and indirect retail customers.

PAR. 13. The acts and practices as alleged in paragraphs 11 and 12 above are in violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as amended.

Count III

Charging violation of subsection (e) of Section 2 of the Clayton Act, as amended:

PAR. 14. Paragraphs 1 through 6 of Count I hereof are hereby set forth by reference and made a part of this count as fully and with the same effect as if quoted here verbatim.

PAR. 15. In the course and conduct of its business in commerce, respondent Schick Incorporated has discriminated in favor of many of its purchasers, both direct and indirect, and against other of its competing purchasers, both direct and indirect, buying Schick electric shavers for resale by contracting to furnish or furnishing or by contributing to the furnishing to such favored competing purchasers services or facilities connected with the handling, sale, or offering for sale of such commodities so purchased upon terms not accorded to said nonfavored competing purchasers, both direct and indirect on proportionally equal terms.

As illustrative of such practices, respondent has furnished certain of its direct and indirect retail customers a demonstrator or demonstrators for week ends or other periods of time for the purpose of giving free shaves and demonstrations of Schick electric shavers to prospective customers, and to repair Schick shavers brought into said favored retailer-purchaser's stores by customers and to give such shavers a free cleaning, while not according such demonstrator and other services to all other direct and indirect competing purchasers on proportionally equal terms.

PAR. 16. The acts and practices as alleged in paragraphs 14 and 15 above are in violation of subsection (e) of Section 2 of the aforesaid Clayton Act as amended.

Count IV

Charging violation of Section 5 of the Federal Trade Commission Act, the Commission alleges:

PAR. 17. Paragraphs 1 through 4 of Count I are hereby set forth by reference and made a part of this count as fully and with the same effect as if set forth herein verbatim.

PAR. 18. In the course and conduct of their business respondents are now and for many years past have been shipping "Schick" electric shavers from the state or states where such products are manufactured, kept, or stored to customers located in other States and in the District of Columbia in a constant current of commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 19. In the course and conduct of their said business in commerce, respondents have been and are now in competition with persons, firms, and other corporations likewise engaged in

the manufacture, sale, and distribution in commerce of electric shavers and related products. Respondent Schick Incorporated sells its electric shavers and accessories therefor primarily through approximately 1,000 wholesale distributors or jobbers, principally electrical, drug, jewelry, and hardware distributors. In addition, said respondent sells said products direct to approximately 250 retail accounts, principally larger department stores, credit jewelers, chain stores, mail order houses, and certain other retail outlets. Respondent Schick Service, Inc., sells Schick shavers in its various stores and service shops to retail dealers and consumers.

Many of the wholesale distributors to whom respondent Schick Incorporated sells "Schick" electric shavers and related products were, and are, in competition, some in commerce, with each other and with said respondents Schick Incorporated and Schick Service, Inc., which sell to retail dealers in competition with said wholesale distributors. Many of the retail dealers to whom respondent Schick Incorporated and respondent Schick Service, Inc., sell "Schick" electric shavers were and are in competition, some in commerce, with each other and with respondent Schick Service, Inc., in the resale of "Schick" electric shavers to consumers.

PAR. 20. Respondent Schick Incorporated has entered into contracts and agreements with a substantial number of its wholesale distributors or jobbers whereby it has fixed and maintained, and now fixes and maintains, minimum resale prices at which such wholesale distributors or jobbers shall sell respondent's electric shavers to retail dealers with the further provision that said wholesale distributors or jobbers will sell at wholesale only and will not sell any Schick product to consumers for use.

Respondent Schick Incorporated has also entered into contracts and agreements with many of its retail dealers both direct and indirect to whom respondents Schick Incorporated and Schick Service, Inc., or wholesale distributors or jobbers sell Schick electric shavers, whereby respondent Schick Incorporated has fixed and maintained and now fixes and maintains the minimum prices at which such retail dealers shall resell said shavers to the public.

Respondent Schick Incorporated has compelled many of its retail dealers, both direct and indirect, who offer for sale and sell Schick electric shavers, and who have not entered into any contracts or agreements with respondent regarding resale prices, to

observe the minimum resale prices fixed by respondent for said shavers.

Said respondent has and does now further maintain the observance of the fixed resale prices of its electric shavers and related products by prohibiting in connection with the resale thereof the offering or giving of any article of value, or the offering or making of any other concession or privilege which has the practical result of reducing the selling price of such products below the minimum resale price fixed by respondent.

PAR. 21. The said products for which respondent Schick Incorporated has fixed and maintained and now fixes and maintains the prices at which same are to be resold by both wholesale distributors or jobbers and retail stores, have been and are now sold by respondents Schick Incorporated and Schick Service, Inc., in competition with said wholesale distributors or jobbers which are the customers of Schick Incorporated and sold by respondent Schick Service, Inc., in competition with retail stores which are customers of both respondents Schick Incorporated and Schick Service, Inc.

