S. D. Quarles Lumber Company, Inc., a corporation, C. T. Smith, Ray S. Campbell, Addie C. Doswell, Elliot Campbell, E. May Campbell, Bessie S. Campbell, shall, within sixty (60) days after service upon them of this modified order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the modified order to cease and desist.

---

IN THE MATTER OF

## FIBER ENTERPRISES, INC., ET AL.

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

*Docket 7440. Complaint, Mar. 12, 1959—Decision, May 6, 1960*

Order requiring two associated corporations, in New York City and Danbury, Conn., respectively, and their common officer, engaged in reprocessing fur products by separating the hair from the skin and selling the resultant fiber to cloth manufacturers, to cease violating the Wool Products Labeling Act by falsely labeling and invoicing as "Vicuna," "100% Processed Vicuna," etc., interstate shipments of hair fibers which were those of the guanaquito or young guanaco of the "Llama" genus.

*Mr. Alvin D. Edelson* for the Commission.

*Mr. Samuel Young*, of New York, N.Y., for respondents and *pro se*.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The respondents are charged with having violated the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that (a) they misbranded certain wool products as "vicuna" whereas in fact said products contained a substantial quantity of other fibers, (b) certain of their products were not labeled as required by §4(a)(2) of the Act and the Rules thereunder, and (c) the fiber content of certain of their products was misrepresented on invoices covering their shipment in commerce.

These charges were denied on behalf of both respondent corporations and himself by respondent Samuel Young, who appeared at the hearings *pro se* and as an officer of each of said corporations. After completion of the hearings, proposed findings, conclusions and order were submitted by counsel supporting the complaint.

Upon the basis of the entire record, the following findings are made, conclusions reached and order issued:

1. Respondent Fiber Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 15 East 26th Street, New York City, New York.

Respondent Fairfield Wool Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at Taylor Street, Danbury, Connecticut.

The individual respondent Samuel Young is an officer of both corporate respondents, and formulates, directs and controls the acts, policies and practices of both corporate respondents, including the acts and practices hereinafter referred to. He maintains a business address at the same address as each of the corporate respondents.

2. Part of respondents' business has been for many years and now is that of reprocessing fur products by separating the hair or fur fiber from the skin and selling the resultant fiber to manufacturers of cloth which is later used in making garments. The processing ordinarily is carried on at respondents' Connecticut plant, from where the finished product is transported to purchasers thereof in other states. The record shows shipments from Fairfield Wool Company, Inc., in Danbury, Connecticut, to South Village Mills in Webster, Massachusetts, and to Prince Textile Corp. in Pittsfield, Maine. The billing on these shipments was from Fairfield to Fiber Enterprises, Inc., and from Fiber Enterprises to the recipients in Massachusetts and Maine. All of respondents were involved in these transactions. Invoices of record show purchases by South Village Mills from respondents during 1957 and 1958 of over $20,000. Thus, subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment into commerce, and offered for sale in commerce, as "commerce" is defined in said Act, wool products, as "wool products" are defined therein.

3. Respondents' product is "wool" under the Wool Products Labeling Act of 1939, the term "wool" being defined in §2(b) thereof as meaning "the fiber from the fleece of the sheep or lamb or hair of the Angora or Cashmere goat (and may include the so-called specialty fibers from the hair of the camel, alpaca, llama, and vicuna) which has never been reclaimed from any woven or felted wool product."

4. Respondents' shipments to South Village Mills and to Prince Textile Corp. were labeled and invoiced variously as "Vicuna,"

"Processed Vicuna," "100% Processed Vicuna," "100% Processed Vicuna from old coat skins." Tests of three samples of respondents' materials by a highly qualified expert with 52 years' experience in the Fur Industry, 32 years as a Fur Consultant and three years' research on furs at Columbia University, showed the hair fibers in all three samples to be "those of the Guanaquito," Guanaquito being young Guanaco, a member of the "Llama" genus to which the llama belongs.

5. There was testiomny that for many years the term "Vicuna" was used in the industry to refer indiscriminately to the furs of the Guanaco and Guanaquito as well as the true Vicuna, although there are differences in the fineness and quality of the hair fibers. This distinction was recognized and emphasized in the Fur Products Name Guide, issued by the Federal Trade Commission February 8, 1952, since which time such indiscriminate use of the term has been unauthorized and therefore improper. The record indicates quite clearly that the stripped fur which came to respondents as their raw material was also labeled vicuna, but it is also clear that such labeling was incorrect, and respondents' responsibility was to have known the product which they manufactured and introduced in commerce and to have had it properly labeled and invoiced when it left their possession.

