ized magazines which are undeliverable, thus leading to the substitution of other magazines by the respondents. As previously stated, both allegations are sustained by the evidence.

In view of the foregoing, the appeal of counsel supporting the complaint is granted. The initial decision is set aside, and we are entering our own findings as to the facts, conclusions and order to cease and desist in conformity with this opinion.

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

IN THE MATTER OF

REICHART FURNITURE COMPANY ET AL.

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

Docket 7535. Complaint, July 13, 1959—Decision, Mar. 8, 1960

Consent order requiring retailers of furniture, home furnishings, electrical appliances, etc., in Wheeling, W. Va., to cease making deceptive pricing and savings claims for their merchandise by such advertisements as "Regularly $16.95 BASE CABINET $8.88 * * *"; "5-Pc. Day-O-Niter Outfit! Usually $129.95! Save $41.95 * * * At Reichart's Only $88," in which the prices following the words "Regularly," "Usually," and, "List" were greatly in excess of the usual prices, and the purported savings were fictitious.

Mr. Morton Nesmith for the Commission.

Mr. J. T. McCamic of *McCamic & Tinker*, of Wheeling, W. Va., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes hereinafter referred to as the Commission) on July 13, 1959, issued its complaint herein, charging respondents with having violated the provisions of the Federal Trade Commission Act by the use of false, misleading and deceptive advertisements by mail and otherwise in interstate commerce in connection with the prices of furniture, home furnishings and electrical and other household appliances sold by them to the public. Respondents were duly served with process and thereafter on October 26, 1959, agreed to a motion to amend the complaint made by counsel supporting the complaint. This motion was found to be without prejudice to the public interest or to the rights of the parties, and it was sustained by an order of the hearing examiner

on October 28, 1959, and the complaint was thereby amended in certain particulars which were and are reasonably within the scope of the proceeding as initiated by the original complaint.

On January 15, 1960, respondents, their attorneys, and counsel supporting the complaint entered into an Agreement Containing Consent Order To Cease And Desist, which was thereafter duly approved by the Commission's Bureau of Litigation and transmitted to the hearing examiner for his consideration. Having examined said agreement and the complaint as amended, the hearing examiner finds that the 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 agreed to the following matters.

1. Respondent Reichart Furniture Company is a corporation, existing and doing business under and by virtue of the laws of the State of West Virginia, with its office and principal place of business located at 1115–1125 Main Street, in the City of Wheeling, State of West Virginia. Said corporation trades and does business under the name of Reichart's.

Respondents Robert L. Levenson, Edgar L. Levenson and Donald W. Levenson are officers of the corporate respondent. Said individual respondents formulate, direct and control the policies, acts and practices of said corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

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

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

4. 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.

5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint, as amended, and this agreement.

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

7. 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, as amended.

8. 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 as amended may be used in construing the terms of the order.

Upon due consideration of the complaint as amended and the "Agreement Containing Consent Order To Cease And Desist" submitted herein, the said agreement is hereby approved and accepted, and ordered filed if and when the agreement shall have become a part of the Commission's decision. The hearing examiner finds from the complaint, as amended and the agreement that the Commission has jurisdiction of the subject-matter of this proceeding, and of the respondents herein; that the complaint as amended states a legal cause for action under the Federal Trade Commission Act, generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; and that the proposed order contained in the agreement is appropriate for the just disposition of all the issues in this proceeding, and should be and hereby is entered. Therefore,

It is ordered, That the respondents Reichart Furniture Company, a corporation, and its officers and Robert L. Levenson, Edgar L. Levenson and Donald W. Levenson, 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 merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication:

1. That any amount is the price of merchandise in respondents' trade area when it is in excess of the price at which said merchandise is usually and customarily sold in said trade area;

2. That any amount is respondents' customary and usual price of merchandise, when it is in excess of the price at which said merchandise is customarily and usually sold by respondents in the recent regular course of business;

3. That any savings are afforded from respondents' customary and usual prices in the purchase of merchandise unless the price at which the merchandise is offered constitutes a reduction from the price at which it has been sold by respondents in the recent regular course of business;

4. That any saving is afforded in the purchase of merchandise from the price in respondents' trade area unless the price at which it is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold in said trade area.

B. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of said merchandise is reduced from the price at which it is usually and customarily sold by respondents or their competitors in the normal course of their business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of March, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents Reichart Furniture Company, a corporation, and its officers, and Robert L. Levenson, Edgar L. Levenson and Donald W. Levenson, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

LEE RUBBER & TIRE CORPORATION

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

Docket 7595. Complaint, Sept. 24, 1959—Decision, Mar. 8, 1960

Consent order requiring a Conshohocken, Pa., distributor of automobile tires and tubes to franchised dealers for resale to the public, to cease representing falsely, in advertising in magazines of national circulation and in advertising mats and other advertising material furnished its dealers, that its premium "Ultra Deluxe" tires and its second line "Advanced Super Deluxe" were of equal quality and both were premium or first line category tires; and to disclose reduction in quality of its named tires when such was the fact.

Mr. Anthony J. Kennedy, Jr., for the Commission.

Mr. Paul Van Anda of *Satterlee, Browne, Cherbonnier & Dickerson*, of New York, N.Y., for respondent.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of the Federal Trade Commission Act in connection with the offering for sale, sale and distribution of certain motor vehicle tires and tubes.

An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the making 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 this proceeding without further notice to the respondent and when entered shall have the same force and effect as if entered after a full hearing, respondent specifically waiving all the rights it may have to challenge or contest the validity of the order; that the order may be altered, modified or set aside in the manner provided for other orders; that the complaint may be used in construing the terms of the order; 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 agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

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 Lee Rubber & Tire Corporation 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 at Conshohocken, Pennsylvania.

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, Lee Rubber & Tire Corporation, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its motor vehicle

tires and tubes, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, by the use of trade names or otherwise that respondent's tires of different category quality are of the same or equal quality.

2. Reducing the quality of motor vehicle tires so as to put them in a lower quality category without changing the trade name designation unless a clear and conspicuous disclosure is made of such reduction in quality.

3. Furnishing any means or instrumentality to others by and through which they may mislead the public, by the use of trade names or otherwise, that tires of different category quality are the same or of equal quality and by offering for sale tires of reduced quality category, bearing a trade name originally applied to a tire of higher quality category, without making a clear and conspicuous disclosure of such reduction in the quality of the said tires.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of March, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

RECOTON CORPORATION AND G. SCHIRMER, INC.

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

Docket 7601. Complaint, Oct. 1, 1959—Decisions, Feb. 12 and Mar. 8, 1960

Consent orders dated Mar. 8, 1960, and Feb. 12, 1960, respectively, the first addressed to a manufacturer of phonograph needles and the second to its retailer customer, of New York City and Long Island City, requiring them to cease such unfair practices as advertising falsely in the New York Times that Recoton diamond and diamond-sapphire needles with a "List Price" of $25 and $30 were on sale at $9.95 and $10.95, respectively, and using the expression "Unconditional Lifetime Guarantee" when the guarantee was, in fact, subject to undisclosed limitations.

Mr. John J. Mathias supporting the complaint.

Mr. Joshua B. Cahn of *Cahn, Schwartzreich & Mathias*, of New York, N.Y., for respondent Recoton.

Mr. Milton M. Rosenbloom of *O'Brien, Driscoll and Raftery*, of New York, N.Y., for respondent Schirmer.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On October 1, 1959, pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission caused to be issued its complaint in this proceeding to which Recoton Corporation, a corporation, and G. Schirmer, Inc., a corporation, were made respondents. A true copy of said complaint was served upon said respondents as required by law. The complaint charges respondents with false, misleading and deceptive pricing statements in selling diamond and combination diamond-sapphire phonograph needles, and in deceptively advertising their "Unconditional Lifetime Guarantee" of said phonograph needles. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act. After being served with the complaint, respondents Recoton Corporation and G. Schirmer, Inc., appeared by counsel and entered into an agreement dated December 4, 1959, which purports to dispose of all of this proceeding as to the respondents Recoton Corporation, and G. Schirmer, Inc., corporations, without the necessity of conducting a formal hearing. The agreement has been signed by the respondents, their counsel, and by counsel supporting the complaint; and has been approved by the Director and the Assistant Director of the Bureau of Litigation of this Commission. Said agreement contains the form of a consent cease and desist order which the parties have agreed is dispositive of the issues involved in this proceeding. On December 16, 1959, and January 8, 1960 the said agreement was submitted to the above-named hearing examiner for his consideration, in accordance with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents Recoton Corporation and G. Schirmer, Inc., pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents Recoton Corporation and G. Schirmer, Inc., waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the

validity of the order to cease and desist entered in accordance with such agreement. The parties have, *inter alia*, by such agreement agreed: (1) 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; (2) the complaint may be used in construing the terms of said order; (3) the record herein shall consist solely of the complaint and said agreement; and (4) that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of December 4, 1959, containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding, the agreement of December 4, 1959 is hereby accepted and ordered to be filed and to become a part of the record at the same time that this decision becomes the decision of the Federal Trade Commission pursuant to §§3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and

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, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondent Recoton Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 52–35 Barnett Avenue, Long Island City, New York;

Respondent G. Schirmer, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 3 East 43rd Street, New York, New York;

3. Respondents Recoton Corporation and G. Schirmer, Inc., are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act;

4. The complaint herein states a cause of action against said respondents Recoton Corporation and G. Schirmer, Inc., under the Federal Trade Commission Act, and this proceeding is in the public interest.

ORDER

It is ordered, That respondents Recoton Corporation and G. Schirmer, Inc., corporations, and their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of phonograph needles or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Any amount is the usual and customary retail price of merchandise when such amount is in excess of the price at which such merchandise is usually and customarily sold at retail in the trade area or areas where the representations are made.

2. Such merchandise is guaranteed, unless the nature and extent of the guarantee, and the manner in which the guarantor will perform thereunder, are clearly and conspicuously set forth.

DECISIONS OF THE COMMISSION AND ORDERS TO FILE REPORTS OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decisions of the hearing examiner shall, on the 12th day of February, 1960, and the 8th day of March, 1960, become the decisions of the Commission; and, accordingly:

It is ordered, That the respondents Recoton Corporation, a corporation, and G. Schirmer, Inc., a corporation, shall, within sixty (60) days after service upon them of these orders, file with the Commission reports 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

CHARLES A. ROBERTS DOING BUSINESS AS GAIN PUBLISHING CO., ETC.

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

Docket 7603. Complaint, Oct. 1, 1959—Decision, Mar. 8, 1960

Consent order requiring an individual in New York City to cease representing falsely in advertising that persons using his slogans, answers, titles, and other written material in competitive contests could win homes, cars, substantial sums of money, or other awards; that he employed a staff of

writers, reporters, and advertising experts, and was approved by sponsors and judges of competitive contests; that he limited sales to a small number of selected persons; and that he had been a contest judge and sponsor and was thus an expert in preparing winning answers.

Mr. Frederick McManus for the Commission.
Mr. Jacob Friedman, of New York, N.Y., for respondent.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of the Federal Trade Commission Act in connection with the offering for sale, sale and distribution of written material designed to win prizes in competitive contests.

An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the making 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 this proceeding without further notice to the respondent and when entered shall have the same force and effect as if entered after a full hearing, respondent specifically waiving all the rights he may have to challenge or contest the validity of the order; that the order may be altered, modified, or set aside in the manner provided for other orders; that the complaint may be used in construing the terms of the order; that the agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint; and that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

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 Charles A. Roberts is an individual doing business as Gain Publishing Company and Win Publishing Company with his office and place of business located at 141 West 17th Street in the City of New York, New York.

ORDER

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.

It is ordered, That respondent, Charles A. Roberts, doing business under the names Gain Publishing Company and Win Publishing Company, or any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of written material, consisting of slogans, titles, names, compositions and answers designed to win prizes or awards in competitive contests, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from disseminating, or causing to be disseminated, any advertisement, which represents, directly or by implication that:

1. Users of said written material as entries in competitive contests can win homes, cars, paid up insurance policies, or substantial sums of money, or any other award without clearly disclosing that said entries are subject to invalidation under competitive contest rules and practices which require that all entries be the original creation of the entrant.

2. Respondent employs a staff of writers, reporters and advertising experts.

3. Respondent is approved by judges in and sponsors of competitive contests.

4. The sale of said written material is limited to a small number of selected persons.

5. Respondent has experience as a judge in and as a sponsor of competitive contests, or is an expert in preparing winning entries in competitive contests.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 8th day of March, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

DUKE RECORDS, INC., ET AL.

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

Docket 7690. Complaint, Dec. 17, 1959—Decision, Mar. 8, 1960

Consent order requiring Houston, Tex., distributors of phonograph records to independent distributors for resale to retail outlets and jukebox operators to cease giving concealed "payola" to disc jockeys of television and radio programs to induce them to broadcast the seller's records in order to increase sales.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.
Mr. William H. Scott, Jr., Houston 2, Texas, for the respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the offering for sale, sale and distribution of phonograph records to independent distributors for resale to retail outlets and jukebox operators in various states of the United States, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record distributors, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

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

The agreement states that respondent Duke Records, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 2809 Erastus Street, Houston 26, Texas, and that individual respondent Don D. Robey is the president of the corporate respondent, his address being the same as that of said corporate respondent.

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

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

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

It is ordered, That respondents Duke Records, Inc., a corporation, and its officers, and Don D. Robey, 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 phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature;

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of March, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Duke Records, Inc., a corporation, and Don D. Robey, 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

FUR CITY ASSOCIATES, INC., ET AL.

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

Docket 7580. Complaint, Sept. 8, 1959—Decision, Mar. 9, 1960

Consent order requiring Pittsburgh furriers to cease violating the Fur Products Labeling Act by removing required labels from fur products prior to ultimate sale; by labeling certain furs with names of animals other than those which produced them and with excessive prices represented thereby as the usual selling prices; by advertising in newspapers which failed to disclose names of animals producing certain furs, or that some products contained artificially colored or cheap or waste fur; and by failing in

other respects to comply with labeling, invoicing, and advertising requirements.

Mr. Charles Donelan for the Commission.
Mr. Samuel Krimsly, of Pittsburgh, Pa., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act and the Fur Products Labeling Act 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 are made in whole or in part of fur which has been shipped and received in commerce.

An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the making 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 this proceeding without further notice to the respondents and when entered shall have the same force and effect as if entered after a full hearing, respondents specifically waiving all the rights they may have to challenge or contest the validity of the order; that the order may be altered, modified, or set aside in the manner provided for other orders; that the complaint may be used in construing the terms of the order; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

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 Fur City Associates, Inc., is a corporation existing and doing business under and by virtue of the laws of the

Commonwealth of Pennsylvania, with its office and principal place of business located at 906 Forbes Street, in the City of Pittsburgh, Commonwealth of Pennsylvania.

Individual respondents Sam Simon and Mack Davis are officers of the said corporate respondent and control, direct and formulate the acts, practices, and policies of the said corporate respondent. Their address is the same as that of the said corporate respondent.

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 Fur City Associates, Inc., a corporation, and its officers, and Sam Simon and Mack Davis, 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 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 are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

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

C. Falsely or deceptively labeling or otherwise identifying such products as to the regular prices thereof by any representation that the regular or usual prices of such products are any amount in excess of the prices at which respondents have usually and customarily sold such products in the recent regular course of business.