PAR. 22. The contracts and agreements entered into by respondent Schick Incorporated with both its wholesale distributor or jobber customers and its retail dealer customers, both direct and indirect, whereby it fixes and maintains the resale prices of its electric shavers and related products, including such products sold by and through respondent Schick Service, Inc., are illegal in that many of the said wholesale distributors or jobbers are in competition with respondents Schick Incorporated and Schick Service, Inc., in the sale of Schick products to retailers and are further illegal in that some of said retail dealers are in competition with respondent Schick Service, Inc., in the resale of Schick shavers and accessories to consumers.

PAR. 23. The acts, practices, methods, and agreements of respondents, as hereinabove alleged and described, are all to the prejudice of the public, have a dangerous tendency to unduly hinder competition and create a monopoly in respondents in the sale of electric shavers, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 24. Charging further violations of the Federal Trade Commission Act, it is alleged that for many years past respondent Schick Incorporated has manufactured and sold electric shavers

for men. Some time prior to January 14, 1957, said respondent designed and manufactured a Schick shaver for use by women, commonly referred to as "Lady Schick."

On or about January 14, 1957, through the use of statements and representations appearing in advertisements in newspapers, magazines, circulars, price lists, and in commercial announcements to the public made over radio and television, respondent Schick Incorporated represented that with the purchase of a man's shaver known as the "Schick 25" there would be given free to the customer a "Lady Schick." Such representations and statements were broadcast and disseminated to the public under the slogan "BUY HIS—GET HERS FREE." A certificate was contained in the cartons of Schick 25's shipped from respondent's factory after the effective date of the offer, entitling the purchaser to a Lady Schick shaver which would be sent by respondent to the purchaser from its factory in Lancaster, Pennsylvania, upon receipt of the certificate. It was required by respondent that this certificate be sent to its factory in order for the purchaser to be entitled to receive a "Lady Schick" shaver.

Respondent, as alleged, inaugurated and put into effect this "Lucky Lady Special Offer" on or about January 14, 1957, which was to expire on April 30, 1957, but it was continued until on or about May 15, 1957. Shortly thereafter respondent came out with a new model of the Schick 25 for men. Prior to the beginning of this so-called special offer the fair trade retail price of the Schick 25 was $29.50 and at such price respondent permitted a trade-in allowance of $7.50 on an old shaver, thus reducing the net price to $22. During the period of time that the so-called "Lucky Lady Special Offer" was in effect the fair trade price of the Schick 25 remained at $29.50 but on any sale of a Schick 25 which contained the "Lucky Lady Special Offer Certificate" no trade in allowance was permitted. In other words, if a purchaser desired to get the $7.50 trade in allowance on the purchase of a Schick 25 during the period of this so-called special offer, he could obtain the allowance on a single purchase of a Schick 25 at the fair trade price of $29.50, but he could not receive the "Lucky Lady" certificate on these terms.

At about the time of the making of this offer by respondent on January 14, 1957, respondent increased the price of its Schick 25 shavers to wholesalers, which in turn increased their price to retailers. While respondent did not increase the fair trade price

of retailers to consumers theretofore fixed by respondent, in States where fair trade agreements were legal, in the District of Columbia where "Fair Trade" is not in force, the effect of respondent's price increase was to cause retailers to increase the price of Schick 25's to consumer purchasers during the duration of the "Lucky Lady" offer. Shortly after the expiration of the Lucky Lady Special Offer and just prior to the marketing of its new model Schick 25, respondent sharply reduced the wholesale, retail, and consumer prices of Schick 25's then in stock.

PAR. 25. It is alleged that the statements, representations, and advertisements hereinabove referred to in paragraph 24 were false, misleading, and deceptive for the reason that the Lady Schick shaver represented by respondent to be free with the purchase of a Schick 25 was not in truth and in fact free. This is by reason of the fact that respondent's refusal to accept a trade in in those instances where a Schick 25 was purchased with the "Lucky Lady Special Offer Certificate" was in effect an increase in the price of the Schick 25, thereby rendering the advertised offer to the consumer to get a Lady Schick free both false and misleading; also by reason of the fact that respondent's increase in the price of its Schick 25 to its wholesalers and dealers during the period of this offer had the effect of requiring the retail dealers to charge more for the Schick 25 in places, including the District of Columbia, where fair trade is not in force and effect.

Respondent Schick Service, Inc., was a party to the promotional plan as hereinbefore alleged by selling to the consuming public many Schick shavers with the "Lucky Lady Certificates" attached, under the terms and conditions imposed by respondent Schick Incorporated.

PAR. 26. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, and advertising has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertising were and are true, and into the purchase of a substantial number of said electric shavers because of said erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondent Schick Incorporated and to respondent Schick Service, Inc., from their competitors and injury has thereby been done to competition in commerce.

PAR. 27. The aforesaid acts and practices of respondents as herein alleged in paragraphs 24 to 26, inclusive, 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.

Mr. William H. Smith and *Mr. James R. Fruchterman* for the Commission.

Dunnington, Bartholow & Miller, New York, N.Y., by *Mr. R. Daniel Saxe, Jr.*, for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on September 24, 1957, issued its complaint herein, charging the above-named respondents with having violated certain provisions of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45) and of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13), and the respondents were duly served with process.