6. By the improper labeling of their product, respondents have violated §4(a)(1) and §4(a)(2) of the Wool Act and the Rules and Regulations promulgated thereunder, and by failing properly to identify their product on the invoices issued by them, have misrepresented the fiber content of certain of their products. Thus respondents have engaged in acts and practices which were and are to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

7. The Federal Trade Commission has jurisdiction over the respondents and over the acts and practices which are charged in the complaint, and are herein found, to be in violation of the law. Accordingly,

*It is ordered*, That respondents, Fiber Enterprises, Inc., a corporation, and its officers; Fairfield Wool Company, Inc., a corporation, and its officers; and Samuel Young, individually and as an officer of both corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or

distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

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

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

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

*It is further ordered*, That respondents, Fiber Enterprises, Inc., a corporation, and its officers; Fairfield Company, Inc., a corporation, and its officers; and Samuel Young, individually and as an officer of both corporations, 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 textile fabrics, do forthwith cease and desist from representing, on invoices, in advertising, or through any other media, in any manner, directly or by implication, that said fabrics are composed of certain percentages of a particular fiber or fibers, or are substantially composed of a particular fiber or fibers, unless such is the fact.

ORDER MODIFYING INITIAL DECISION, ADOPTING INITIAL DECISION AS MODIFIED AS COMMISSION'S DECISION, AND DIRECTING THAT REPORT OF COMPLIANCE BE FILED

The Commission having by its order of February 18, 1960, extended until further order the date on which the initial decision of

the hearing examiner would become the decision of the Commission; and

The Commission having determined that said initial decision is not appropriate in all respects to dispose of this matter:

*It is ordered*, That the initial decision be, and it hereby is, modified (1) by striking the last sentence contained in paragraph 2 thereof, (2) by striking paragraph 3 thereof in its entirety, and (3) by redesignating paragraph 4 of the initial decision as paragraph 3 of the initial decision as modified.

*It is further ordered*, That the initial decision be, and it hereby is, modified to include the following language to be designated as paragraph 4 of the initial decision as modified:

"4. Section 2(b) of the Wool Products Labeling Act defines wool as 'the fiber from the fleece of the sheep or lamb or hair of the Angora or Cashmere goat (and may include the so-called specialty fibers from the hair of the camel, alpaca, llama and vicuna) which has never been reclaimed from any woven or felted product.' As noted in paragraph three of the initial decision as modified by the Commission, respondents' fibers were represented on labels and otherwise as 'processed vicuna' or 'vicuna,' which fiber is one expressly permitted by the Act to be identified as 'wool.' The definition in Section 2(e) of the Act for a 'wool product' not only includes products containing wool but extends to any other product which purports to contain or is represented as containing wool, reprocessed wool or reused wool. It follows, therefore, that the fur fiber which the respondents have labeled and otherwise designated as vicuna and have offered for sale, shipped and sold in commerce constituted wool products within the meaning of said Act and were duly subject to the requirements of Sections 4(a)(1) and 4(a)(2) thereof."

*It is further ordered*, That the second sentence contained in paragraph 5 of the initial decision be, and it hereby is, modified to read as follows:

"The distinction between such furs and the animals producing them was recognized in the Fur Products Name Guide, issued by the Commission on February 8, 1952."

*It is further ordered*, That the last paragraph of the order to cease and desist contained in the initial decision be, and it hereby is, modified to read as follows:

"*It is further ordered*, That respondents, Fiber Enterprises, Inc., a corporation, and its officers; Fairfield Wool Company, Inc., a corporation, and its officers; and Samuel Young, individually and as an officer of both corporations; and said respondents' representa-

tives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of fur fiber, or any other products, in commerce, as 'commerce' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fibers of respondents' products, or the percentages or amounts of the fibers contained therein, in sales invoices or by any other means."

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

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

---

IN THE MATTER OF

## GLOBE RUBBER PRODUCTS CORPORATION ET AL.

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

*Docket 7666. Complaint, Nov. 24, 1959—Decision, May 7, 1960*

Consent order requiring Philadelphia distributors of rubber products, including swimming ware and household goods, to jobbers and retailers for resale, to cease preticketing some of their products with fictitious and excessive prices, represented thereby as the usual retail price.

*Mr. Ames W. Williams* for the Commission.

*Mr. Daniel Lowenthal* of *Fox, Rothschild, O'Brien & Frankel*, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission issued its complaint in this proceeding against the above-named respondents charging them with violation of that Act in connection with the advertising and sale of rubber products. On March 10, 1960, there was submitted to the undersigned hearing examiner an agreement between the respondents, their counsel and counsel supporting the complaint, providing for the entry of a consent order.