D. Setting forth on labels affixed to fur products:

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

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

E. Failing to disclose the names of the pieces of which fur products are composed.

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

G. Failing to set forth on labels the item number or mark assigned to a fur product.

2. Removing, or causing the removal or participating in the removal of, labels required to be affixed to fur products, prior to the time fur products are sold and delivered to the ultimate purchaser of such products.

3. Falsely or deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products an invoice showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

B. Failing to set forth on invoices the item number or mark assigned to a fur product.

4. 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:

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

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

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

B. Fails to set forth the information required under Section 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.

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 9th day of March, 1960, 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

HOUSE OF ARNOLD, INC., ET AL.

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

Docket 7622. Complaint, Oct. 22, 1959—Decision, Mar. 9, 1960

Consent order requiring a Philadelphia furrier to cease violating the Fur Products Labeling Act by failing to use the terms "Persian Lamb" and "Dyed Broadtail-Processed Lamb" on tags and invoices as required, and to comply in other respects with labeling and invoicing requirements.

Mr. DeWitt T. Puckett for the Commission.

Fox, Rothschild, O'Brien & Frankel by *Mr. Stephen J. Kron*, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On October 22, 1959, the Federal Trade Commission issued its complaint against the above-named respondents charging them with falsely and deceptively invoicing and advertising certain of their fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated under said Fur Products Labeling Act. On December 21, 1959, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said 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 it is for settlement purposes only and does not

constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of Section 3.25(b) of the Rules of Practice.

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 Section 3.21 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 House of Arnold, 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 5508 Germantown Avenue, Philadelphia, Pennsylvania.

The corporate respondent formerly operated under the name of Germantown Fur, Inc.

Individual respondent Louis Aronovitz is president of the said corporation and controls, formulates and directs the acts, practices and policies of the said corporate respondent. The office and principal place of business of the individual respondent is the same as that of the corporate respondent.

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

ORDER

It is ordered, That House of Arnold, Inc., a corporation, formerly known as Germantown Fur, Inc., and its officers, and Louis Aronovitz, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, or the sale, advertising or offering for sale in commerce, of fur products or in connection with the sale, manufacture for 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:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

B. Setting forth on labels affixed to fur products:

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

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

C. Failing to set forth the term "Persian Lamb" in the manner required.

D. Failing to set forth the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the required sequence.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products an invoice showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

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

C. Failing to set forth the term "Persian Lamb" in the manner required.

D. Failing to set forth the term "Dyed Broadtail Processed Lamb" in the manner required.

E. Failing to set forth the item number or mark assigned to a fur product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of March, 1960, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF

STRODE FURRIERS ET AL.

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

Docket 7650. Complaint, Nov. 3, 1959—Decision, Mar. 10, 1960

Consent order requiring Louisville, Ky., furriers to cease violating the Fur Products Labeling Act by falsely identifying certain fur products with respect to the names of animals producing the fur therein; by affixing labels containing fictitious prices in excess of the usual retail prices; by failing to label with the term "Persian Lamb" where required; by invoicing which showed imported furs to be of domestic origin and failed to set forth the term "Dyed Mouton-processed Lamb" as required; by newspaper advertising which falsely represented percentage savings; by failing in other respects to comply with advertising, invoicing, and labeling requirements; and by failing to keep adequate records as a basis for pricing claims.

Mr. Charles Donelan for the Commission.
Mr. Morris B. Borowitz, of Louisville, Ky., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on November 3, 1959, 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 January 21, 1960, 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 January 19, 1960, 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 Strode Furriers is a corporation existing and doing business under and by virtue of the laws of the State of Ken-

tucky, with its office and principal place of business located at 311 Guthrie Street, in the City of Louisville, State of Kentucky.

2. 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.

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

4. 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.

5. 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.

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

7. 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.

8. 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 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 Strode Furriers, a corporation, and its officers, and Irvin Seligman and Joseph Seligman, 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 the sale, advertising, offering for sale, 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 are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act;

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

C. Falsely or deceptively labeling or otherwise identifying such products as to the regular prices thereof by any representation that the regular or usual prices of such fur products are any amounts in excess of the prices at which respondents have usually and customarily sold such products in the recent regular course of business;

D. Setting forth on labels affixed to fur products:

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

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

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

E. Failing to set forth the term "Persian Lamb" in the manner required;

F. Affixing to fur products labels that do not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches;

G. Failing to set forth the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the required sequence;

H. 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 Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section;

I. Failing to set forth on labels affixed to fur products the item number or mark assigned to the fur product;

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products an invoice showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act;

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

C. Falsely or deceptively invoicing fur products by stating that the furs contained in such fur products are domestic furs when, in fact, such furs are imported;

D. Failing to set forth the term "Dyed Mouton-processed Lamb" in the manner required;

E. Failing to set forth on invoices the item number or mark assigned to a fur product;

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

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 respondents have usually and customarily sold such product in the recent regular course of business;

C. Misrepresents in any manner the savings available to purchasers of respondents' fur products.

4. Making claims and representations in advertisements respecting prices and values of fur products unless respondents maintain full and adequate records disclosing the facts upon which such claims and representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 10th day of March, 1960, 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

ANTONETTE PEARLS, INC., ET AL.

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

Docket 7435. Complaint, Mar. 11, 1959—Decision, Mar. 12, 1960

Consent order requiring Newark, N.J., distributors of simulated and cultured pearl sets, to cease preticketing individual sets or containers of their products with excessive prices represented thereby as the usual retail selling prices.

Mr. Thomas F. Howder for the Commission.

Tislowitz, Schneck & Hechtman, by *Mr. Paul J. Tislowitz*, of New York, N.Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated March 11, 1959 the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On January 15, 1960 the respondents entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among

other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The agreement provides that the complaint insofar as concerns respondents Josephine Toch and Antonia Krakauer in their individual capacities should be dismissed for the reasons set forth in affidavits attached thereto that said respondents do not now and never have had any part in formulating, directing or controlling the acts and practices of the corporate respondent.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the 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 following jurisdictional findings are made and the following order issued.

1. Respondent Antonette Pearls, Inc., 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 17–19 William Street, in the City of Newark, New Jersey.

Individual respondents Ernest Toch and Julius Krakuer and respondents Josephine Toch and Antonia Krakauer are officers of the corporate respondent and are located at the same address.

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

ORDER

It is ordered, That respondents Antonette Pearls, Inc., a corporation and its officers, and Ernest Toch and Julius Krakuer, individually and as officers of said corporation, and Josephine Toch and Antonia Krakuer as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for

sale, sale, or distribution of simulated or cultured pearl sets or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing by preticketing, or in any other manner, that any amount is the usual or customary retail price of any product when such amount is in excess of the price at which such product is usually and customarily sold at retail.

2. Furnishing any means or instrumentality to others by and through which they may misrepresent the usual and customary retail price of respondents' products.

It is further ordered, That the complaint, insofar as it relates to respondents Josephine Toch and Antonia Krakauer in their individual capacities be, and the same hereby is dismissed.

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 12th day of March, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents Antonette Pearls, Inc., a corporation, and Ernest Toch and Julius Krakauer, individually and as officers of said corporation, and Josephine Toch and Antonia Krakauer 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

MARCUS ROSENFELD ET AL. TRADING AS TOWEL SHOP, ETC.

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

Docket 7533. Complaint, July 13, 1959—Decision, Mar. 12, 1960

Consent order requiring St. Louis distributors of non-woven fabrics, consisting of fibers held together by bonding agents, to cease advertising falsely by statements and photographs that a 12 by 18-inch towel was of the large size and general appearance, texture, and thickness of fabric towels in common use and was far superior to woven fabric towels in every way; that money would be refunded to dissatisfied purchasers; that tes-

timonial letters they used were unsolicited; that they guaranteed the success of those who sold their product and that there was no competition; and that the product was made by a new scientific process.

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

Kramer and Chused by *Mr. Joseph Chused* of St. Louis, Mo., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on July 13, 1959 charging them with having violated the provisions of the Federal Trade Commission Act. The complaint alleged that respondents used various kinds of false advertising of the size and quality of their non-woven towels and of their guarantees.

On January 13, 1960 there was submitted to the undersigned hearing examiner an agreement between the above-named respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondents Marcus Rosenfeld and Leon Rosenfeld are individuals and copartners trading as Towel Shop, L and M Company, 40 Towel Co., 50 Towel Co., and Wholesale Towel Company. Their

principal office and place of business is located at 415 N. 8th Street, St. Louis, Missouri.

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

ORDER

It is ordered, That respondents Marcus Rosenfeld and Leon Rosenfeld, individually and as copartners trading as Towel Shop, L and M Company, 40 Towel Co., 50 Towel Co., and Wholesale Towel Company or under any other name, their agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of their non-woven cotton and rayon fiber product, or any other like merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, through the use of photographs, or in any other manner, that their non-woven product has the appearance, thickness or texture of fabric towels in common use or misrepresenting in any manner the appearance, thickness or texture of their said product.

2. Using the word "towel" or any other word or words of similar import or meaning to describe their non-woven product, unless it is affirmatively stated, clearly and conspicuously, that their non-woven product does not have the appearance, texture and thickness of fabric towels in common use.

3. Representing, directly or by implication:

(a) That products referred to as towels, whose dimensions are 12″ x 18″ are large, or misrepresenting in any manner the size of their said product;

(b) That the money paid for their product will be refunded to dissatisfied purchasers, unless all of the money paid, including postage, is refunded; provided, however, that nothing herein shall prevent respondents from truthfully representing that a specific amount will be refunded to dissatisfied purchasers;

(c) That respondents' product is superior to ordinary woven towels in every way; or in any way that is not in accordance with the fact;

(d) That any solicited testimonial letter used by respondents was unsolicited;

(e) That respondents guarantee the success of those selling their product or that they do not have competition;

(f) That respondents' product is made by a scientific new process.

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 12th day of March, 1960, become the decision of the Commission; and, accordingly:

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

MARNEL DISTRIBUTING COMPANY, INC., ET AL.

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

Docket 7691. Complaint, Dec. 17, 1959—Decision, Mar. 12, 1960

Consent order requiring an independent Philadelphia distributor of phonograph records for several manufacturers to retail outlets and jukebox operators in and around the area of eastern Pennsylvania, southern New Jersey, and Delaware, to cease giving concealed "payola" to disc jockeys of television and radio programs to induce them to "expose" and promote the payer's records in order to increase sales.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.

Winokur & Kahn, by *Mr. Morris J. Winokur*, Philadelphia Pa., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the offering for sale, sale and distribution of phonograph records as independent distributors for several record manufacturers, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record manufacturers, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, with-

hold or camouflage the fact of such payment from the listening public.

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

The agreement states that respondent Marnel Distributing Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1622 Fairmount Avenue, Philadelphia, Pennsylvania, and that respondent Nelson Verbit is the president of the respondent corporation and formulates, directs and controls the acts and practices of said corporation, the address of this individual respondent being the same as that of the corporate respondent.

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

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

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement

containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondents, Marnel Distributing Company, Inc., a corporation, and its officers, and Nelson Verbit, 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 phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature;

2. Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record, when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

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 12th day of March, 1960, 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.

Findings

IN THE MATTER OF

PHILIP J. DOUGLAS DOING BUSINESS AS HARLOW HAIR EXPERTS

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

Docket 7152. Complaint, May 21, 1958—Decision, Mar. 14, 1960

Order requiring an individual in Coral Gables, Fla., to cease representing in advertising that use of his preparations and methods of application would, in almost every case, prevent and overcome baldness or excessive hair loss and induce the hair to grow and thicken; and representing falsely by use of the word "Trichologist" and otherwise, that he had had competent training in dermatology; and requiring him to reveal in advertising that the great majority of cases of hair loss are of the male pattern type of baldness, in which cases his preparations were of no value.

Mr. Harold A. Kennedy and *Mr. Thomas F. Howder*, counsel supporting the complaint.

Frank E. and *Arthur Gettleman* and *Mr. Franklin M. Lazarus*, of Chicago, Ill., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint in this proceeding alleges that the respondent has disseminated false advertisements in connection with the sale of cosmetic and drug preparations for external use in the treatment of certain conditions of the hair and scalp. Respondent, through his counsel, filed an answer and denied the allegations set forth in the complaint.

Hearings have been concluded at which evidence in support of and in opposition of the complaint was received. Proposed findings of fact, conclusions and order have been filed by respective counsel. All proposed findings of fact and conclusions not specifically found or adopted herein are rejected. Upon the basis of the entire record, the hearing examiner makes the following findings of fact and conclusions of law, and issues the following order:

FINDINGS OF FACT

1. Respondent Philip J. Douglas is an individual doing business as Harlow Hair Experts with his office and principal place of business located at 2308 Galiano Street, Coral Gables, Florida. Since approximately April 1, 1956, the respondent has been engaged in

the business of selling and distributing drug and cosmetic preparations, as "drug" and "cosmetic" are defined in the Federal Trade Commission Act, for external use in the treatment of the hair and scalp. The respondent causes said preparations to be transported from his place of business in the State of Florida to purchasers thereof located in various states of the United States. Since 1956, respondent has maintained a course of trade in said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

2. In the operation of his business, it has been the custom of respondent or his representative, Mr. J. J. Stalteri, to plan an extensive itinerary and visit predetermined cities and towns in the Eastern and Southern part of the United States, east of the Mississippi river, but including Texas. The respondent or his representative generally places advertisements in local newspapers in advance of his visit to each town announcing the date of his visit and where he will be located in that particular city. Usually the location will be in a hotel room. The newspaper advertisement invites persons who are suffering with dandruff, falling hair or symptoms of baldness to visit respondent or his representative at such hotel room for advice, diagnosis, or treatment of his or her scalp or hair condition. Respondent or his representative will then examine the hair and scalp of such persons and, if treatment is recommended and agreed to, sells such persons home treatment kits containing respondent's preparations and sometimes a brush for the hair. The orders for such kits are transmitted to respondent's place of business in Florida for processing and the kits are then shipped, along with instructions for use and application, direct to the address given by the purchaser.

3. Respondent's preparations are composed of the following ingredients in various combinations:

Alcohol	
Atlasene 500	Trade name of Atlas Refinery, Inc., for fatty alkylol amide condensate, a detergent and wetting agent.
Boric Acid	
Castro Oil	
Coloring	
Hyamine 2389	Trade name of Rohm & Haas Co. for alkylated tolyl methyl trimethyl ammonium chloride, a germicide.
Isopropyl Alcohol	
Mineral Oil	
Nopco 1034	Trade name of Nopco Chemical Company for sulfonated castor oil, a detergent and wetting agent.

Oil of Bay
Perfume
Phenol
Propylene Glycol
Resorcinol
Soap
Tegosept M---------- Trade name of Goldschmidt Chemical Corporation for methyl parahydroxy benzoate.
Tincture Capsicum
Tween 60---------- Trade name of Atlas Powder Co. for polyoxysorbitan monostearate, an emulsifier.
Veegum---------- Trade name of R. T. Vanderbilt Co., Inc., for colloidal magnesium aluminum silicate, an emulsifier and thickener.
Water

4. In the course and conduct of his said business, respondent has disseminated, and has caused the dissemination of advertisements, placed in various newspapers and distributed by the United States mail and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which would likely to induce directly or indirectly the purchase of said preparations; and respondent has disseminated and has caused the dissemination of advertisements by various means, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. As examples, said advertisements stated, among other things, "Hair Specialist here Saturday will Show How to Save Hair and Prevent Baldness," "New home treatment methods for growing thicker hair —and preventing baldness—will be demonstrated," etc.