On June 24, 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 respondents and counsel for both parties on May 9, 1958, and subsequently approved by the Bureau of Litigation of the Commission.

The hearing examiner, upon due consideration of such agreement, finds that, both in form and in content, it is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondents Schick Incorporated and Schick Service, Inc., are corporations existing and doing business under and by virtue of the laws of the State of Delaware, with their offices and principal places of business located at 216 Greenfield Road, in the City of Lancaster, State of Pennsylvania.

2. Pursuant to the provisions of the Clayton Act as amended, and the Federal Trade Commission Act, the Federal Trade Commission, on September 24, 1957, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on each respondent.

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 is entered into subject to the condition that the effective date of the initial decision based thereon shall be stayed by the Commission and shall not become the decision of the Commission in this matter until and unless the Commission issues orders to cease and desist under Counts I, II, and III *In the Matter of Sperry Rand Corporation,* Docket 6701, and under Counts II and III *In the Matter of North American Philips Company, Inc.,* Docket 6900.

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

9. 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.

10. 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 Federal Trade Commission Act and the Clayton Act as amended by the Robinson-Patman Act, against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding 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 the allegations contained in Count I of the complaint to the extent that such charge the respondent with violating Section 2(a) of the Clayton Act, as amended, by reason of the fact that customers of respondents' wholesaler-purchasers are alleged to be purchasers of respondents be, and they hereby are, dismissed, without prejudice, however, to the right of the Commission to take such further or other action against respondents at any time in the future as may be warranted by the then existing circumstances: provided that nothing herein shall be construed as limiting the meaning of the term "purchaser" in the order to cease and desist in this matter from its full meaning in Section 2(a) of the Clayton Act, as amended, nor in any manner as affecting or limiting the adoption and reallegation of the allegations of paragraph 6 of Count I as a part of Counts II and III of the complaint.

It is further ordered, That respondents Schick Incorporated and Schick Service, Inc., their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of electric shavers and related products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products of like grade and quality, by selling to any purchaser at net prices higher than the net prices charged any other purchaser competing in fact with such unfavored purchaser in the resale and distribution of such products.

It is further ordered, That respondent Schick Incorporated, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in the course

of its business in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of any customer acquiring respondent's electric shavers and related products from respondent, from wholesalers, or from any other source, any payment of anything of value as compensation or in consideration for any advertising or other services or facilities furnished by or through such customer, in connection with the handling, resale, or offering for resale of such products manufactured, sold, or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other such customers competing in fact with such favored customers in the resale or distribution of such products.

It is further ordered, That respondent Schick Incorporated, its officers, representatives, agents, and employees, directly or through any corporate or other device, in the course of its business in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from discriminating among competing purchasers:

By contracting to furnish, or furnishing or by contributing to the furnishing of demonstrator services, or any other services or facilities connected with the handling, resale, or offering for resale of respondent's electric shavers and related products, to any purchaser acquiring such products from respondent, from wholesalers, or from any other source, unless such services or facilities are accorded on proportionally equal terms to all other such purchasers who compete in fact with such favored purchasers in the resale or distribution of such products.

It is further ordered, That respondent Schick Incorporated, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of electric shavers and related products in commerce, as "commerce" is defined in the aforesaid Federal Trade Commission Act, do forthwith cease and desist from:

Fixing, establishing or maintaining by, or in accordance with the terms or conditions of, any contract, agreement or understanding, the prices, terms or conditions of sale at which its electric shavers or related products, produced, distributed, or sold, directly or indirectly, by respondent, are to be resold by any wholesaler or retailer when such products are being sold or of-

fered for sale in competition with any branch, retail or service store, establishment, or business owned or controlled, by any means or method, by respondent.

It is further ordered, That respondents Schick Incorporated and Schick Service, Inc., their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of electric shavers and related products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "free," or any other word or words of similar import or meaning, in advertising or in other offers to the public, to designate or describe any electric shaver or related products:

1. When all of the conditions, obligations or other prerequisites to the receipt and retention of the "free" article of merchandise are not clearly and conspicuously set forth at the outset so as to leave no reasonable probability that the terms of the advertisement or offer might be misunderstood; or

2. When, with respect to the article of merchandise required to be purchased in order to obtain the "free" article, the offerer either (a) increases the ordinary and usual price; or (b) reduces the quality; or (c) reduces the quantity or size of such article of merchandise.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The hearing examiner, on July 28, 1958, having filed an initial decision in this proceeding based on an agreement containing a consent order to cease and desist theretofore executed by respondents and counsel in support of the complaint, and the Commission, on September 15, 1958, having extended, until further order, the date on which said initial decision would otherwise become the decision of the Commission; and

It appearing that the aforesaid agreement is subject to the condition that an initial decision based thereon shall not become the decision of the Commission until and unless the Commission issues an order to cease and desist under Counts I, II, and III in the matter of *Sperry Rand Corporation,* Docket No. 6701, and under Counts II, and III in the matter of *North American Philips Company, Inc.,* Docket No. 6900, and that, such orders being issued in the aforementioned matters simultaneously with this action, the condition is met; and