Under the foregoing agreement it is recommended that the complaint be dismissed insofar as it relates to Emanuel Meyer as an individual but not as an officer of the corporate respondent. Mr. Meyer has admitted that he is an officer, director and shareholder in the corporation; he has, however, denied that he formulates, directs and controls the acts and practices of the company. An affidavit by a corporate officer attached to the agreement states that the policies, acts and practices of the corporate respondent are established by action of the Board of Directors of the corporation. The record is devoid of circumstances to support a conclusion that individual liability should attach.[1]

Under the foregoing agreement the respondents admit all the jurisdictional allegations in the complaint. The agreement also provides that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, the respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

1. Respondent Globe Rubber Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 3333 North Lawrence Street, in the City of Philadelphia, State of Pennsylvania.

---

[1] In the matter of Basic Books, Inc., et al., D. 7016, (1959); in the matter of Kay Jewelry Stores, Inc., et al., D. 6445, (1957).

Respondent Emanuel Meyer is an officer of said corporation. His 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 Globe Rubber Products Corporation, a corporation, and its officers, and Emanuel Meyer, 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 rubber products or other merchandise 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 and regular retail price of merchandise when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail in the trade area or areas where the representations are made.

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

*It is further ordered*, That the complaint herein, insofar as it relates to respondent Emanuel Meyer, individually, 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 7th day of May, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondent Globe Rubber Products Corporation, a corporation, and Emanuel Meyer, 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

# SAM S. GOLDSTEIN TRADING AS SUN GOLD INDUSTRIES

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

*Docket 7414. Complaint, Feb. 19, 1959—Decision, May 10, 1960*

Order dismissing, for lack of supporting evidence, complaint charging a New York City distributor with using fictitious prices by attaching to women's hosiery tickets printed with excessive price figures, and with setting out similar amounts in advertising, thereby falsely representing such figures to be the usual retail prices.

*Mr. Edward F. Downs* and *Mr. Anthony Kennedy* for the Commission.

*Bader & Bader*, by *Mr. I. Walton Bader*, of New York, N.Y., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Respondent is charged with having engaged in the practice of using fictitious prices in connection with the labeling and advertising of women's hosiery, in violation of the Federal Trade Commission Act.

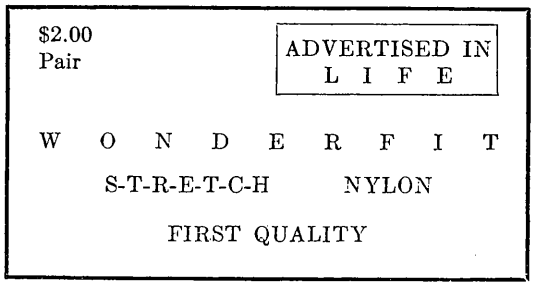
Upon the basis of the entire record, after hearings and submission of proposed findings of fact and conclusions, the following findings of fact are made, conclusions reached and order issued.

1. Respondent Sam S. Goldstein is an individual trading as Sun Gold Industries, with his office and principal place of business located at 1220 Broadway, New York, New York.

2. Respondent is now, and for some time last past has been, engaged in the advertising, sale and distribution of a number of products, including women's hosiery, to distributors and jobbers, and to retailers for resale to the consuming public.

3. In the course and conduct of his business, respondent now causes, and for some time last past has caused, his women's hosiery, with which this proceeding is particularly concerned, when sold, to be shipped from his place of business in the State of New York, and from the factories from which he buys said product, to the purchasers thereof, many of whom are located in states other than the state in which such shipments originated. Respondent's business in commerce has been substantial, amounting to approximately $190,000 a year. Respondent's sales were mostly to jobbers, mail-order establishments, house-to-house canvassers, and direct premium users, at prices varying from $6.00 to $9.00 per dozen.

4. The particular brand of women's hosiery involved in this proceeding is trademarked "WONDERFIT," and each pair is stamped:




Respondent's hosiery was advertised in Life Magazine at $2.00 per pair.

5. It is charged in the complaint that the prices used by respondent in the advertising and on the hose "are fictitious and in excess of the usual and regular retail prices of said hosiery." There is insufficient reliable, probative evidence in the record to establish what the usual and regular retail price of respondent's Wonderfit hosiery was.

6. Evidence was presented in support of the complaint that the profit of wholesalers on resale of hosiery to retail outlets varies from 10% to 30%, and that retailers, for their own benefit, add a mark-up of from 30% to 44%, based on their selling price. This gives only a slight clue as to the retail selling price of respondent's hosiery, and furnishes the basis for a wide variance in the price at which the hosiery is sold to the public. From such evidence no usual and regular retail price can be determined. The fallacy of trying to determine selling price upon the basis of wholesale cost and of comparing selling prices of similar products is aptly illustrated in this proceeding where it was shown that a stocking which was described as a 60-gauge, 15-denier nylon stocking had cost the B. Altman Company $13.50 per dozen and was sold by them at $1.95 a pair; the buyer of women's hosiery for the J. C. Penney Company, after examining the hose but not knowing where it came from, said, "We use this stocking in promotions to retail at two for a dollar."