5. Through the use of the aforesaid statements and representations respondent has represented, directly and by implication that by the use of his preparations and methods of application, in most every case, or except in cases of persons who are slick-bald after years of gradual hair loss, baldness or excessive hair loss will be prevented or overcome, hair will be induced to grow and the hair will become thicker.

6. The respondent, by referring to himself and his representative as a "Trichologist" in said advertisements, has represented, directly and by implication, that he and his representative have had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair.

7. The said advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the

Federal Trade Commission Act. The medical testimony adduced at the hearing shows that the great majority of cases of baldness and excessive hair loss is the common type known as male pattern baldness. Male pattern baldness involves gradual and progressive thinning of the hair. The medical testimony offered at the hearing to substantiate the allegations set forth in the complaint consists of the testimony of two qualified and experienced physicians. Their testimony is that approximately 95% of all cases of baldness and excessive hair loss falls in the male pattern type. These physicians testified that the condition is probably attributable to hereditary factors. These physicians, who were familiar with the ingredients contained in respondent's preparations, testified that, in their opinions, regardless of the exact formulae or combination of ingredients of the preparations or methods of application, the use of respondent's preparations or any other preparations, regardless of their composition or methods of application, will not, in cases of male pattern baldness, prevent or overcome baldness or excessive hair loss or induce hair to grow or cause the hair to become thicker.

8. The evidence shows that respondent has not had any type of medical training. His formal education includes two years of Business Administration at the University of Illinois. Neither respondent nor his representative, Mr. J. J. Stalteri, has undergone competent training in dermatology or any other branch of medicine having to do with the diagnosis or treatment of scalp disorders affecting the hair.

9. Respondent's advertisements are misleading in a further material respect and constitute "false advertisements" by reason of failure to reveal facts material in the light of representations made therein. In advertising that his preparations will cause hair to grow and overcome baldness, respondent has suggested that there is a reasonable probability that hair loss or baldness in any particular case may involve a condition in which his preparations may be of benefit, or will constitute an effective treatment therefor. In truth and in fact, the instances in which respondent's preparations will be of any benefit, or constitute an effective treatment for hair loss or baldness, are rare. In the great majority of cases, loss of hair or baldness is the male pattern type in which case respondent's preparations are of no value whatsoever in the treatment thereof. Thus, there is no reasonable probability that any particular case of hair loss or baldness is a condition for which respondent's preparations will be beneficial, and respondent's advertising is misleading because of respondent's failure to reveal the material fact that the great majority of cases of hair loss or baldness is the type known as male

pattern baldness and when hair loss or baldness is of that type, respondent's preparations are of no value in the treatment thereof.

CONCLUSIONS

10. The use and dissemination by respondent of the false advertisements described above has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's preparations and the benefits to be derived from the use thereof, and to cause such persons to purchase respondent's preparations as a result of the erroneous and mistaken belief so caused. The acts and practices of respondent herein found are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. This proceeding is in the public interest.

ORDER

It is ordered, That Philip J. Douglas, an individual doing business as Harlow Hair Experts, or under any other name and his agents, representatives and employees, directly or indirectly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the various cosmetic and drug preparations set out in the findings herein, or of any other preparations for use in the treatment of hair and scalp conditions, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of the United States mail, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

(a) That the use of said preparations alone or in conjunction with any method of treatment will:

(1) Prevent or overcome baldness or excessive hair loss, unless such representation be expressly limited to cases other than those known as male pattern baldness, and unless the advertisements clearly and conspicuously reveal the fact that the great majority of all cases of baldness or excessive hair loss are of the male pattern type, and that said preparations will not in such cases prevent or overcome baldness or excessive hair loss;

(2) Induce hair to grow or cause the hair to become thicker, or otherwise grow hair, unless such representations be expressly limited to cases other than those arising by reason of male pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of all cases of baldness or

excessive hair loss are of the male pattern type, and that said preparations will not in such cases induce the growth of hair or thicken hair.

(b) That respondent, his agents, representatives or employees have had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp conditions affecting the hair or are trichologists.

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

OPINION OF THE COMMISSION

By the COMMISSION:

The issues presented in the respondent's appeal from the initial decision are identical to those previously considered and determined by the Commission in other cases, including its decisions in the *Loesch*,[1] *Erickson*[2] and *Keele*[3] proceedings. Having considered the record in this case, we are of the view that the hearing examiner's findings and conclusions are supported by reliable and substantial evidence that the order contained in the initial decision has sound legal basis.

The appeal is accordingly denied and the initial decision is adopted as the decision of the Commission.

Commissioner Tait did not participate in the decision.

FINAL ORDER

This matter having been heard by the Commission upon the appeal filed by the respondent from the initial decision of the hearing examiner; and the Commission having rendered its decision denying said appeal and adopting the initial decision as the decision of the Commission:

It is ordered, That the respondent shall, within sixty (60) days

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[1] *In the Matter of Loesch Hair Experts*, Docket No. 6305 (decided November 14, 1957), aff'd 257 F. 2d 882 (4th Cir. 1958), cert. denied 358 U.S. 883.

[2] *In the Matter of Erickson Hair & Scalp Specialists*, Docket No. 6499 (decided February 26, 1959), aff'd 272 F. 2d 318 (7th Cir. 1959).

[3] *In the Matter of Keele Hair & Scalp Specialists, Inc.*, Docket No. 6589 (decided May 21, 1959), aff'd 275 F. 2d 18 (5th Cir., February 17, 1960).

after the 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.

Commissioner Tait not participating.

IN THE MATTER OF

ALVIN'S FURNITURE TRADING AS TELLER'S ET AL.

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

Docket 7644. Complaint, Nov. 2, 1959—Decision, Mar. 15, 1960

Consent order requiring a corporate operator of retail stores in Chula Vista and San Diego, Calif., to cease violating the Fur Products Labeling Act by failing to comply with labeling and invoicing requirements, by advertising in newspapers which falsely represented retail prices of fur products to be at or below wholesale prices and such products to be the entire stock of a New York manufacturer which they were liquidating and had to sell within four days, and by failing to keep adequate records as a basis for said pricing claims.

Mr. John McNally for the Commission.

Mr. Nathan Schoichet, of Beverly Hills, Calif., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated November 2, 1959 the respondents are charged with violating the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations made pursuant thereto.

On January 7, 1960, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the 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 following jurisdictional findings are made and the following order issued.

1. Respondent Alvin's Furniture is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its offices and principal place of business located at 668 Third Avenue in the City of San Diego, State of California. It operates retail stores in Chula Vista and in San Diego, California, under the trade name of Teller's.

Respondent George Alvin Strep is president of the said respondent corporation and controls, directs and formulates its acts, practices and policies. His business address is the same as that of said respondent corporation.

The said respondents are engaged in the sale at retail of a wide variety of merchandise including, from time to time, the sale of fur products under a lease or concession arrangement with others regularly engaged in the sale of fur products. During the times material to this proceeding the fur products offered for sale and sold on respondents' premises to the purchasing public were the property of their then lessee and concessionnaire, Beckman-Hammer Furs, and were labeled, invoiced and advertised by said lessee and concessionnaire and their representatives and agents, subject to respondents' over-all direction and control.

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 Alvin's Furniture, a corporation, trading as Teller's or under any other name, and its officers; and respondent George Alvin Strep, as an individual or as an officer of said corporation; and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, transportation, or distribution in commerce, of fur products; or in connection with the sale, advertising, offering

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

1. Misbranding fur products by:

(a) Failing to affix labels to fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

(b) Failing to set forth on labels affixed to fur products the item number or mark assigned to such fur products.

2. Falsely or deceptively invoicing fur products by:

(a) Failing to furnish to purchasers of fur products an invoice showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

(b) Failing to set forth on invoices the item number or mark assigned to such fur products.

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) Represents, directly or by implication, that such fur products are being offered for sale at or below wholesale prices.

(b) Represents in any manner the savings available to purchasers of respondents' fur products.

(c) Represents, directly or by implication, that such fur products are from the stock of one manufacturer or source; that such fur products are being liquidated by respondents; or that they must be sold during the advertised sale.

4. Making claims and representations in advertisements respecting prices and values of fur products unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 15th day of March, 1960, 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 Com-

mission 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

AINBINDER & SON, INC., ET AL.

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

Docket 7648. Complaint, Nov. 3, 1959—Decision, Mar. 15, 1960

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by failing to set forth on invoices the terms "Persian Lamb," "Dyed Mouton-processed Lamb," and "Secondhand used fur" where required, and to comply in other respects with labeling and invoicing requirements.

Mr. Charles Donelan for the Commission.
Respondents, *pro se*.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On November 3, 1959, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violation of the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated under said Fur Products Labeling Act in connection with the introduction into commerce, and the sale, advertising and offering for sale, transportation and distribution of fur products. On December 17, 1959, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said 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 it is for settlement purposes only and does not constitute an admission by the respondents that they have violated

the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of section 3.25(b) of the Rules of Practice.

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 section 3.21 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 Ainbinder & Son, 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 127 West 29th Street, in the City of New York, State of New York.

Individual respondent Israel Ainbinder is president of the said corporate respondent and controls, directs and formulates the acts, practices and policies of the said corporate respondent. His office and principal place of business is the same as that of the said corporate respondent.

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

ORDER

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

1. Failing to affix labels to fur products showing in letters and figures plainly legible all of the information required to be dis-

closed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products an invoice showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

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

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

D. Failing to set forth the term "Persian Lamb" in the manner required by Rule 8 of said Rules and Regulations.

E. Failing to set forth the term "Dyed Mouton processed Lamb" in the manner required by Rule 9 of said Rules and Regulations.

F. Failing to disclose that fur products contain or are composed of "secondhand used fur" when such is the fact.

G. Failing to set forth on invoices the item number or mark assigned to a fur product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 15th day of March, 1960, 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

PEARL-MARTIN CO., INC., ET AL.

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

Docket 7531. Complaint, July 13, 1959—Decision, Mar. 16, 1960

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to disclose the names of animals producing certain furs or that certain prod-

ucts were composed of used or artificially colored fur, and to set forth the term "secondhand used fur" where required; and by failing in other respects to comply with advertising and invoicing requirements.

Mr. Charles W. O'Connell supporting the complaint.
Respondents, *pro se.*

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on September 30, 1959 charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder and the Federal Trade Commission Act by falsely and deceptively invoicing and advertising certain of their fur products.

On November 4, 1959 there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondents Pearl-Martin Co. Inc. is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business, located at 2848 West 30th Street, Brooklyn, New York, which is the residence address of Murray Perlmutter.

2. Respondents Murray Perlmutter and Martin Scharfman are officers of the corporate respondent and their offices are located at 2848 West 30th Street, Brooklyn, New York, and 890 West Beech Street, Long Beach, New York, respectively.

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 Pearl-Martin Co., Inc., a corporation, and its officers, and Murray Perlmutter and Martin Scharfman, 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 the sale, advertising, offering for sale, 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 are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely and deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products an invoice showing all of the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

B. Failing to furnish invoices to purchasers of fur products showing the item number or mark assigned to a fur product.

2. 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:

(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 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.

B. Fails to disclose that fur products contain or are composed of "secondhand used fur," when such is the fact .

C. Fails to set forth the information required under Section 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.

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 exmainer shall on the 16th day of March, 1960, become the decision of the Commission; and, accordingly:

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

MIDLAND AFFILIATED BUSINESS SALES AND SERVICES, INC., ET AL.

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

Docket 7543. Complaint, July 15, 1959—Order, Mar. 19, 1960

Order dismissing—for the reason that respondent sold his interest in the company before issuance of the complaint—charges that a former official of corporate respondent used deception to obtain advance fees for advertising real estate.

The matter was disposed of as to all other respondents by a consent order dated Jan. 6, 1960, p. 708 herein.

Mr. John W. Brookfield, Jr., and *Mr. John J. Mathias* supporting the complaint.

Mr. Sidney Z Karasik of Chicago, Ill., for respondent.

INITIAL DECISION AND ORDER DISMISSING COMPLAINT AS TO RESPONDENT BERNARD HEWITT

The Commission on January 6, 1960 adopted the Initial Decision theretofore entered in this matter which disposed of this proceeding as to all respondents except respondent Bernard Hewitt.

Counsel supporting the complaint has now moved that the complaint be dismissed as to this remaining respondent on the ground that this respondent sold his interest in the corporate respondent

prior to the issuance of the complaint and has not thereafter engaged in a similar business. These facts are supported by an affidavit of this respondent attached to the motion.

The motion is granted and *it is ordered*, That the complaint herein against respondent Bernard Hewitt, an individual, be, and the same hereby is, dismissed without prejudice to the right of the Commission to take such action in the future as the facts may warrant.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner as to respondent Bernard Hewitt shall, on the 19th day of March 1960, become the decision of the Commission.

IN THE MATTER OF

PEERLESS PRODUCTS, INC., ET AL.

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

Docket 6718. Complaint, Feb. 1, 1957—Decision, Mar. 22, 1960

Order requiring a Chicago punch board manufacturer to cease its sale of lottery devices for use by retailers to sell merchandise to the public.

William A. Somers, Esq., for the Commission.
Simon Herr, Esq., of Chicago, Ill., for respondents.

INITIAL DECISION UPON REMAND BY ROBERT L. PIPER, HEARING EXAMINER

STATEMENT OF THE CASE

On February 1, 1957, the Federal Trade Commission issued its complaint against Peerless Products, Inc., a corporation and Marshall Maltz, Rose Maltz, and Shirley Maltz, individually, and as officers of said corporation (all except Rose Maltz hereinafter collectively called respondents), charging them with unfair acts and practices in commerce in violation of §5 of the Federal Trade Commission Act (hereinafter called the Act), 15 U.S.C. 41, et seq. Copies of said complaint together with a notice of hearing were duly served upon respondents.

The complaint alleges in substance that respondents and Rose Maltz by the sale and distribution of punchboards in commerce have placed in the hands of others a means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise.

Pursuant to notice, hearings were thereafter held on July 17 and July 31, 1957, in Chicago, Illinois, and Seattle, Washington, respectively, before the undersigned hearing examiner duly designated by the Commission to hear this proceeding. All parties were represented by counsel, participated in the hearings, and afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file proposed findings of fact, conclusions of law and orders, together with reasons in support thereof. On September 5, 1957, an order was issued fixing the time for filing such proposed findings. On September 26, 1957, pursuant to motion of counsel supporting the complaint, the aforesaid order was vacated and proceedings reopened for the taking of additional testimony. Thereafter, on April 10, 1958, counsel supporting the complaint filed a notice that he was resting his case, and by order dated April 17, 1958, the parties were allowed until May 19, 1958, to file such proposed findings.

On May 20, 1958, the undersigned issued his initial decision. After appeal by counsel for respondents, the Commission on October 29, 1958, vacated and set aside said decision, and remanded the proceeding to the undersigned for the receipt of such additional evidence "as may be offered showing the extent to which the practices herein alleged to be unlawful have been or are engaged in 'commerce'." Upon motion of counsel supporting the complaint additional hearings were held on April 15 and 16, 1959, in Cleveland, Ohio, and Pittsburgh, Pennsylvania, respectively, at which hearings proof was received of sales from Illinois by respondents of their punchboard devices to customers in Ohio and Pennsylvania.

On July 17, 1959, counsel for respondents rested, and upon request the parties were allowed until August 21, 1959, to file proposed findings of fact, conclusions of law and orders, together with reasons in support thereof. Both parties did so, and waived oral argument. All such findings of fact and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded are herewith specifically rejected.[1]

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

[1] 5 U.S.C. §1007(b).