It further appearing that subsequent to the filing of the said

initial decision counsel in support of the complaint, with the concurrence of respondents, filed in their own behalf and in behalf of respondents a motion requesting modification of the initial decision (1) by dismissing, without prejudice, such parts of the complaint as are specified in the motion, and (2) by correcting a typographical error in the order, changing the word "favored" to "unfavored" in the indented portion of the first paragraph thereof; and

The Commission having determined that the requested modification of the initial decision is appropriate, the motion of counsel supporting the complaint in behalf of the parties to the proceeding is granted hereby:

Accordingly, it is ordered, That the said initial decision of the hearing examiner be, and it hereby is, modified by substituting the following for the first paragraph of the order:

It is ordered, That the allegations contained in Count I of the complaint to the extent that such charge the respondent with violating Section 2(a) of the Clayton Act, as amended, by reason of the fact that customers of respondents' wholesaler-purchasers are alleged to be purchasers of respondents be, and they hereby are, dismissed, without prejudice, however, to the right of the Commission to take such further or other action against respondents at any time in the future as may be warranted by the then existing circumstances; provided that nothing herein shall be construed as limiting the meaning of the term "purchaser" in the order to cease and desist in this matter from its full meaning in Section 2(a) of the Clayton Act, as amended, nor in any manner as affecting or limiting the adoption and reallegation of the allegations of paragraph 6 of Count I as a part of Counts II and III of the complaint.

It is further ordered, That respondents Schick Incorporated and Schick Service, Inc., their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of electric shavers and related products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products of like grade and quality, by selling to any purchaser at net prices higher than the net prices charged any other purchaser competing in fact with such unfavored purchaser in the resale and distribution of such products.

It is further ordered, That the said initial decision, as modified

herein, be, and it hereby is, adopted as the decision of the Commission.

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

IN THE MATTER OF

NORTH AMERICAN PHILIPS COMPANY, INC.

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

Docket 6900. Complaint, Sept. 27, 1957—Decisions, Nov. 3, 1958

Consent orders requiring a major seller of electric shavers for men and women, with net sales in 1956 approaching $29,000,000, to cease discriminating in price by selling "Norelco" electric shavers to some purchasers at net prices higher than those charged their competitors; by making varying advertising allowances to some customers but not to their competitors on an equal basis under its "Share the Cost" advertising agreement or as push money or prize money, production and engraving charges, art charges, etc.; and by furnishing to certain retail customers free of charge its salaried personnel as demonstrators and service men to sell, repair, and demonstrate its electric shavers.

COMPLAINT [1]

The Federal Trade Commission, having reason to believe that North American Philips Company, Inc., has violated and is now violating the provisions of subsections (a), (d), and (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Sec. 13), hereby issues its complaint charging as follows:

Count I

Charging violation of subsection (a) of Section 2 of the Clayton Act as amended the Commission alleges:

PARAGRAPH 1. Respondent named herein is North American Philips Company, Inc. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Delaware. Respondent's principal office and place of business is located at 100 East 42nd Street, New York City, N.Y.

PAR. 2. Respondent is one of the major sellers and distributors of electric shavers for men and women in the United States, which it sells under the trade name "Norelco." For 1956 net sales of respondent and its affiliated companies for all products, including sales of electric shavers and parts therefor, amounted to $28,795,334.58.

PAR. 3. Respondent sells electric shavers of like grade and

[1] Complaint is published as amended by order of May 15, 1958.

quality to a large number of purchasers located throughout the United States for use, consumption, or resale therein.

Respondent maintains warehouses located at New York City, New York, Chicago, Illinois, and Reno, Nevada, from which places electric shavers sold by respondent to such purchasers are shipped and where others are temporarily stored in anticipation of sale and shipment.

PAR. 4. In the course and conduct of its business respondent is now and for many years past has been shipping Norelco electric shavers from the state or states where such products are stored to purchasers located in other states and in the District of Columbia in a constant current of commerce as "commerce" is defined in the Clayton Act as amended.

PAR. 5. Respondent's activities in the sale and distribution of Norelco electric shavers cover the entire United States, which it has divided into seventeen sales territories. Each of these territories is in charge of a manufacturers representative selected and appointed by respondent and who sells respondent's electric shavers for respondent to purchasers on a commission basis. Each of respondent's manufacturers representatives is given an annual sales quota for his respective territory which he is expected to sell and upon which the rate of his commissions on sales is paid. Under the supervision and control of respondent the manufacturers representatives so appointed and designated by respondent are the agents and sales representatives of respondent in their respective territories in the performance of the sales and other activities of respondent in connection with the sale and distribution of respondent's Norelco electric shavers.

PAR. 6. By and through its several manufacturers representatives respondent sells its Norelco electric shavers directly to approximately 2,000 purchasers and indirectly to a greater number of others located throughout the United States and in the District of Columbia. A large number of respondent's purchasers, both direct and indirect, are in competition with one another at their respective levels of trade.

Such direct purchasers are wholesalers, large retail chain stores, and other large retail customers. Respondent's indirect purchasers are the customers of respondent's wholesaler-purchasers.

The wholesaler-purchasers of respondent resell Norelco electric shavers to retailers. It is alleged that such retailers are purchasers of respondent within the meaning of the Clayton Act as amended. As illustrative of such relationship, respondent rec-

ognizes retailers buying through wholesaler-purchasers by personally soliciting them through its own sales force or through the sales forces in the employ of its selling agents, the manufacturers representatives, by drop shipping shavers to them ordered by wholesalers, by making effective its price policies and schedules as applied to said retailer-customers wherever the same are legal, and by dealing directly with such retailer-customers either through its own salaried personnel or through the personnel in the employ of its commissioned manufacturers representatives with respect to its advertising and other promotional programs in connection with the sale of Norelco electric shavers and accessories.

Included among respondent's wholesaler-purchasers are respondent's manufacturer representatives who buy substantial quantities of respondent's Norelco electric shavers directly from respondent on their own account. As wholesalers, respondent's said manufacturer representatives resell Norelco electric shavers so purchased from respondent to retailers in competition with other wholesaler-purchasers of respondent. Retailers who purchase respondent's Norelco electric shavers from respondent's manufacturer representatives as herein alleged, are in competition, in the sale of said electric shavers, with retailers who are the customers of other wholesaler-purchasers of respondent.

By reason of their large purchasing power, many of the retail chain stores and other large retail customers purchasing respondent's Norelco shavers directly from respondent by and through respondent's manufacturers representatives are sold by respondent at wholesaler's prices. In many instances they represent themselves to respondent as being wholesalers, and are granted wholesalers' discounts by respondent when in truth and in fact said purchasers are retailers and not wholesalers, and are therefore competing purchasers with said respondent's indirect retailer-purchasers who buy respondent's Norelco shavers through respondent's wholesaler-purchasers. In many instances this is accomplished by the use of dummy or fictitious buying devices or instrumentalities often in the form of commonly owned or controlled corporations, subsidiaries, instrumentalities, or affiliates of large retail chains representing themselves to said respondent as doing a legitimate wholesale business, when in truth and in fact their only business is to buy at wholesale prices for the particular retail chain with which they are so affiliated or identified.

In the course and conduct of its business in commerce, respondent has been and is now in competition with persons, firms, and other corporations likewise engaged in the sale and distribution in commerce of electric shavers and related products.

PAR. 7. In the course and conduct of its business in commerce, respondent has discriminated in price in the sale of Norelco electric shavers by selling such shavers of like grade and quality at different prices to different and competing purchasers.

Illustrative of such sales at discriminatory prices are the following pricing practices of said respondent:

Respondent has sold, and now sells, Norelco electric shavers to its manufacturer representatives on their own account as wholesalers at prices which equal discounts of 40 and 20 and 5%, off list, and during the same periods of time has sold its said electric shavers to other competing wholesaler-purchasers at 40 and 20% off list.

During the year 1956 respondent sold electric shavers to its direct buying retailer-purchasers as hereinabove described at discounts of 40 and 20% off list and to competing indirect retailer-purchasers who bought through wholesalers at discounts varying from 35% to 40% off list. Wholesalers were sold at 40 and 20% off list. As further illustrative of such discriminatory pricing practices of respondent, respondent's electric shaver, Model SC 7759, during 1956 had a retail list price of $24.95. This model was sold to direct retailer-purchasers as hereinabove described for $11.98 and to their indirect retailer competitors buying through wholesalers at $16.22, representing 35% off list in purchases of one to five, and for $14.97, representing 40% off list in purchases of six or more.

PAR. 8. The effect of said discrimination in price by respondent in the sale of Norelco electric shavers has been or may be to lessen, injure, destroy, or prevent competition:

(a) Between respondent and its competitors in the sale and distribution of electric shavers;

(b) Between direct buying purchasers of respondent who are retailers in fact and competing indirect buying retailers of said respondent who purchase through wholesalers.

(c) Between wholesaler-purchasers of respondent and respondent's manufacturer representatives buying from respondent on their own account as wholesalers, in the resale of respondent's Norelco electric shavers to retailers.

(d) Between retailers, the customers of respondent's whole-

saler-purchasers and retailers who are the customers of respondent's manufacturer representatives buying from respondent on their own account as wholesalers.

PAR. 9. The discriminations in price as herein alleged are in violation of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Count II

Charging violation of subsection (d) of Section 2 of the Clayton Act as amended, the Commission alleges:

PAR. 10. With the exception of the last subparagraph of paragraph 6, paragraphs 1 through 6 of Count I hereof are hereby set forth by reference and made a part of this count as fully and with the same effect as if quoted herein verbatim.

PAR. 11. In the course and conduct of its business in commerce, as aforesaid, respondent has paid or contracted for the payment of money, goods, or other things of value to or for the benefit of some of its direct and indirect customers as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such customers in connection with the handling, sale, or offering for sale of respondent's electric shavers and respondent has not made or contracted to make such payments, allowances, or consideration available on proportionally equal terms to all of its other direct and indirect customers competing in the sale and distribution of such electric shavers.