FINDINGS OF FACT

I. The Business of Respondents

Peerless Products, Inc., is a corporation organized existing and doing business under and by virtue of the laws of the State of Illinois. Marshall Maltz is president and Shirley Maltz is secretary treasurer of said corporation. Although the complaint alleged that Rose Maltz is vice president of said corporation, no proof was offered in support thereof and accordingly no such finding is made. In general, respondents' answer denied all of the allegations of the complaint. The complaint also alleged that the named individual respondents formulate, direct and control the acts, practices, and policies of the corporation. With respect to Rose and Shirley Maltz, there is no evidence in the record in support of this allegation, which was denied by the answer, and accordingly no such finding is made. For the reasons elucidated by the Commission in the *Kay Jewelry* decision,[2] the order hereinafter set forth does not include said individuals. On the other hand, the record establishes that Marshall Maltz is the president of the corporation, individually manages it, and formulates, directs, and controls its acts, practices, and policies. For the reasons expressed by the Commission in the *Morse Sales* case,[3] the order hereinafter set forth includes Marshall Maltz individually as well as an officer of the corporation.

II. Interstate Commerce

Respondents are now and for more than one year last past have been engaged in the manufacture of devices commonly known as punchboards, and in the sale and distribution in commerce of such devices to manufacturers of, and dealers in, various articles of merchandise. Respondents cause and have caused such devices when sold to be transported from their place of business in the State of Illinois to purchasers thereof at their points of location in the various states of the United States other than Illinois, including the states of Ohio, Pennsylvania, and Washington. There is now and has been for more than one year last past a substantial course of trade in such devices by respondents in commerce between and among the various states of the United States.

III. The Unlawful Practices

Respondents sell and distribute their punchboards to various dealers in merchandise, who in turn assemble said punchboards to-

[2] *Kay Jewelry Stores, Inc.*, 54 F.T.C. 548, November 12, 1957.
[3] *Morse Sales, Inc.*, 54 F.T.C. 193, August 22, 1957.

gether with various articles of merchandise and sell and distribute them to retailers in the various states, who in turn sell the merchandise, by means of such punches, or chances, to members of the purchasing public. These punchboards are so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used by retailers in the sale and distribution of merchandise to the public. They are of many kinds, all of which, although varying in detail, involve the same features of chance or lottery. Many of respondents' punchboards have blank spaces on the face thereof so that the purchasers thereof may place instructions or legends thereon, usually the winning numbers and the prizes, which explain the manner in which said devices are to be used in the sale of various specified articles of merchandise. Others already have the legends printed thereon with such explanatory material. All of them are used by the dealer in distributing merchandise in the same manner.

The prices of the punches on the punchboards vary with the individual device. When a punch is made, a printed slip is separated from the punchboard and a number is disclosed. This number is effectively concealed from the purchaser or prospective purchaser until a selection has been made and the punch completed. Certain specified numbers usually set forth in the legend attached to the board entitle purchasers to designated articles of merchandise. Persons securing such lucky or winning numbers receive such articles of merchandise without additional cost at prices which are much less than the normal retail price. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a punch on said board. The articles of merchandise are thus distributed to the public wholly by lot or chance. Some of these devices may be and have been used to distribute cash prizes, but the primary and usual use is for the sale and distribution of merchandise.

Many persons, firms, and corporations who sell and distribute various articles of merchandise, such as watches, cigarettes, candy, jewelry and blankets, in commerce between and among the various states of the United States, purchase and have purchased respondents' punchboards, and pack and assemble assortsments to retail dealers and others for resale to the public. Respondents thus supply to and place in the hands of retail dealers and others through the channels of interstate commerce the means of, and instrumentalities for, conducting lotteries, games of chance or gift enterprises in the sale and distribution of merchandise to the general public.

It must now be considered well settled that the sale and distribu-

tion of such punchboard devices which supply to and place in the hands of others a means or instrumentality for the sale of merchandise by lotteries or games of chance is contrary to the established public policy of the Government of the United States and in violation of the Act. In a recent decision involving substantially the same type of operation, the Commission, after reviewing the leading cases on the subject, so held, and this decision was affirmed by the Court of Appeals for the Seventh Circuit.[4]

Respondents called no witnesses and offered no proof other than the offer in evidence of certain ordinances of different municipalities in the State of Washington licensing the use of punchboards by local retailers as "games of skill." For the reasons enunciated by the Commission in the *James* decision, footnote 4, *supra*, as well as for other obvious reasons, respondents' contention, that such municipal licenses negate the Commission's power to prohibit practices contrary to the Act and the established public policy of the United States, is without merit.[5]

CONCLUSIONS OF LAW

1. Respondents are engaged in commerce and engaged in the above-found acts and practices in the course and conduct of their business in commerce, as "commerce" is defined in the Act.

2. The acts and practices of respondents hereinabove found are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Act.

3. This proceeding is in the public interest and an order to cease and desist the above-found unlawful acts and practices should issue against respondents.

ORDER

It is ordered, That respondents, Peerless Products, Inc., a corporation, and its officers, and Shirley Maltz, as an officer of said corporation, and Marshall Maltz, individually and as an officer of said corporation, and respondents' agents, representatives, employees, successors and assigns, directly or through any corporate or other device, do forthwith cease and desist from:

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[4] *R. B. James, et al.*, 53 F.T.C. 1119, June 4, 1957, aff'd, 253 F. 2d 78 (C.A. 7, 1958). See also, *Modernistic Candies, Inc.* v. *FTC*, 145 F. 2d 454 (C.A. 7, 1944).

[5] While not controlling, it is interesting to note that respondent Marshall Maltz and his father, Benjamin Maltz, previously have been found to have engaged in illegal lotteries by the sale of their punchboard devices. *Maltz* v. *Sax*, 134 F. 2d 2 (C.A. 7, 1943), and *Benmar Sales Company*, 51 F.T.C. 511 (1954), aff'd by the Court of Appeals, Seventh Circuit, October 22, 1955, not reported in the Federal Reporter.

Selling or distributing in commerce, as "commerce" is defined in the Act, punchboards or other devices which are designed or intended to be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

It is further ordered, That the complaint herein be, and hereby is, dismissed as to respondent Shirley Maltz, individually and as to respondent Rose Maltz, individually and as an officer of Peerless Products, Inc., without prejudice.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner:*

The complaint in this matter charges respondents with having violated Section 5 of the Federal Trade Commission Act through the sale and distribution in commerce of punchboards for the use of others in conducting lotteries or games of chance in the sale of merchandise. The matter was previously before the Commission and was remanded to the hearing examiner for further proceedings to develop the commerce allegation of the complaint.

Pursuant to such remand, additional evidence was received and considered by the hearing examiner. In his initial decision upon remand, the hearing examiner found that the charge was sustained by the evidence and ordered respondents (except Rose Maltz, individually and as an officer of corporate respondent; and Shirley Maltz, individually) to cease and desist from the practice found to be unlawful. Respondents have appealed from this decision.

Respondents first argue that the allegations in the complaint are not supported by the evidence. There is substantial evidence in the record which establishes conclusively that respondents sold and distributed their punchboards in interstate commerce and that the primary and usual use of said punchboards is for the sale and distribution of merchandise by lottery methods. This fully supports the allegations upon which this case was tried. The fact that some purchasers of punchboards have used them for purposes other than those for which they were designed and intended, such as for distribution of cash prizes, is not material in light of this showing. Respondents' argument on this point is rejected.

Respondents next argue that they cannot be held responsible for the practices of those purchasers who use respondents' punchboards for the purpose of selling merchandise by lottery methods. As we have previously stated, the record clearly establishes that respondents' punchboards are primarily used for that purpose.

Despite the fact that the sale of merchandise by lottery methods is made by the purchaser of the board rather than by respondents, there can be no doubt that respondents' sale and distribution in commerce of these punchboards violates the Federal Trade Commission Act. *Chas. A. Brewer & Sons* v. *Federal Trade Commission*, 158 F. 2d 74 (C.A. 6, 1946); *Modernistic Candles, Inc.* v. *Federal Trade Commission*, 145 F. 2d 454 (C.A. 7, 1944); *Lichtenstein* v. *Federal Trade Commission*, 194 F. 2d 607 (C.A. 9, 1952). In answer to a similar argument in *R. B. James* v. *Federal Trade Commission*, 253 F. 2d 78 (C.A. 7, 1958), the Court expressed itself as follows:

> Overlooking, when not denying, Congressionally authorized Commission functions and aims, these petitioners, in substance, claim an unrestricted right to use interstate commerce channels for flooding the states with punchboards. Because petitioners themselves do not participate in the ultimate sales of punches over store counters to individual consumers within a state, petitioners ask for immunization from §5(a)(1). To describe their position posits the refutation of it. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U.S. 483 (1922).

Respondents also contend that the hearing examiner has ignored the effect of local laws that permit the use of punchboards in merchandising. The hearing examiner's order is limited to the prevention of the sale and distribution of these lottery devices in interstate commerce and is not concerned with that part of the merchandising transaction which takes place locally. As stated by the court in *Royal Oil Corporation* v. *Federal Trade Commission*, 262 F. 2d 741 (C.A. 4, 1959), "Unless Congress specifically withdraws authority in particular areas, the Commission, upon its general grant of authority, can restrain unfair business practices in interstate commerce even if the activities or industries have been the subject of leginlation by a state."

Moreover, that such an order is clearly within the authority of the Commission is shown by the provisions of Section 2 of Public Law 906 (15 U.S.C. 24). This law, which forbids the transportation of "gambling devices" in interstate commerce, provides an exception in the case of shipments to any place in any state which has enacted a law providing for an exemption. Section 2 provides that:

> Nothing in this act shall be construed to interfere with or reduce the authority or existing interpretations of the authority of the Federal Trade Commission under the Federal Trade Commission Act as amended (15 U.S.C. 41–58).

The legislative history of this law makes it clear that the purpose of the above-quoted provision is to leave unaffected the au-

thority of the Commission to exclude from channels of interstate commerce devices to be used in the sale or distribution of merchandise by lottery methods. S. Rep. No. 1482, 81st Cong., 2nd Sess. (1950); H.R. Rep. No. 2769, 81st Cong., 2nd Sess. (1950).

The two remaining arguments by respondents that the furnishing of punchboards to be used in selling merchandise by lottery methods is not violative of the public policy of the United States and that the Commission does not have jurisdiction to prohibit the distribution of punchboards in interstate commerce are rejected upon the authority of *Chas. A. Brewer & Sons* v. *Federal Trade Commission, supra; Lichtenstein* v. *Federal Trade Commission, supra; Globe Cardboard Novelty Co., Inc.* v. *Federal Trade Commission,* 192 F. 2d 444 (C.A. 3, 1951); *Gay Games, Inc.* v. *Federal Trade Commission,* 204 F. 2d 197 (C.A. 10, 1953).

The appeal of respondents is denied and the initial decision will be adopted as the decision of the Commission.

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

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and the Commission having rendered its decision denying the appeal and adopting the initial decision:

It is ordered, That respondents, Peerless Products, Inc., a corporation, and Shirley Maltz, as an officer of said corporation, and Marshall Maltz, 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.

Commissioner Tait not participating.

IN THE MATTER OF

SWANEE PAPER CORPORATION

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

Docket 6927. Complaint, Oct. 31, 1957—Decision, Mar. 22, 1960

Order requiring a large manufacturer of bathroom and facial tissue, household napkins and towels, to cease violating Section 2(d) of the Clayton

Act by such practices as granting one customer, The Grand Union Co.—an eastern supermarket chain with some 340 outlets—the following discriminatory benefits not made available to competitors as a result of the $1,000-a-month fee it paid a New York City outdoor advertiser to have its products advertised on the "Epok Panel" portion of the chain's spectacular sign at 46th St. and Broadway, New York City, and for tied-in in-store promotions: (1) valuable advertising on the Broadway spectacular sign at nominal cost, (2) radio and television advertising worth approximately $39,000 and newspaper advertising worth $25,000 in exchange for the advertising time to which it was entitled on the Epok Panel, and (3) cash payments of more than $14,600.

Mr. Donald R. Moore and *Mr. Charles J. Steele* supporting the complaint.

Arnold, Fortas & Porter, by *Mr. G. Daune Vieth*, of Washington, D.C., and *Moses & Singer*, of New York, N.Y., for respondent.

Initial Decision of John Lewis, Hearing Examiner

Statement of Proceedings

The Federal Trade Commission issued its complaint against the above-named respondent on October 31, 1957, charging it with having violated the provisions of subsection (d) of Section 2 of the Clayton Act, as amended (15 U.S.C. Section 13). A copy of said complaint with notice of hearing was duly served upon respondent. Said complaint, in substance, charges respondent with having made discriminatory payments to or for the benefit of certain of its customers, which were not made available on proportionally equal terms to other competing customers, as compensation or in consideration for services or facilities furnished by or through the favored customers. Among the discriminatory payments charged is one involving The Grand Union Company, to which, or for whose benefit, it is alleged respondent paid substantial sums of money for services and facilities furnished in the form of advertising respondent's products on an illuminated sign leased and controlled by Grand Union, and in the form of in-store promotional displays. Following service of the complaint upon it, respondent appeared by counsel and filed answer to such complaint denying, in substance, the violations charged.

Following the holding of a pre-trial conference on February 3, 1958, and a series of postponements to enable counsel for the parties to negotiate a stipulation covering the material facts in the proceeding, a hearing was held on June 19, 1958, in Washington, D.C. At said hearing a stipulation of facts was spread upon the record, in lieu of the calling of witnesses, and a number of documentary

exhibits were offered, subject to objection by respondent as to the receipt of several documents on the grounds of relevancy and materiality. All of the documents were received in evidence, subject to a motion to strike three of said documents. Counsel for both sides rested their case at the conclusion of said hearing, after having participated in the hearing and being afforded full opportunity to be heard.

Pursuant to leave granted, proposed findings together with supporting briefs or memoranda were thereafter filed by counsel supporting the complaint and counsel for respondent. Counsel were also permitted to file replies to the proposals and briefs filed by opposing counsel. The examiner has carefully reviewed the proposed findings, briefs and replies filed by counsel. Proposed findings which are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters.

Upon the entire record in the case, the hearing examiner makes the following:

FINDINGS OF FACT

1. Swanee Paper Corporation (formerly known as National Paper Corporation of Pennsylvania) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania. Its principal office and factory are located at Ransom, Pennsylvania. It is engaged in the business of manufacturing and selling certain paper products, including bathroom (toilet) tissue, household towels, facial (cleansing) tissue and napkins. It sells and distributes said products in commerce, as "commerce" is defined in the Clayton Act, as amended, to customers, including grocers and grocery chains located in the New York City metropolitan area, which includes the parts of New Jersey and Connecticut adjacent to New York City. Respondent's sales are substantial, exceeding $7,000,000 in the fiscal year ending October 31, 1955.

2. Among respondent's customers is The Grand Union Company (herein called Grand Union) which operates a chain of approximately 340 retail food stores in New York, New Jersey, Connecticut, Pennsylvania, Vermont, and other states. Some of respondent's other customers located in the New York City metropolitan area compete with Grand Union in the sale of respondent's products. Net sales to Grand Union by respondent in the years from 1953 to 1956 were as follows:

Year	*Net sales to Grand Union*
1953	$222,752.45
1954	226,284.75
1955	285,178.58
1956	221,119.66
Total	$995,335.44

3. Douglas Leigh, Inc. (hereinafter referred to as Douglas Leigh) is in the outdoor advertising business with its office located in New York, New York. Between 1952 and 1956 Douglas Leigh was the owner and operator of a "spectacular" advertising sign located on the northeast corner of Broadway and 46th Street in the Times Square area of New York City, and the owner of the leasehold on the realty on which the sign was located. The sign was in large part a fixed, illuminated sign. On its lower right-hand side was erected a novel and unusual panel consisting of a bank of timed electric lamps against a black background used for the projection and display of animated advertising cartoons. This panel was known as the "Epok Panel."