Respondent has executed, carried out, and put into effect its various discriminatory and disproportionate advertising practices in a variety of ways. The following practices are illustrative:

Respondent has in effect a "Share the Cost" advertising agreement by which respondent purports to cooperate with retailers both direct and indirect on a 50-50 share-cost basis, for advertising space in local newspapers or commercial time over local television and radio stations when submitted at the dealer's lowest available local rate. This agreement excludes costs for art work, layout, photography, engraving, printing, advertising agency commissions, visual materials, talent costs, or announcers fees, etc. Respondent makes arrangements for and carries out said local advertising agreement by and through its manufacturers representatives in the various territories in which they are in charge throughout the United States. The agreement must be signed by the retailer and the wholesaler from whom he buys

and also must be approved by the manufacturers representative, which is then referred to the respondent for final approval. Each manufacturers representative is given a yearly quota for advertising purposes and the cost to respondent of all advertising placed pursuant to such agreements is charged against the manufacturer representative's yearly quota. Upon submission of satisfactory evidence to respondent showing the advertising placed and its cost, respondent makes reimbursement either through the wholesaler or direct to the retailer.

Respondent's advertising agreement just described is not based on the number of electric shavers sold by the advertiser and has no relationship thereto. In at least one instance a large retail chain store in Philadelphia, Pa., received more than half of all the local advertising money spent by respondent for all of its dealers in the City of Philadelphia; and this particular chain store received in advertising money an amount nearly as great as the cost of respondent's electric shavers which it purchased. Thus respondent under its said advertising agreement has undertaken to spend and has spent disproportionate funds in relation to the cost or value of its electric shavers purchased, it being respondent's practice and policy to spend the bulk of its advertising funds on so-called "key accounts." At the same time respondent's "share the cost" advertising agreement was not made available on proportionally equal terms in the City of Philadelphia to all direct and indirect competing customers of respondent selling its electric shavers.

The decision as to which customers received the benefit of respondent's "share the cost" agreement was left by respondent to the discretion and judgment of its several manufacturer representatives and, in many instances, with wholesalers. There were many of respondent's retail customers, both direct and indirect, competing with one another who never heard of and were never advised of respondent's said advertising agreement.

While respondent's advertising agreement appears on its face as an agreement based upon a 50-50 division of cost between respondent and the advertiser, by reason of the fact that it is also based on the local newspaper rate, in many instances a large local advertiser paying a lesser rate would be paying less than 50% while respondent would be paying more.

In some instances this so-called 50-50 advertising agreement of respondent was used in the granting of promotional allowances to respondent's distributors and wholesalers where the cost of

the advertising was divided between respondent and such distributor. In some such instances the amounts paid by respondent represented $1.00 per shaver as push money or "spiffs" and distributed to any jobber buying 96 shavers and denied to any competing jobber buying less than 96 shavers. Respondent also in certain instances offered and gave prize money, sometimes taking the form of a gift by respondent of a number of free shavers, to salesmen of favored wholesalers and dealers while not offering the same or similar deals to other competing wholesalers and dealers.

In other instances respondent paid to some advertisers their production and engraving charges, art charges, etc., contrary to the terms of its advertising agreement, while not offering such payments to other competing purchasers.

In many instances respondent entered into contracts and agreements for local advertising upon the basis of individual negotiations between the advertisers and its manufacturer representatives paying as much as 100% or full cost of the advertising while not offering the same or similar arrangements to other competing customers.

PAR. 12. The acts and practices as alleged in paragraphs 10 and 11 above are in violation of subsection (d) of Section 2 of the aforesaid Clayton Act as amended.

Count III

Charging violation of subsection (e) of Section 2 of the Clayton Act as amended, the Commission alleges:

PAR. 13. With the exception of the last subparagraph of paragraph 6, paragraphs 1 through 6 of Count I hereof are hereby set forth by reference and made a part of this count as fully and with the same effect as if quoted herein verbatim.

PAR. 14. In the course and conduct of its business in commerce, respondent has discriminated in favor of many of its purchasers both direct and indirect and against other of its competing purchasers, both direct and indirect, buying Norelco electric shavers for resale by contracting to furnish or furnishing or by contributing to the furnishing to such favored competing purchasers services or facilities connected with the handling, sale, or offering for sale of such commodities so purchased upon terms not accorded to said nonfavored competing purchasers, both direct and indirect on proportionally equal terms.

As illustrative of such practices, respondent has furnished cer-

tain of its direct and indirect retail customers free of charge its salaried personnel as demonstrators and servicemen to sell, repair, or demonstrate respondent's Norelco electric shavers in the stores and retail outlets of such favored purchasers while not according such services or facilities to all other direct and indirect competing purchasers on proportionally equal terms.

PAR. 15. The acts and practices as alleged in paragraphs 13 and 14 above are in violation of subsection (e) of Section 2 of the aforesaid Clayton Act as amended.

Mr. William H. Smith and *Mr. James R. Fruchterman* for the Commission.

Rosenman, Goldmark, Colin & Kaye, by *Mr. Seymour D. Lewis,* and *Mr. Robert G. Dettmer,* all of New York, N.Y., for respondent.

INITIAL DECISION AS TO COUNT I
BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Clayton Act, as amended, the Federal Trade Commission on September 27, 1957, issued and subsequently served its complaint in this proceeding against respondent North American Philips Company, Inc., a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 100 East 42d Street, New York, N.Y.

On August 28, 1958, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order which disposes of Count I in this proceeding. By the terms of said agreement, respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondent waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of fact and conclusions of law; and waives all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

Such agreement further provides that it disposes of Count I of the complaint, the issues involved in Counts II and III having been disposed of by previous consent agreement; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the Complaint and this agreement; that this agreement is entered into subject to the

condition that the effective date of the initial decision based thereon shall be stayed by the Commission and shall not become the decision of the Commission in this matter until and unless the Commission issues an order to cease and desist under Count I in the matters of *Sperry Rand Corporation*, Docket No. 6701, and *Schick, Inc.*, and *Schick Service, Inc.*, Docket No. 6892, and 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. This 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.

This agreement is entered into subject to the further condition that the "Motion to Dismiss Part of Complaint Without Prejudice" in this matter filed by counsel supporting the complaint in the Office of the Secretary of the Federal Trade Commission on July 25, 1958, be granted by the Commission, and that such parts of the complaint as are specified in said motion be dismissed by the Commission without prejudice.

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

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

1. Respondent North American Philips Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 100 East 42d Street, New York, N.Y.

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

ORDER[2]

It is ordered, That the allegations in Count I of the complaint, as amended by the examiner's order filed May 15, 1958, to the

[2] Published as corrected by commission order of Dec. 18, 1958.

extent that such charge respondent with violating Section 2(a) of the Clayton Act, as amended, by reason of the fact that customers of respondent's wholesaler-purchasers are alleged to be purchasers of respondent be, and they hereby are, dismissed, without prejudice, however, to the right of the Commission to take such further or other action against respondent at any time in the future as may be warranted by the then existing circumstances; provided that nothing herein shall be construed as limiting the meaning of the term "purchaser" in the order to cease and desist in this matter from its full meaning under Section 2(a) of the Clayton Act, as amended, nor in any manner as affecting or limiting the adoption and reallegation of the allegations of paragraph 6 of Count I as a part of Counts II and III of the complaint.

It is further ordered, That respondent North American Philips Company, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of electric shavers and related products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products of like grade and quality, by selling to any purchaser at net prices higher than the net prices charged any other purchaser competing in fact with such unfavored purchaser in the resale and distribution of such products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The hearing examiner, on September 2, 1958, having filed an initial decision in this proceeding as to Count I of the complaint based on an agreement containing a consent order to cease and desist theretofore executed by respondent and counsel in support of the complaint; and

It appearing that the aforesaid agreement is subject to the condition that an initial decision based thereon shall not become the decision of the Commission until and unless the Commission issues an order to cease and desist under Count I in the matters of *Sperry Rand Corporation,* Docket No. 6701, and *Schick Incorporated, et al.,* Docket No. 6892, and that, such orders being issued in the aforementioned matters simultaneously with this action, this condition is met; and

It further appearing that the said initial decision is subject

to the additional condition that the Commission grant a motion filed by counsel in support of the complaint on July 25, 1958, which requests the dismissal without prejudice of such parts of the complaint as are specified in the motion, and the Commission hereby having granted the motion and having determined that the said initial decision should be modified to effect the requested result:

It is ordered, That the initial decision of the hearing examiner filed September 2, 1958, be, and it hereby is, modified by substituting the following for the order contained therein:

It is ordered, That the allegations in Count I of the complaint, as amended by the examiner's order filed May 15, 1958, to the extent that such charge respondent with violating Section 2(a) of the Clayton Act, as amended, by reason of the fact that customers of respondent's wholesaler-purchasers are alleged to be purchasers of respondent be, and they hereby are, dismissed, without prejudice, however, to the right of the Commission to take such further or other action against respondent at any time in the future as may be warranted by the then existing circumstances; provided that nothing herein shall be construed as limiting the meaning of the term "purchaser" in the order to cease and desist in this matter from its full meaning under Section 2(a) of the Clayton Act, as amended, nor in any manner as affecting or limiting the adoption and reallegation of the allegations of paragraph 6 of Count I as a part of Counts II and III of the complaint.

It is further ordered, That respondent North American Philips Company, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of electric shavers and related products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products of like grade and quality, by selling to any purchaser at net prices higher than the net prices charged any other purchaser competing in fact with such unfavored purchaser in the resale and distribution of such products.

It is further ordered, That the initial decision of the hearing examiner filed September 2, 1958, as modified herein, be, and it hereby is, adopted as the decision of the Commission.

It is further 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 contained in the said initial decision, as modified.