4. Sometime in 1952 Douglas Leigh made a proposal to Grand Union with respect to the use and occupancy of the electric spectacular sign on Broadway. The exact date when negotiations were entered into does not appear from the record. However, it does appear that on August 6, 1952, Grand Union accepted a written proposal submitted by Douglas Leigh offering to Grand Union "the use and occupancy of our combined electric spectacular and animated cartoon display located at 1552–1554 Broadway, New York City." For purposes of this proceeding the following are the material portions of the offer made by Douglas Leigh and accepted by Grand Union.

a. The display which was being offered for the "use and occupancy" of Grand Union was described as being composed of "three units," (1) an illuminated roof bulletin, (2) a north panel and (3) a south panel, including an "electronic animated cartoon panel." The agreement stated that the "entire three-part display * * * would constitute the display as considered herein."

b. The consideration to be paid by Grand Union was the sum of $50.00 and the securing of "the agreements and consents of fifteen (15) participating advertisers to use the south panel animated cartoon part of the display, hereinafter referred to as the 'Epok Panel,' for their advertising on this display, such advertising to be approved by you."

c. The term of the agreement was stated to be for a period of one year from the date of its full operation (which was estimated to begin within 60 days from the date of the execution of the agree-

ment), with an option on the part of Grand Union to renew the agreement for two additional periods of one year.

d. The agreement was subject to cancellation by Douglas Leigh on or before August 15, 1952, in the event Grand Union was not successful in securing signed contracts from fifteen participating advertisers for the use of the Epok panel.

e. The illuminated roof bulletin was reserved for the advertising of a Grand Union for the term of the agreement. The north panel and the Epok panel were to be developed in accordance with layout and copy plans prepared by Douglas Leigh for the approval of Grand Union.

f. The Epok panel was to be in use for participating advertisers 75 percent of the hours of its operation and the remaining 25 percent was to be reserved for the advertising of Grand Union. During each 20-minute period of operation of the panel, participating advertisers were to have 15 minutes and Grand Union five minutes. Grand Union could use its five minutes for its own individual advertising or could elect to use it to advertise a brand of merchandise in which it had an interest, or could exchange the time allotted to it for radio or television advertising.

g. All design, layout and copy to be used on the entire display were to be submitted for approval of Grand Union and would not be used unless approved in writing by Grand Union. The cost of operation of the entire display was to be borne by Douglas Leigh.

5. At or about the time that negotiations were going on between Douglas Leigh and Grand Union with respect to the use and occupancy of the spectacular sign by Grand Union, negotiations were undertaken with respondent regarding its participation in the Epok panel. An agreement for respondent's participation in the sign was signed by it on July 30, 1952 and by Douglas Leigh on August 4, 1952. Respondent's agreement to become a participating advertiser followed conferences, conversations and correspondence between its representatives and those of both Grand Union and Douglas Leigh. The agreement and later renewals thereof were entered into by respondent after discussions with representatives of Grand Union concerning the desirability of using the sign, and were made with the knowledge and approbation of Grand Union. However, it has been stipulated that respondent had no knowledge of the terms of the arrangement between Grand Union and Douglas Leigh at the time it entered into its own contract with the latter, except as revealed in that contract, and that the contract between Grand Union and Douglas Leigh was entered into without any prior commitment, authorization or agreement of respondent.

Pursuant to its agreement with Douglas Leigh respondent agreed "to undertake a participation in the Advertising Service arranged for and to be rendered to The Grand Union Company by Douglas Leigh, Inc." The agreement recited that Grand Union had "leased from Douglas Leigh, Inc., an Electric Spectacular Display located at the northeast corner of 46th Street and Broadway," one part of which it stated was known as the "Epok Panel." The agreement provided for the "use and occupancy of this Epok Panel by and for Participating Advertisers" in accordance with specified conditions, which were:

a. Each participating advertiser would have one period of one minute's duration in each 20-minute period for its advertising.

b. All copy-messages and cartoons to be exhibited on the panel for participating advertisers were "to be approved in advance of being used by Grand Union and only such copy-messages and/or cartoons approved by Grand Union shall be used on the Epok Panel."

c. The term of the agreement was for one year commencing from the first day of full operation of the display. However, the agreement was "[c]onditioned upon the basis that Grand Union Company will have secured fifteen (15) contracts from participating advertisers for the use of the EPOK Panel * * *." In the event fifteen signed contracts for participating advertisers were not secured by August 15, 1952, Douglas Leigh had the right to cancel any contracts of participating advertisers that may have been signed.

d. For its services rendered under the agreement the participating advertisers agreed to pay Douglas Leigh the sum of $1,000 a month.

6. Prior to the expiration of the agreement between Douglas Leigh and Grand Union, Douglas Leigh advised Grand Union, by letter dated August 20, 1953, that the "first year of your existing Grand Union combined spectacular display on the northeast corner of 46th and Broadway expires on December 9, 1953," and proposed that the original contract be renewed for a second year upon the same terms and conditions as the existing contract, except for certain modifications, which Grand Union accepted. The modifications were:

a. Instead of there being fifteen participating advertisers having one minute of advertising, each, per 20 minutes, with five minutes being reserved for Grand Union's advertising, there would be twenty participating advertisers, each to have a minute of advertising for each twenty minutes.

b. In lieu of the five minutes of advertising available for Grand Union's use under the original agreement (which it had the right

to use for its own advertising or to trade for television or radio advertising) Grand Union was to receive monetary compensation on the basis of five percent of all monies which Douglas Leigh received as monthly rental from the first fifteen participating advertisers, and all monthly rentals paid by the remaining five advertisers (after deducting Douglas Leigh's commission).

7. By letter-agreement dated December 13, 1954, the arrangement between Douglas Leigh and Grand Union was renewed for a third year to run from January 1, 1955 through December 31, 1955. The agreement was renewed on the same terms as the original agreement of August 6, 1952, as modified by Douglas Leigh's letter of August 20, 1953. The December 1954 agreement gave Grand Union a further option to renew the arrangement for one year at a time for the next five years, from 1956 through 1960.

8. In December 1953 respondent advised Douglas Leigh that it did not intend to renew its participation on the sign. Douglas Leigh advised Grand Union of this fact and suggested that Grand Union might be successful "in securing a reversal" of this decision. There were contacts thereafter between representatives of respondent and representatives of Douglas Leigh and of Grand Union, following which respondent did enter into a contract to participate in the sign for another year, and did so participate. The renewal agreement was signed by respondent on February 16, 1954, and was substantially the same as the original agreement entered into with Douglas Leigh. The only change which need be noted is that made necessary by the fact that the contract between Douglas Leigh and Grand Union had been modified so as to provide for twenty participating advertisers on the Epok panel, instead of fifteen. The renewal agreement stated that it was "[c]onditioned upon the basis that Grand Union will have secured agreements from twenty (20) participating advertisers for the use of the Epok Panel," and that in the event the twenty signed contracts were not secured from participating advertisers by January 1, 1954, Douglas Leigh would have a right to cancel any existing contracts with participating advertisers.

9. Sometime prior to September 8, 1955, respondent advised Grand Union that "because of pressure from other concerns," including customers of respondent who were competing with Grand Union, that it would be unable to renew its participation on the sign for another year. However, following further contacts between representatives of respondent and representatives of Douglas Leigh and of Grand Union, respondent did agree to participate on the sign for another year. The third agreement was signed by respond-

ent on February 16, 1956. The new agreement was substantially the same as the earlier two agreements, except that the reference in the earlier agreements to the fact that Grand Union had leased the sign from Douglas Leigh and that all copy-messages, cartoons, etc., to be exhibited on the Epok panel had to be approved in advance by Grand Union, were eliminated from the agreement. The agreement provided for approval of copy by Douglas Leigh, instead of by Grand Union. The reference to the agreement's being conditioned on Grand Union's securing of a specified number of participating advertisers was also dropped and provided for the securing of participating advertisers by Douglas Leigh instead.

10. Although the original agreement between Grand Union and Douglas Leigh, which was entered into on August 6, 1952, estimated that the sign would go into operation within 60 days, and the agreement between respondent and Douglas Leigh provided that the sign would begin operating between August 15 and September 30, 1952, the sign did not actually go into operation until December 1952. The record does not indicate whether this was due to the difficulty of obtaining the requisite number of participating advertisers or what the reason for the delay was. In any event, prior to the commencement of the operation of the sign, on November 28, 1952, Grand Union issued a statement, purporting to be a joint press release by it and Douglas Leigh, describing the arrangement as: "A new venture in cooperative advertising * * * to promote Grand Union and fifteen different food products." The release described the sign as including a "30-foot replica of the Grand Union identification tower" and "an electronic animated cartoon panel." Among the fifteen products listed as "cooperating in the plan" were "Swanee Tissues." The release further referred to the fact that the "joint effort with fifteen of our manufacturers is a natural step which follows the success of cooperative radio and television show * * *." Reference was also made in the release to the fact that Douglas Leigh was "already working on cooperative signs for food chains in other key cities."

11. An advertising brochure with reference to the sign was also prepared by or under the direction of Douglas Leigh. The brochure referred to the sign as "The Grand Union Spectacular" and contained reprints of a number of newspaper articles, some of which referred to the sign as a "Grand Union Sign," or as part of a "new cooperative outdoor advertising program." While respondent did not specifically authorize or participate in the preparation, circularization or distribution of the Grand Union release or of the advertising brochure, it did receive a copy of the brochure from

Douglas Leigh in February 1953. Its representatives were familiar with the appearance of the entire sign throughout the period of its participation thereon.

12. A copy of the advertising brochure was also sent to respondent's broker, Frederick Gash who, on February 11, 1953, addressed a letter to Douglas Leigh stating that he found the brochure "objectionable in every respect." The primary basis of the objection was stated to be that the sign "is not a Grand Union sign—it is a Douglas Leigh sign with participating sponsors including Grand Union." The writer objected to the fact that Douglas Leigh's brochure "has now established the sign as a Grand Union Co-op deal and not a straight advertising proposition comparable to NBC's chain lightning or Storecast." The letter further stated that as a result of the publicity "every sponsor is now being put on the carpet by Grand Union's competition. And they are right because it has now been made as clear as daylight that Grand Union has given a preference." The letter concluded with the statement that Grand Union "was having trouble getting sponsorship because of the co-op angle" and that the writer's four sponsors on the sign, including respondent, were "now in jeopardy."

It has been stipulated that Gash was not specifically authorized, on behalf of respondent, to write the letter or to make any of the statements contained therein and that respondent did not ratify the letter and had no knowledge of its existence. Gash is an independent food broker and not an employee of respondent. The sales of respondent's products in the New York metropolitan area are negotiated by Gash. Gash also represents a number of other suppliers of products sold in grocery stores.

13. By interoffice memorandum dated November 2, 1953, respondent's broker, Gash, submitted to respondent's president an analysis of respondent's sales to Grand Union in the ten-month period ending October 31, 1953, as compared with the ten-month period ending October 31, 1952. The memorandum and an attachment thereto indicated that respondent had increased its sales to Grand Union by some 13,400 cases of tissue "since you went into the Broadway Sign deal and because of the various merchandising display deals." The memorandum also referred to the amount which respondent had paid out for the sign and "in various display and cooperative advertising deals," and expressed the opinion that the Grand Union account "is too costly for the amount of business we are doing with them." It suggested that the solution was not to cut down on the amount of money being spent on the Grand Union account but to increase the amount of business so as to justify the expense.

A copy of the above memorandum was sent to Grand Union by Gash in a letter dated November 2, 1953, preparatory to a conference between respondent's president and an official of Grand Union. The letter referred to the fact that Grand Union "today is the costliest account that National Paper has on its books. It costs them too much money for the amount of business they get." It was suggested that the solution was to increase the amount of business from Grand Union, rather than to cut down on the program with Grand Union.

14. As already indicated, the so-called spectacular sign consisted of three portions. The first, which was referred to as the "illuminated roof bulletin," was a stationary sign containing an illuminated replica of a Grand Union store with the illuminated legend "Save at Grand Union Food Markets." It hung directly over the so-called south panel containing the Epok panel. The second part of the sign, referred to as the "north panel," contained the fixed illuminated legend "Your Dollar Buys More at Your Grand Union Store." The third portion of the sign, which was referred to as the "south panel," contained the electronic animated cartoon panel known as the "Epok Panel" in the center thereof, above which was a stationary panel bearing the legend "For Grand Values," and below which was another panel with the illuminated legend "Grand Union Food Markets." The entire sign gave the appearance of being a single display.

15. The animated cartoon advertisements of respondent's products on the Epok Panel were concerned only with the products themselves and respondent's trade name, and did not mention or show the name or place of business of any customer of respondent which sold the product. However, as indicated above, other portions of the south panel as well as other portions of the sign above and adjacent to the Epok panel made it apparent that such products were for sale at "Grand Union Food Markets."

16. During the period when respondent's products were advertised in animated cartoons on the Epok panel, the products and services of a number of other firms were also advertised by similar animated cartoons. With the exception of advertisers with whom Grand Union had traded portions of its allotted five-minute periods, as provided under its contract with Douglas Leigh, all of the firms which participated in the panel were firms which manufactured or sold products commonly sold in or through grocery stores, and which were, in fact, sold in Grand Union stores. All such grocery advertisers using animated cartoon advertising on the Epok panel paid to Douglas Leigh the same rate as paid by respondent.

17. The total amount paid by respondent to Douglas Leigh under the three contracts referred to above was $47,500. These payments were made by respondent to its advertising agency and were transmitted by that agency to Douglas Leigh. This was the same procedure that respondent followed in connection with payments on its advertising contracts with other advertising media. It has been stipulated that if an official of respondent had been called as a witness he would have testified that the advertising benefits to respondent from the anmiated cartoon advertising on the Epok panel were, in respondent's judgment, equal to the payments of $1,000 per month therefor.

18. The last contract which was entered into by respondent with Douglas Leigh in February 1956 was cancelled, effective December 31, 1956, and since that date respondent has not been a party to any contract or arrangement providing for the advertising of its products on the spectacular sign, and its products have not been so advertised. Respondent's products were advertised on the spectacular sign throughout the period from December 10, 1952, to December 31, 1956, except for the period from January 1 to February 15, 1954.

19. There was no similar sign in the Times Square area bearing the name of any other of respondent's customers on which respondent could have contracted for advertising during the period from 1952 through 1956, and respondent did not enter into similar contracts with respect to, or make payments for, advertising on signs which bore the names of any of its other customers. Respondent's participation in the Broadway spectacular sign was something entirely apart from its other advertising and promotional program, and the money paid for participation in the sign was not charged against the amounts that Grand Union would qualify for under respondent's established advertising and promotional program. Customers of respondent competing with Grand Union did not receive and were not offered the advertising and payments received by Grand Union, as hereinafter found, or anything of value in lieu thereof.