INITIAL DECISION AS TO COUNTS II AND III BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Clayton Act, as amended, the Federal Trade Commission on September 27, 1957, issued and subsequently served its complaint in this proceeding against respondent North American Philips Company, Inc., a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 100 East 42d Street, New York, N.Y.

On June 24, 1958, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondent waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of fact and conclusions of law; and waives all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

Such agreement further provides that it disposes of Counts II and III of the complaint, the issues involved in Count I of the complaint not being disposed of by this agreement; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that this agreement is entered into subject to the condition that the effective date of the initial decision based thereon shall be stayed by the Commission and shall not become the decision of the Commission in this matter until and unless the Commission issues an order to cease and desist under Count II in the matter of *Sperry Rand Corporation,* Docket 6701, and Counts II and III in the matter of *Schick, Inc.,* and *Schick Service, Inc.,* Docket 6892, and 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. This 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.

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

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

1. Respondent North American Philips Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 100 East 42d Street, New York, N.Y.

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

ORDER

It is ordered, That respondent North American Philips Company, Inc., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device in the course of its business in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of any customer acquiring respondent's electric shavers and related products from respondent, from wholesalers, or from any other source, any payment of anything of value as compensation or in consideration for any advertising or other services or facilities furnished by or through such customer in connection with the handling, resale, or offering for resale of such products manufactured, sold, or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other such customers competing in fact with such favored customers in the resale or distribution of such products.

It is further ordered, That respondent North American Philips Company, Inc., a corporation, its officers, representatives, agents

and employees, directly or through any corporate or other device in the course of its business in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from discriminating among competing purchasers:

By contracting to furnish, or furnishing, or by contributing to the furnishing of demonstrator services, or any other services or facilities connected with the handling, resale, or offering for resale of respondent's electric shavers and related products, to any purchaser acquiring such products from respondent, from wholesalers, or from any other source, unless such services or facilities are accorded on proportionally equal terms to all other such purchasers who compete in fact with such favored purchasers in the resale or distribution of such products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The hearing examiner, on July 14, 1958, having filed an initial decision in this proceeding as to Counts II and III of the complaint based on an agreement containing a consent order to cease and desist theretofore executed by respondent and counsel in support of the complaint, and the Commission, on August 25, 1958, having extended, until further order, the date on which said initial decision would otherwise become the decision of the Commission; and

It appearing that the aforesaid agreement is subject to the condition that an initial decision based thereon shall not become the decision of the Commission until and unless the Commission issues an order to cease and desist under Count II in the matter of *Sperry Rand Corporation,* Docket No. 6701, and Counts II and III in the matter of *Schick Incorporated, et al.,* Docket No. 6892, and that, such orders being issued in the aforementioned matters simultaneously with this action, the condition is met:

It is ordered, That the initial decision of the hearing examiner filed July 14, 1958, be, and it hereby is, adopted as the decision of the Commission.

It is further 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 contained in the aforesaid initial decision.

IN THE MATTER OF

MILLER BROS. CO., INC.

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

Docket 7221. Complaint, Aug. 5, 1958—Decision, Nov. 5, 1958

Consent order requiring a furrier in Baltimore, Md., to cease violating the Fur Products Labeling Act by advertising which failed to disclose the names of animals producing certain furs and which made deceptive pricing and savings claims, and by failing in other respects to comply with the labeling, invoicing, and advertising requirements of the Act.

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

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on August 5, 1958, charging it with having violated the Fur Products Labeling Act and the Rules and Regulations issued thereunder, and the Federal Trade Commission Act, through the misbranding of certain fur products and the false and deceptive invoicing and advertising thereof. After being served with said complaint, respondent appeared and entered into an agreement, dated September 5, 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 respondent 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.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with 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 respondent that it has 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 Miller Bros. Co., Inc., is a corporation duly organized and doing business under and by virtue of the laws of the State of Maryland, with its place of business located at 1110 North Charles Street, Baltimore, Md.

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 Miller Bros. Co., 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. 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 products contain or are composed of used fur, when such is the fact;

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

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

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

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

2. Setting forth on labels attached to fur products:

(a) 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 the fur product.

2. Setting forth on invoices information required under Sec-

tion 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

3. Failing to set forth on invoices the terms "Persian Lamb," "Broadtail Lamb," "Persian-Broadtail Lamb," when required, in the manner required under the aforesaid Rules and Regulations.

4. Failing to set forth on invoices, when required, the term "Broadtail-Processed Lamb" in the manner required under the aforesaid Rules and Regulations.

5. Failing to set forth on invoices the item number or mark assigned to fur products as required under the aforesaid Rules and Regulations.

6. Failing to set forth on invoices the disclosure "Second-hand," when required, in the manner required under the aforesaid 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:

(a) 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.

(b) 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 business.

(c) Represents through the use of percentage savings claims that the regular or usual retail prices charged by the respondent in the recent regular course of its business were reduced in direct proportion to the percentage of savings stated, when such is not the fact.

D. Setting forth pricing claims and representations in advertising without maintaining full and adequate records which disclose the facts upon which such pricing claims 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 5th day of November 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.