20. As a result of the operation of the sign under the contract with Douglas Leigh, Grand Union received from Douglas Leigh, between July 1954 and February 1955, $14,633.28. In addition, time and space trades were made by Grand Union with other advertisers, pursuant to its original contract permitting Grand Union to exchange its five-minute advertising period with others. Such trades were made with WCBS-TV, Il Progresso Newspaper, and WRCA-TV. In the case of WCBS-TV and WRCA-TV, Grand Union

received, in exchange for the use of parts of the five one-minute periods to which Grand Union was entitled, broadcasting time at "card rates" (standard rates) equivalent to the spectacular sign time, the value of which was computed at the rate of $1,000 for one-minute per twenty-minute cycle per month. The computed value of the spectacular sign time was about $39,000, and Grand Union received at "card rates" approximately $39,000 worth of broadcasting time.

In the case of Il Progresso, an arrangement was made under which Grand Union was to receive, in exchange for use of part of the one-minute periods to which Grand Union was entitled, a credit against the cost of advertising space in Il Progresso, taken at the rate of 30¢ a line. The arrangement was that Il Progresso should receive one minute of the twenty-minute cycle, the value of which was computed at the rate of $1,000 a month, and in exchange Grand Union was to receive 1,000 lines of advertising space a week, paying approximately $50.00 a week to Il Progresso to make up for the difference between the values exchanged.

21. As part of the discussions with Grand Union concerning respondent's becoming a participant on the Broadway spectacular sign a schedule of in-store promotions was arranged with Grand Union to tie in with respondent's use of the spectacular sign. Such promotions continued during the period of respondent's participation on the sign. There was no separate charge by Grand Union for such in-store promotions, nor was any separate payment therefor made to Grand Union by respondent.

CONTENTIONS AND CONCLUSIONS

In order to establish a violation of Section 2(d) it is necessary to show (1) that respondent in the course of commerce made a payment "to or for the benefit of a customer," (2) that such payment was "compensation or in consideration for any services or facilities furnished by or through such customer" in connection with the handling of respondent's products, and (3) that such payment was not made "available on proportionally equal terms" to other customers competing with the favored customer. Respondent contends that there has been no showing that the payments which it made to Douglas Leigh were "for the benefit of" its customer, Grand Union, or that such payments were "compensation or in consideration for any services or facilities furnished by or through" Grand Union. No question has been raised as to the third element of the offense, nor with respect to the existence of interstate commerce.

Respondent's argument consists largely of an attempt to distinguish this case from the so-called *Chain Lightning* cases (nine companion cases, Dockets 6592–6600), in which the Commission held a somewhat similar arrangement to be a violation of Section 2(d). Like the instant proceeding, those cases also involved two separate sets of contracts, one between various broadcasting companies and certain grocery chains, and the other between the broadcasting companies and various suppliers of the grocery chains. The contracts between the broadcasting companies and the grocery chains provided for the furnishing of radio and television broadcast time to the chains, in return for their agreement to conduct promotional displays of the products of various manufacturers to be named by the broadcasting companies. The contracts between the broadcasting companies and the manufacturers provided for the purchase of broadcasting time by the manufacturers. While there was nothing in the latter contracts with regard to in-store promotions, separate brochures issued by the broadcasting companies advised prospective advertisers that they would receive such promotions because of the separate contracts with the chains. The Commission held, in essence, that despite the existence of separate contracts, the entire arrangement was part of a single, unified plan in which the suppliers' payments were made for the benefit of the grocery chains, in that they paid for the broadcast time received by the chains from the broadcasting companies, and were made not only in consideration of the advertising received by the suppliers from the broadcasting companies, but in return for the in-store promotions which the grocers had undertaken to supply in their contracts with the broadcasting companies.

Respondent seeks to distinguish this case from the *Chain Lightning* cases mainly on the ground that the brochures which the broadcasting companies furnished to the suppliers gave them notice of the fact that they would receive the benefit of the in-store promotions, which the chains were obligated to furnish under their separate contracts with the broadcasting companies, and that it was clear from such brochures that the supplying of the in-store promotions was a part of the consideration for the suppliers' entering into their contracts with the broadcasting companies. Respondent contends that in this case it had no knowledge of the separate arrangements between Grand Union and Douglas Leigh, that "so far as respondent knew, Grand Union was paying full rates in cash" for its space on the "stationary parts of the sign," that respondent was paying only for what it considered to be the advertising value of its space on the Epok panel, and that Grand Union was under

no legal obligation to furnish the in-store displays but did so because of an alleged practice in the grocery industry for retailers to capitalize on the special advertising campaigns of their suppliers in order to increase their own sales.

Respondent's argument, in essence, is that since it had no knowledge of the terms of the separate arrangements between Douglas Leigh and Grand Union, the payments which it made were not made with the intent of benefiting Grand Union but were, rather, made for the purpose of paying for its own advertising, and that Grand Union furnished no service to respondent in consideration of respondent's payments because it was under no legal obligation to respondent to furnish the in-store promotions. The short answer to respondent's argument is that since the filing of its proposed findings and briefs in this case a similar argument, which was addressed to the Third Circuit Court of Appeals in two of the *Chain Lightning* cases, (*P. Lorillard Co.* v. *FTC*, and *General Foods Corp.* v. *FTC*, June 4, 1959, 27 Law Week 2635), has been held to be without merit. In addressing itself to what it understood to be the argument of petitioners, viz., that a payment cannot be considered for the benefit of a third person "unless the seller makes it with the intention of benefiting the customer or has reason to know that some direct benefit to the customer will proximately result therefrom," the court stated:

> This section of the Act does not concern itself with motive or intention. It is only concerned with the consequences which flow from an act. If those consequences eventuate, the act from which they result is forbidden.

Cited with approval by the court in the *P. Lorillard* case was the earlier decision of the Seventh Circuit in *State Wholesale Grocers* v. *The Great Atlantic & Pacific Tea Co.*, 258 F. 2d 831, 837 (C.A. 7, 1958), cert. denied, sub nom. *General Foods Corp.* v. *State Wholesale Grocers*, 358 U.S. 947 (1959), in which the district court (154 F. Supp. 471) had dismissed the complaint on the ground that the advertisement paid for by the supplier was purchased primarily for the supplier's own benefit and not for that of the grocery chain. The circuit court, in reversing, stated (at 837):

> The *fact* of paying or contracting for the payment for the services or facilities referred to is proscribed * * *. It is apparent that Congress has not made relevant the motive or intent of him who thus pays or contracts to pay. * * * We believe that the district court erred in relying upon the fact that it found that there was no evidence of any ulterior *motive* on the part of defendant suppliers * * * nor that said suppliers had *intended* to favor A & P over other customers.

In the *Lorillard* case the court also made the following pertinent observation with respect to the argument that the legality of the

arrangement must be determined on the basis of the principles of private contract law and the separateness of each of the agreements:

> The petitioners' position is bottomed on the assumption that in deciding whether a violation of the statute has occurred the Commission must restrict itself to an assessment of the consequences which flow from a written contract by the application of formal principles which a court would be required to apply in an action between the contracting parties. If, however, we keep in focus *the real question involved*, that *is whether the petitioners have made payments to someone which actually are of benefit to their customers and not whether they have bound themselves to do so by a legally enforceable contract*, it is readily apparent that petitioners' position is untenable. [Emphasis supplied.]

On this basis is seems clear that respondent has violated Section 2(d). The payments made by respondent (and the other participating advertisers) to Douglas Leigh were actually of substantial benefit to Grand Union, irrespective of whether respondent intended to benefit Grand Union or made them because it thought the advertising value of having its products flashed on the Epok panel was worth the $1,000-a-month fee which it paid. The benefits received by Grand Union included (1) valuable advertising on the Broadway spectacular sign at nominal cost, (2) valuable advertising in other media (in exchange for the advertising time to which it was entitled on the Epok panel) consisting of radio and television advertising worth approximately $39,000, and newspaper advertising worth approximately $25,000, and (3) cash payments amounting to $14,633.28. The services or facilities furnished by or through Grand Union to respondent, as compensation or in consideration for the payments made by respondent, were (1) advertising on the Epok panel and (2) in-store promotions in Grand Union retail stores. In connection with Grand Union's furnishing of the latter, it makes little difference whether, as stated by the court in the *Lorillard* case, they had "bound themselves to do so by a legally enforceable contract."

The foregoing conclusions, based on the logic of the holding of the courts of appeals in two of the *Chain Lightning* cases and in the *State Wholesale Grocers* case, are made without regard to whether respondent had any knowledge of the separate arrangement between Grand Union and Douglas Leigh or intended to benefit Grand Union. However, it is noted that in the *Chain Lightning* decision the court, while observing that the Commission had gone "further than required" in finding that respondent knew or should have known that it was supplying the consideration for the benefits received by the favored chain stores, nevertheless, considered the Commission's findings as to knowledge and, by way of dicta, up-

held such findings. While it would appear to be unnecessary in this case to make any specific findings on the question of knowledge and intent, in view of what the examiner considers to be the essential holding in the *Chain Lightning* case, the examiner will, nevertheless, make specific findings in this regard in order to avoid any doubt which may exist. The examiner entertains no doubt as to respondent's notice or knowledge in this case, or of its intention to confer a benefit on Grand Union. To a consideration of the reasons for this conclusion the examiner now turns.

There is no question but that the Broadway spectacular sign was a Grand Union sign, that it was understood by respondent as being a Grand Union sign, that respondent knew it was contributing to a cooperative advertising arrangement from which Grand Union was receiving a substantial benefit, and that it entered the arrangement in part at least because of its expectation of receiving the benefit of in-store promotions. The very contract between respondent and Douglas Leigh spelled out the fact that Grand Union had leased the entire sign, and not merely the "stationary portion" thereof as respondent contends. The agreement recited that Grand Union had leased "an electric spectacular display" and identified it as having one section "known as the Epok Electronic Animated Cartoon Panel" on which respondent would participate. The fact that respondent's advertisements were to appear on the Epok panel in no way detracts from the fact that the entire sign had been leased to Grand Union, nor does it indicate that the latter would not have dominion over the Epok panel. On the contrary, the agreement entered into by respondent specifically stated that all messages on the panel were to be approved in advance by Grand Union and that only such messages as had been approved by Grand Union could be used on the panel. The publicity with regard to the sign identified it as a Grand Union sign, including the brochure prepared by Douglas Leigh which described the sign as "The Grand Union Spectacular."[1] The very appearance of the sign cried out to all who observed it that it was a Grand Union sign. The name Grand Union dominated all three panels of the sign. The products advertised on the Epok panel were unmistakably identified as products which were on sale in Grand Union Food Markets.

Since the sign was, to respondent's knowledge, a Grand Union sign, it is self-evident that it knew its contribution was helping to support, in part at least, an advertising project from which

[1] While respondent may not have seen the Douglas Leigh brochure until after it had signed the first contract, it was undoubtedly familiar with it by the time it had entered into the second and third contracts renewing the arrangement.

Grand Union was benefiting. In fact, it knew that but for its contribution and that of the other participating advertisers the project would not go into operation. This is clear from the provision in its contract with Douglas Leigh that Grand Union had undertaken to secure signed contracts from fifteen (later twenty) advertisers, and that its own contract with Douglas Leigh would not take effect unless and until Grand Union had secured the cooperation of the prescribed number of other suppliers. While it may not have known all of the terms of the separate contract between Grand Union and Douglas Leigh, it certainly knew that Grand Union would receive valuable advertising benefits from being on the sign, and that such benefits were dependent on the support it received from respondent and other suppliers whom it sought to interest in the sign. In addition to the wording of its contract, the active participation by Grand Union in respondent's negotiations with Douglas Leigh and the fact that it twice induced respondent to renew its arrangement with Douglas Leigh in the face of respondent's obvious reluctance to do so, must have made it clear to respondent that Grand Union was receiving substantial benefits under the arrangement.

The examiner is not unaware that in the last renewal of the contract between Douglas Leigh and respondent there was a modification in the wording of the contract, so that all reference to Grand Union was dropped. This is not surprising, however, in the face of the publicity which had been given to the sign as a Grand Union sign and to the fact that the arrangement was being referred to in the industry as a cooperative deal.[2] In the light of the criticism received by both Douglas Leigh and respondent regarding the arrangement, it is not surprising that those references in the contract which tended to identify the sign as a Grand Union sign and pointed up the cooperative nature of the arrangement were dropped. This does not, however, detract from the notice and knowledge which

[2] Respondent objected to the receipt in evidence of, and has moved to strike, the letter from respondent's broker to Douglas Leigh expressing concern that the publicity issued by Douglas Leigh had "established the sign as a Grand Union Co-op deal and not a straight advertising proposition." Respondent contends that since there is no showing that the broker was authorized to write the letter, it is not admissible as a vicarious admission by respondent. While the stipulation between counsel reserved the right to object to documents only on the grounds of relevancy and materiality and not on the grounds of hearsay and competency, the examiner is not receiving the document as being in the nature of a vicarious admission, but as a document which was received by Douglas Leigh expressing concern that the true nature of the arrangement had been revealed and which, presumably, Douglas Leigh took into account in the later revision of the contract. It is also noted that respondent had also been reluctant to renew the arrangement because of the pressure from other customers who apparently viewed the arrangement as one benefiting Grand Union. It may be assumed that both Douglas Leigh and respondent took such criticism into account in the last revision of the contract. The motion to strike is accordingly denied.

respondent already had but, on the contrary, is indicative of an intent to cover up the visible indicia of such knowledge.

Even assuming, arguendo, that Grand Union may be deemed to have leased only the stationary parts of the sign, and that respondent intended to pay only for its own advertising on the Epok panel and considered the advertising benefit received by it to be worth what it paid, this does not change the essential nature of the arrangement as a cooperative advertising venture. Grand Union received the benefit of the sign as a whole even if, as respondent contends it thought, Grand Union was paying the going rate in cash for its advertising on the stationary portions of the sign. The entire display was a single advertisement from which respondent received a substantial benefit, and it is unrealistic and artificial to attempt to segregate the benefits as between the stationary portions and the Epok panel. The situation would be no different than the usual cooperative newspaper advertising arrangement, in which the grocer and supplier both contribute to the cost of a single advertisement featuring the name of the store and the products of the supplier. In such instances the advertisement is considered to be a unitary advertisement and the grocer is considered to be receiving a benefit from the entire advertisement. An advertising allowance is no less for the benefit of a customer because the supplier receives a substantial, or even the primary, benefit from the advertisement. *State Wholesale Grocers* v. *The Great Atlantic & Pacific Tea Co.*, *supra*. The only difference in this case from the usual cooperative advertising situation is that the supplier made his payment to a third person, rather than to the grocer for transmission to a third person (either a newspaper, a magazine or a broadcasting company). However, this difference is immaterial since the statute does not require that the payment be made "to" the customer. It is sufficient if it is made "for the benefit of" the customer.

It is also clear that respondent was aware that the payment which it was making would yield to it services or facilities furnished by or through Grand Union, viz., the right to advertise its products on the Grand Union sign and to receive the benefit of in-store promotions. The fact that it would receive the former is self-evident and needs no further discussion. Respondent's argument as to the latter, that Grand Union was under no legal obligation to furnish the in-store promotions, places a premium on form over substance. It is clear from the discussions between respondent and Grand Union, which took place prior to respondent's entering into the contract, regarding the furnishing of in-store promotions to

respondent, and from the fact that a schedule of such promotions was actually arranged to tie in with the advertisements on the Epok panel, that such in-store promotions were an actual part of the arrangement whether spelled out in legally binding form or not. There is no evidence of the so-called custom to which respondent makes reference of grocers permitting suppliers to set up displays without charge, and even if there were, it is clear that the arrangement made here had nothing to do with any such custom but was part of the warp and woof of respondent's agreement to go on the sign.

When reduced to its essence, respondent's argument, as in the *Chain Lightning* cases, is based on the technicalities of private contract law and seeks to make the form of the arrangement, rather than its substance, the crucible for testing its legality. It seems clear from what the parties were trying to accomplish that a Section 2(d) violation was inevitable, irrespective of what form the agreement took (unless the suppliers made equivalent arrangements with other customers). If Douglas Leigh had leased the sign to Grand Union and the latter had undertaken the responsibility of entering into contracts with its suppliers for the use of the panel, there would have been an obvious violation of law since the payments by the suppliers would clearly be *to* Grand Union and would be in return for advertising services received by the suppliers. Presumably such an arrangement would not have been acceptable to Grand Union since it would have been saddled with the initial and primary financial responsibility for the sign. An alternative was to lease the sign to Grand Union for a nominal consideration and have it procure suppliers to participate on the sign but have them make payment to Douglas Leigh, thus relieving Grand Union of any substantial financial obligation. Had a single contract been entered into among all parties, the nature of the arrangement as a cooperative advertising venture for Grand Union's benefit would have been revealed, even though payments by the suppliers were made to Douglas Leigh. Consequently the idea of splitting the arrangement into two separate groups of contracts suggested itself as the apparent solution. Presumably the parties thought that what would otherwise be illegal would become legal by the magic of using separate contracts. However, no amount of legal obfuscation can hide the basic purpose or effect of the arrangement as a cooperative advertising venture between Grand Union and its suppliers. The examiner entertains no doubt from the entire context of events that respondent was aware of, and understood, the basic nature of the arrangement into which it entered.

The only issue remaining is that with regard to whether an order should issue in view of respondent's discontinuance of the practices involved 10 months before the issuance of the complaint herein. While not urging this as a ground for dismissal at the hearing or in its proposed findings or brief filed in support thereof, respondent has raised it in its reply brief in apparent response to an argument made in the brief of counsel supporting the complaint (who apparently anticipated that respondent might urge dismissal on this ground). Counsel supporting the complaint oppose dismissal on such ground for the reason that the practice was not discontinued until after investigation was begun, and that there has been no showing of facts of an unusual nature which require a dismissal of the complaint in the interests of justice.

While the record does not disclose when the practice was discontinued with reference to the date of investigation, respondent apparently concedes that it did so after investigation of the practice had begun, and bases its argument for dismissal on the ground of the lack of likelihood that the practice will be resumed. In the opinion of the hearing examiner there has been no showing of such unusual or exceptional circumstances by respondent, as to warrant a dismissal of the complaint on the ground that respondent has discontinued the practices alleged therein. *Sheffield Merchandise, Inc.*, Docket 6627, July 7, 1958; *Ward Baking Co.*, Docket 6833, June 23, 1958.

CONCLUDING FINDINGS

It is concluded and found that (1) respondent has in the course of commerce paid or contracted to pay something of value for the benefit of a customer, to wit, Grand Union; (2) such payment was for the benefit of Grand Union, in that as a result thereof Grand Union received valuable advertising on the Broadway "spectacular" sign, valuable advertising in other media in exchange therefor and substantial cash returns; (3) such payment was compensation or in consideration for services or facilities furnished by or through Grand Union to respondent, in connection with the handling, sale or offering for sale of products manufactured by respondent, such services or facilities consisting of the advertising of respondent's products on the Broadway "spectacular" sign and in-store promotions in Grand Union stores; and (4) the payments or consideration made or furnished by respondent were not available on proportionally equal terms to all other customers of respondent competing in the distribution of its products with Grand Union.

CONCLUSION OF LAW

The acts and practices of respondent, as above found, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson Patman Act (15 U.S.C. Section 13).

ORDER

It is ordered, That respondent Swanee Paper Corporation, a corporation, its officers, employees, agents or representatives, directly or through any corporate or other device, in connection with the sale or offering for sale in commerce (as "commerce" is defined in the Clayton Act) of paper products, do forthwith cease and desist from:

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having been heard by the Commission on the respondent's appeal from the hearing examiner's initial decision; and

The Commission having considered the entire record, including the briefs and oral arguments of counsel for respondent and counsel in support of the complaint, and having determined that the hearing examiner's findings and conclusions are fully substantiated on the record and that the order contained in the initial decision is appropriate in all respects to dispose of this matter:

It is ordered, That respondent's appeal be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision filed August 18, 1959, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondent, Swanee Paper Corporation, a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order contained in said initial decision.

Commissioner Tait not participating.

IN THE MATTER OF

THE DAHLBERG COMPANY, ET AL.

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

Docket 7455. Complaint, Mar. 31, 1959—Decision, Mar. 22, 1960

Consent order requiring Minneapolis manufacturers to cease representing falsely in advertising in newspapers, magazines, etc., and by advertising mats, brochures, and other promotional material supplied to their dealers, that their "Miracle Ear," "Solar Ear," and "Optic Ear" hearing aids were buttonless, cordless, and invisible; and that the "Miracle Ear" device provided equally good hearing from all directions and was smaller than was the fact.

Mr. Morton Nesmith for the Commission.

Levitt, Palmer and Rogers, by *Mr. John M. Palmer*, of Minneapolis, Minn., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On March 31, 1959, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the manufacture, sale and distribution of hearing aids, including those designated as "Miracle Ear," "Optic Ear," and "Solar Ear."

On July 9, 1959, a hearing was held in Minneapolis, Minnesota, to take testimony in support of the allegations of the complaint. On December 28, 1959, respondents and their counsel and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist, which disposes of the allegations of the complaint in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

It is set out in the agreement that respondent Ralph Campagna who was, until September 18, 1959, an officer of respondent corporation, resigned and severed his connections with respondent corporation. It is agreed that the complaint should be dismissed as to this respondent in his official capacity or as an officer of said corporation, but not individually.

It is also set out in the agreement that the charge contained in the complaint in subparagraph 7 of paragraph 5, viz:

7. "Respondents were the first to introduce the heat powered hearing aid such as the Solar Ear" cannot be sustained, and that

The charges contained in the complaint in subparagraphs 4, 5 and 8 of paragraph 5 of the complaint, viz:

4. "Their Optic Ear and Miracle Ear hearing aids will enable persons suffering from hearing loss to hear more naturally than they would by using competitive hearing aids of similar types."

5. "Their Optic Ear is the only eyeglass type hearing aid with full transistor power for one or both ears."

8. "The Solar Ear was immediately available to the purchasing public at a price no higher than that of a battery powered hearing aid."

were excerpts from advertisements of respondents' distributors for which respondents are not responsible. It is, therefore, agreed that all of the above charges should be dismissed as well as the traverses set out in paragraph 6 with respect to said charges. The agreement disposes of all other matters in this proceeding as to all parties.

Under the terms of the agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said 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 it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of Section 3.25(b) of the Rules of Practice.

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 as to all parties, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Section 3.21 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 The Dahlberg Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at Golden Valley, Minneapolis, Minnesota.

Respondents Kenneth H. Dahlberg and Arnold R. Dahlberg are officers of the corporate respondent. They formulate, direct and

control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents The Dahlberg Company, a corporation, and its officers, and Kenneth H. Dahlberg and Arnold R. Dahlberg, individually and as officers of said corporation, and Ralph Campagna, individually, 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 hearing aid devices known as the Miracle Ear, the Solar Ear and the Optic Ear, or any other device of substantially the same construction or operation, whether sold under the same or any other designation, do forthwith cease and desist from directly or indirectly:

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

a. There are no buttons, cords or wires attached to their said air conduction hearing aids unless in close connection therewith and with equal prominence it is stated that a plastic tube runs from the device and is attached to an ear mold fitted in the ear.

b. Their hearing aids are invisible when worn.

c. Their hearing aids are hidden behind the ear or concealed within an eyeglass temple, when in fact there is a visible plastic or other type of tube running from the device to the ear; or are worn completely in the ear, except when such is the fact.

d. Their Miracle Ear hearing aid provides true panoramic hearing or equally good hearing from all directions unless the fact is disclosed that it is necessary to wear a hearing aid in each ear.

e. The Miracle Ear is the size depicted in advertisements when the depiction is smaller than the entire Miracle Ear hearing aid, or misrepresenting in any manner the size of any of their hearing aids.

2. Disseminating any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of respondents' products in commerce, as "commerce"

is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in Paragraph One hereof.

It is further ordered, That the charges in the complaint in subparagraphs 4, 5, 7 and 8 of Paragraph 5, viz.,

4. "Their Optic Ear and Miracle Ear hearing aids will enable persons suffering from hearing loss to hear more naturally than they would by using competitive hearing aids of similar types."

5. Their Optic Ear is the only eyeglass type hearing aid with full transistor power for one or both ears."

7. "Respondents were the first to introduce the heat powered hearing aid such as the Solar Ear."

8. "The Solar Ear was immediately available to the purchasing public at a price no higher than that of a battery powered hearing aid."

be, and the same hereby are, dismissed.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Ralph Campagna as an officer of respondent corporation, but not individually.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22nd day of March, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents The Dahlberg Company, a corporation, and Kenneth H. Dahlberg and Arnold R. Dahlberg, individually and as officers of said corporation, and Ralph Campagna, individually, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

SONOTONE CORPORATION ET AL.

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

Docket 7466. Complaint, Apr. 2, 1959—Decision, Mar. 22, 1960

Consent order requiring an Elmsford, N.Y., manufacturer to cease representing falsely in advertising that its hearing aids were cordless, buttonless, and invisible.

Mr. Morton Nesmith supporting the complaint.

Mr. John R. Brook of *Breed, Abbott & Morgan*, of New York, N.Y., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On April 2, 1959 the Federal Trade Commission, pursuant to the provisions of the Federal Trade Commission Act, issued its complaint against Sonotone Corporation, a corporation, and Irving Schachtel, individually and as an officer of said corporation, (hereinafter referred to as respondents) charging said respondents with violating the Federal Trade Commission Act by disseminating false, deceptive and misleading statements and advertisements in selling, offering for sale and distributing hearing aids, which are classified as "devices" and defined as such in the Federal Trade Commission Act. A true and correct copy of said complaint was served upon respondents as required by law. After being served with the complaint, respondents appeared by counsel and entered into an argument dated January 20, 1960, which purports to dispose of all of this proceeding as to all parties without the necessity of conducting a hearing. The agreement has been signed by the respondents, their counsel, and by counsel supporting the complaint; and has been approved by the Director and the Assistant Director of the Bureau of Litigation of this Commission. Said agreement contains the form of a consent cease and desist order which the parties have agreed is dispositive of the issues involved in this proceeding. On January 27, 1960 the said agreement was submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. The agreement, by all of the parties hereto, provides that the complaint herein will be dismissed as to Irving Schachtel individually, but not as an officer of Sonotone Corporation, for the reason that the proof to be adduced would not bind Irving Schachtel individually but solely as an officer of said corporation. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist

entered in accordance with such agreement. The parties have, *inter alia*, by such agreement agreed: (1) 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; (2) the complaint may be used in construing the terms of said order; (3) the record herein shall consist solely of the complaint and said agreement; (4) and that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of January 20, 1960, containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties; the agreement of January 20, 1960 is hereby accepted and ordered filed at the same time that this decision becomes the decision of the Federal Trade Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and

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, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondent Sonotone Corporation 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 Elmsford, New York;

Respondent Irving Schachtel is president of corporate respondent. His address is the same as that of the corporate respondent;

3. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act;

4. The complaint herein states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the public interest.

ORDER

It is ordered, That the complaint be, and the same hereby is, dismissed as to respondent Irving Schachtel in his individual capac-

ity but not in his capacity as an officer of respondent Sonotone Corporation, a corporation.

It is further ordered, That respondent Sonotone Corporation, a corporation, and its officers, and Irving Schachtel, 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 hearing aid devices known as Models 222, 333, 400 and 500, or any other device of substantially the same construction or operation and design, whether sold under the same or any other model designation, do forthwith cease and desist from directly or indirectly:

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

(a) No buttons are attached to said air conduction hearing aids, except Model 222, unless in close connection therewith and with equal prominence it is disclosed that an ear mold or plastic tip is inserted into the ear;

(b) No wires or cords are attached to said air conduction hearing aids, except Model 222, unless in close connection therewith and with equal prominence it is disclosed that a plastic tube runs from the device to the ear;

(c) Said hearing aids are invisible;

(d) Said hearing aids are completely hidden in the eyeglasses.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed on January 29, 1960, accepting an agreement containing a consent order to cease and desist, theretofore executed by the respondents and counsel supporting the complaint; and

Respondents, by motion filed on March 7, 1960, having requested that the Commission modify the initial decision to conform with the aforesaid agreement by revising that portion thereof pertaining to the dismissal of the complaint as to the respondent Irving Schachtel

and by removing therefrom the hearing examiner's findings that the complaint states a cause of action and that the proceeding is in the public interest; and

It appearing that the initial decision is at variance with the aforesaid agreement insofar as it pertains to the dismissal of the complaint as to the respondent Schachtel individually and should be corrected; and

It further appearing that the other findings complained of, while not based on a specific statement in the agreement, are implicit in said agreement and are properly included in the initial decision:

It is ordered, That the initial decision be, and it hereby is, amended by substituting for the second sentence in the first paragraph on page 2 thereof the following:

The agreement, by all of the parties hereto, provides that the complaint herein will be dismissed as to Irving Schachtel, individually, but not as an officer of Sonotone Corporation, for the reason that there is no proof to be adduced to bind him individually.

It is further ordered, That the initial decision as so amended shall, on the 22nd day of March, 1960, become the decision of the Commission.

It is further ordered, That the respondents, Sonotone Corporation, a corporation, and Irving Schachtel, 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 contained in the aforesaid initial decision as amended.

IN THE MATTER OF

BURLINGTON INDUSTRIES, INC.

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

Docket 7493. Complaint, May 15, 1959—Decision, Mar. 22, 1960

Consent order requiring a Greensboro, N.C., manufacturer of hosiery and other textile products, with some 17 manufacturing plants located in various states, to cease making discriminatory allowances to favored retail customers not made to their competitors, by such practices as deducting up to .94¢ a dozen on some 1,700 dozen pairs of nylon hose sold to a retail chain in the Portland, Ore., area as its contribution to a coupon book promotion run by the chain.

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent named above has violated and is now violating Section 2(d) of the amended Clayton Act (15 U.S.C. Section 13), hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal offices and place of business located in Greensboro, North Carolina.

PAR. 2. Respondent is principally engaged in the manufacture, distribution and sale of textiles, including branded and unbranded men's, women's and children's hosiery of all types, and more specifically including women's nylon hosiery. Respondent's total annual volume of sales for the year ending December 31, 1958, was in excess of $650,000,000.

PAR. 3. These products are sold by respondent for use, consumption, and resale within the United States, and respondent ships or causes them to be shipped and transported from the state of location of its manufacturing plants to customers located in states other than the state wherein the shipment or transportation originated.

PAR. 4. Respondent maintains a course of trade in commerce, as "commerce" is defined in the amended Clayton Act in such products, among and between the States of the United States.

With respect to the manufacture and sale of hosiery, respondent maintains and operates some 17 manufacturing plants located in North Carolina, Tennessee, Virginia, Alabama, Florida, and California. From these plants it ships and sells throughout the United States to various wholesalers and retailers.

PAR. 5. In the course and conduct of its business in commerce, respondent is competitively engaged with other corporations, individuals, partnerships and firms in the manufacture, distribution, offering for sale, and sale of its products, including hosiery.

PAR. 6. In the course and conduct of its business in commerce, respondent has been paying advertising and promotional allowances to certain favored customers without making the allowances available on proportionally equal terms to all other customers competing in the distribution and sale of its products.

For example, respondent, through its hosiery division, Burlington Hosiery Co., has participated in the periodic promotion plans of Fred Meyer, Inc., of Portland, Oregon, occurring annually for many years. In 1957, respondent, in the method and manner stated, sold approximately 1700 dozen pairs of nylon hose at $6.75 and $7.50 a

dozen pair, less deductions of as much as 94 cents per dozen pair as an allowance representing respondent's contribution to the Fred Meyer, Inc., coupon book promotion.

Such allowances were not offered or made available on proportionally equal terms by respondent to other customers competing in the resale of respondent's products of like grade and quality with those customers receiving the allowances.

PAR. 7. The acts and practices of respondent as alleged violate Section 2(d) of the amended Clayton Act (15 U.S.C., Section 13).

Mr. Franklin A. Snyder for the Commission.

Corcoran, Youngman and Rowe, of Washington, D.C., by *Mr. James H. Rowe, Jr.*, for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding, issued May 15, 1959, charges respondent Burlington Industries, Inc., a corporation, located at Greensboro, North Carolina, with violation of Section 2(d) of the Clayton Act, as amended, in connection with the manufacture, distribution and sale of textiles, including branded and unbranded men's, women's and children's hosiery of all types, and more specifically including women's nylon hosiery.

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

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

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

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

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

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

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

ORDER

It is ordered, That respondent Burlington Industries, Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the sale of hosiery products, in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying, or contracting for the payment of, anything of value to or for the benefit of any customer of respondent as compensation, or in consideration for, any services or facilities furnished by or through such customer in connection with the offering for sale, sale or distribution of any of respondent's products, unless such payment or consideration is affirmatively offered or otheriwse made available on proportionally equal terms to all other customers competing in the resale of such products with the favored customer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission, by order entered March 3, 1960, having extended until further order the date on which the hearing examiner's initial decision herein otherwise would have become the decision of the Commission; and

It now appearing that said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the hearing examiner's initial decision, filed January 20, 1960, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondent, Burlington Indus-

tries, Inc., a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the aforesaid initial decision.

IN THE MATTER OF

TRANS-OCEAN IMPORT CO., INC., ET AL.

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

Docket 7586. Complaint, Sept. 16, 1959—Decision, Mar. 24, 1960

Consent order requiring New York City distributors of rugs and floor coverings, some imported, to cease representing falsely, on labels, in advertising, price lists, invoices, etc., that the pile or wearing surface of their "Rochelle" and "New Rochelle" rugs was composed entirely of wool, and that that of their "New Chateau" rugs was 50% wool and 50% rayon; and to cease such confusing practices as describing said rugs as "9 x 12 (104" x 140")" when they were approximately 104 inches by 140 inches in size.

Mr. Garland S. Ferguson for the Commission.
Respondents not represented by counsel.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act in connection with the sale and distribution of rugs and floor coverings.

An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the making 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 this proceeding without further notice to the respondents and when entered shall have the same force and effect as if entered after a full hearing, respondents specifically waiving all the rights they may have to challenge or contest the validity of the order; that the order may be altered, modified, or set aside in the manner provided for other orders; that

the complaint may be used in construing the terms of the order; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

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. Corporate respondent Trans-Ocean Import Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 292 Fifth Avenue, New York, N.Y.

Individual respondents Philip Brenner, Charles Rostov and Ralph Shulman are officers of said corporation. They formulate, direct and control the practices of the corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Trans-Ocean Import Co., Inc., a corporation, and its officers, and Philip Brenner, Charles Rostov, and Ralph Shulman, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in the connection with the offering for sale, sale, and distribution of rugs and floor coverings, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "wool" or any other word or term indicative of wool to designate or describe any product or portion thereof which is not composed wholly of wool, the fiber from the fleece of the sheep or lamb, or hair of the Angora or Cashmere goat, or hair of the camel, alpaca, llama or vicuna, which has never been reclaimed from any woven or felted product; provided, that in the case of products or portions thereof which are composed in substantial part of wool and in part of other fibers or materials, the term "wool" may be used as descriptive of the wool content of

the product or portion thereof if they are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight, provided further that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated. Nothing herein shall prohibit the use of the terms "reprocessed wool" or "reused wool" when the products or those portions thereof referred to are composed of such fibers.

2. Misrepresenting the constituent fibers of which their products are composed, or the percentage or amounts thereof, on labels, in price lists, or in any other manner.

3. Using two or more sets of figures to represent the size of their products which are at variance, or in conflict, or misrepresenting in any way the actual size of said products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 24th day of March, 1960, 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

ADAMS QUILTING CORP. ET AL.

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

Docket 7647. Complaint, Nov. 3, 1959—Decision, Mar. 24, 1960

Consent order requiring manufacturers in Long Island City, N.Y., to cease violating the Wool Products Labeling Act by labeling as "100% reprocessed wool," and "80% reused wool, 20% other fibers," quilted interlinings which contained substantially less wool than thus indicated.

Mr. John J. Mathias supporting the complaint.

Mr. Alex. Akerman, Jr., of *Shipley, Akerman and Pickett*, of Washington, D.C., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On November 3, 1959, the Federal Trade Commission, pursuant to authority granted to it by the Federal Trade Commission Act and the Wool Products Labeling Act, caused a complaint to be issued against the above respondents, charging them with violations of the Wool Products Labeling Act and the Rules and Regulations promulgated by the Commission pursuant to the provisions of said Act. A true copy of said complaint was duly served upon respondents, as required by law. The complaint charges respondents with misbranding wool products sold by respondents in commerce within the intent and meaning of §4(a)(1) of the Wool Products Labeling Act, and with failure to stamp, tag and label wool products sold in commerce as required by §4(a)(2) of the Wool Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

After being served with the complaint, respondents appeared by counsel. Thereafter respondents entered into an agreement dated January 28, 1960, which purports to dispose of all this proceeding as to all parties without the necessity of conducting a formal hearing. Accompanying the agreement is an affidavit by Harry Adams, president of Adams Quilting Corporation, to the effect that the respondent Natalie Jacaruso does not now have, nor did she ever have, anything to do with formulating, directing, and controlling the acts, practices and policies of the corporate respondent Adams Quilting Corporation. The cease and desist order provided for in the January 28, 1960, agreement dismisses these proceedings as to Natalie Jacaruso without prejudice to the rights of the Commission to take such action in the future as the facts may then warrant. The hearing examiner finds this disposition of the proceedings as to Natalie Jacaruso not to be inimical to the public interest, and these proceedings.

The agreement of January 28, 1960, has been signed by all the respondents except Natalie Jacaruso, their counsel, by counsel supporting the complaint, and has been approved by the Director and the Assistant Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement, respondents, except Natalie Jacaruso, admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts are duly made in accordance with such allegations. In such agreement the respondents who signed the same waive: any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and

all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. The agreement further provides that the record upon 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 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 the cease and desist order provided for in said agreement may be entered in this proceeding without further notice to the respondents; and that, when so entered, such cease and desist order 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. 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 of January 28, 1960, containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties; the agreement of January 28, 1960, is hereby accepted and ordered filed at the same time that this decision becomes the decision of the Federal Trade Commission pursuant to §§3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and

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, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. That the Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondent Adams Quilting Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 42–38 13th Street, Long Island City, New York.

Individual respondents Harry Adams and Salvatore Jacaruso are officers of said corporate respondent. They formulate, direct and control the acts, policies and practices of the corporate respondent. The address of said individual respondents is the same as that of the corporate respondent.

3. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act;

4. The complaint herein states a cause of action against said respondents under the Federal Trade Commission Act, and the Wool Products Labeling Act, and this proceeding is in the public interest.

ORDER

It is ordered, That respondent, Adams Quilting Corporation, a corporation, and its officers (except Natalie Jacaruso) Harry Adams, and Salvatore Jacaruso, 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 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 quilted innerlining 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," 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 affix labels to wool products showing each element of information required to be disclosed by §4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That the complaint herein, insofar as it relates to respondent Natalie Jacaruso, be, and the same hereby is, dismissed without prejudice to the right of the Commission to take such action in the future as the facts may then warrant.

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 24th day of March, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Adams Quilting Corp., a corporation, and Harry Adams and Salvatore Jacaruso, 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

BERNARD LOWE ENTERPRISES, INC., ET AL.

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

Docket 7673. Complaint, Dec. 2, 1959—Decision, Mar. 24, 1960

Consent order requiring Philadelphia manufacturers of phonograph records to cease giving concealed "payola" to disc jockeys of radio and television programs to induce them to "expose," or play frequently, certain of their records to increase sales thereof.

Mr. John T. Walker and *Mr. James H. Kelley* supporting the complaint.

Blanc, Steinberg, Balder & Steinbrook by *Mr. Sigmund H. Steinberg* of Philadelphia, Pa., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 2, 1959, charging them with having violated the provisions of the Federal Trade Commission Act by unfairly paying money or other valuable consideration to induce the playing of phonograph records over radio and television stations in order to enhance the popularity of such records.

On January 19, 1960 there was submitted to the undersigned hearing examiner an agreement between the above-named respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

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

priate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Bernard Lowe Enterprises, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1405 Locust Street, Philadelphia, Pennsylvania.

2. Respondent Bernard Lowe is the president and treasurer of this corporate respondent. The address of the individual respondent is the same as that of said 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 Bernard Lowe Enterprises, Inc., a corporation, and its officers, and Bernard Lowe, individually and as officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

2. Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record, when he shall disclose, or cause to have

disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

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 24th day of March, 1960, become the decision of the Commission; and, accordingly:

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

STUYVESANT TRADING CO., INC., ET AL.

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

Docket 7706. Complaint, Dec. 22, 1959—Decision, Mar. 24, 1960

Consent order requiring New York City distributors to cease advertising falsely that wearing of their "Litenite" tinted glasses would improve night driving vision.

Mr. Frederick McManus for the Commission.
Mr. Ruben Schwartz, of New York, N.Y., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act in connection with the sale of tinted eyeglasses.

An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the making 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 this proceeding without further notice to the respondents and when entered shall have the same force and effect as if entered after a full hearing, respondents specifically waiving all the rights they may have to challenge or contest the validity of the order; that the order may be altered, modified, or set aside in the manner provided for other orders; that the complaint may be used in construing the terms of the order; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

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 Stuyvesant Trading Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 130 42nd Street, in the City of New York, State of New York.

Respondents Charles Schonbrun and Sam Schonbrun are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Stuyvesant Trading Co., Inc., a corporation, and its officers, and Charles Schonbrun and Sam Schonbrun, 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 tinted glasses sold under the name of "Litenite," or any other glasses having substantially similar properties, whether sold under said name or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that the wearing of said glasses will improve night driving vision.

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 24th day of March, 1960, become the decision of the Commission; and, accordingly:

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

ROBERT MAGEE DOING BUSINESS AS ROBERT MAGEE FURS

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

Docket 7570. Complaint, Aug. 25, 1959—Decision, Mar. 25, 1960

Order requiring an Oakland, Calif., furrier to cease violating the Fur Products Labeling Act by failing to show on invoices the name of the animal producing the fur and the country of origin and to comply with invoicing requirements in other respects, and, using fictitious prices, in newspaper advertising and on labels representing them thereby as the usual retail prices.

Mr. John J. McNally for the Commission.
Mr. Charles Reagh, of San Francisco, Calif., for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned hearing examiner for final consideration on the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel. The hearing examiner has given consideration to the proposed findings of fact and conclusions submitted by both parties, and all findings of facts and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded are herewith rejected, and the hearing examiner, having considered the record herein and being now fully advised in the premises, makes the following findings as to the facts, conclusions drawn therefrom and order:

FINDINGS AS TO THE FACTS

1. Respondent Robert Magee, a retail furrier, is an individual, trading as Robert Magee Furs, with his place of business located at 1727 Broadway, Oakland, California.

2. Subsequent to the effective date of the Fur Products Labeling Act, on August 9, 1952, respondent has been engaged in the introduction into commerce, and in the transportation, and distribution, in commerce, of fur products, consisting principally of fur stoles and jackets, and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act.

3. In a number of instances, invoices given to customers by the respondent in connection with the sale of fur garments were in violation of the Fur Products Labeling Act, in that such invoices (1) failed to show the name of the animal producing the fur; (2) failed to properly designate the animal producing the fur in accordance with the Fur Products Name Guide; (3) designated certain fur products as being tipped instead of being tip-dyed; and (4) failed to name the country of origin of imported furs contained in the fur products sold. The contention of the respondent that the omissions in the invoices resulted from inadvertence and without any intent to mislead or deceive cannot be considered as a defense in this proceeding, as the invoices do, in fact, violate the provisions of the Fur Products Labeling Act, and intent is not a necessary element in such violation.

4. In pricing his garments, the respondent did not use a systematic markup from cost. In some instances the retail or ticketed price was arbitrarily set, and in others respondent used a markup of double the cost, plus 10 percent. The retail or ticketed price was a fictitious price in that it was merely a bargaining price and did not represent the actual price at which the fur product was required to be sold.

5. When sales were held, respondent attached to his fur products an additional or sales label showing the purported regular price and the sale price. In addition, respondent placed advertisements in various newspapers having interstate circulation, representing that his fur products could be purchased at a substantial discount or saving, off regular prices. Under respondent's system of pricing, the so-called regular prices were, in fact, fictitious, and such representations in advertising constituted a misrepresentation of

prices in violation of the Fur Products Labeling Act and Rule 44(a) promulgated thereunder.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and as such constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Robert Magee, an individual, doing business as Robert Magee Furs or under any other name, 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 any fur products, or in connection with the 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 the term "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) Falsely or deceptively labeling or otherwise identifying such products, so as to represent that the regular or usual prices of such products are any amount in excess of the prices at which respondent has usually and customarily sold such products in the recent course of business.

2. Falsely or deceptively invoicing fur products by:

(a) Failing to furnish to purchasers of fur products an invoice showing all of the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act;

(b) Failing to set forth on each invoice the item number or mark assigned to such fur products.

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 represents, directly or by implication:

(a) That the regular or usual price of any fur product is any amount which is in excess of the price at which respondent has

usually and customarily sold such products in the recent regular course of his business;

(b) That any of respondent's fur products can be purchased at a substantial discount or saving, off regular prices, when such regular prices do not represent the prices at which respondent has usually and customarily sold such products in the recent regular course of his business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 25th day of March, 1960, become 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

NICHOLS & COMPANY, INC., ET AL.

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

Docket 7659. Complaint, Nov. 17, 1959—Decision, Mar. 25, 1960

Consent order requiring Boston manufacturers to cease violating the Wool Products Labeling Act by labeling as "80% Camel Hair, 20% Wool," wool stocks composed in part of reprocessed woolen fibers, and by failing to comply in other respects with labeling requirements.

The complaint remains pending as to the individual respondent who performed garnetting of the woolen stocks in question.

Before *Mr. Harry R. Hinkes*, hearing examiner.

Mr. Garland S. Ferguson supporting complaint.

Mr. Edward C. Park, of *Withington, Cross, Park & McCann*, of Boston, Mass., for respondents.

INITIAL DECISION AS TO ALL RESPONDENTS EXCEPT HARRY CARR

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission issued and subsequently served its complaint in this proceeding against the above-named respondents, charging them