7. (a) One candy wholesaler testified that in May or June, 1958, he purchased a quantity of respondent's hose, 95% of which he resold at wholesale. Some he sold at retail, at $2.50 for a box of three, to customers who came into his place of business to buy for their own use.

(b) Another witness, manager of a hosiery company, testified that his company had purchased hosiery from respondent; he pre-

sented invoices showing purchases between February 6, 1958, and May 2, 1958, of 105 dozen pairs of "Wonderfit stretch nylon hose" at $6.50 per dozen, and 20 dozen "Wonderfit Seamless Stretch Hosiery" at $8.00 per dozen. Most of his company's business is wholesale, but some sales are made at retail and auction. At retail a box of three pairs of respondent's hose is sold for $3.00. The witness said that his company is not a discount operator, but that when people go into the store "they expect to get considerable off the list price."

(c) A third witness, a manufacturer of ladies' lingerie, stated that he had purchased some of respondent's hosiery—the invoices show purchases in May and June, 1957, of 60 dozen pairs at $6.50 per doezn, and 22½ dozen pairs seamless at $8.50 per dozen. In connection with his lingerie manufacturing he conducts a retail business and sells some of respondent's hosiery at from 60¢ to 75¢ a pair. He said his retail prices would be unfair, "because I do this mostly for accommodation for the girls in the factory. Sometimes we give it away for no mark-up and sometimes a very little mark-up, for expenses." He had never sold any at $2.00 per pair retail. His "retail accommodation business" was discontinued "a year and a half ago" (his testimony was given June 16, 1959). Upon this evidence, the case in support of the complaint was rested.

(d) Respondent testified that he personally had observed and knew that certain of his customers who sell through agents in house-to-house solicitation sell his hose at $5.95 for a box of three pairs, which for all practical purposes amounts to $2.00 per pair.

From this evidence the usual and regular selling price of respondent's hosiery is not established. It is not adequate to establish that there actually was or is no usual and regular retail price for respondent's hosiery.

8. For lack of substantial, reliable, probative evidence in support of the charges contained in the complaint, this proceeding, which is in the public interest and over which the Commission has jurisdiction, should be dismissed. Accordingly,

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

## OPINION OF THE COMMISSION

By KERN, *Commissioner:*

The complaint in this matter charges respondent with violation of Section 5 of the Federal Trade Commission Act in the promotion and sale of hosiery. The hearing examiner in his initial decision held that the allegations were not sustained by the evidence

and ordered dismissal of the complaint. Counsel supporting the complaint have appealed from that decision.

In substance, the complaint alleges that respondent by setting forth a certain amount ($2.00 per pair) in the labeling and advertising of his hosiery products, represented that said amount was the usual and regular retail price of those products, whereas this $2.00 price was fictitious and in excess of the usual and regular retail price of the hosiery.

In his rulings, the hearing examiner has taken the position that since the evidence fails to establish the usual and regular selling price of respondent's hosiery products, the burden of proof has not been sustained. He ruled that it is not adequate to establish that there actually was or is no usual and regular retail price for these products. We do not agree with these rulings. Upon a showing that respondent labeled and advertised his hosiery products at the $2.00 price, the only additional proof required is that $2.00 is not the usual and regular retail price of such hosiery products but is an exaggerated or fictitious price. If it is shown that the products ordinarily retailed at prices less than $2.00 per pair, regardless of what these prices may be, the burden of proof imposed on counsel supporting the complaint has been met. The hearing examiner's rulings would allow respondent to use any price figure to promote the sale of his hosiery products as long as there is such a variance in the retail price of the hosiery that a usual and regular price cannot be established.

Counsel supporting the complaint contends that the record establishes that the hosiery products in question are usually and regularly sold at retail at prices less than $2.00. The evidence of record in support of the charge is reviewed in paragraphs numbered 6 and 7(a) through (c) of the initial decision. Two of the three witnesses called by counsel supporting the complaint were primarily wholesalers who sold only a small proportion of respondent's hosiery at retail. The third witness was a lingerie manufacturer whose sales at retail of respondent's hosiery were mostly as an accommodation for girls working in his factory. None of these witnesses sold respondent's hosiery for as much as $2.00 per pair. However, there is no evidence as to the amount of sales at retail by these witnesses, the percentage relationship of such sales to the total sales at retail of respondent's hosiery, nor that these witnesses were the only sellers of respondent's hosiery at retail in their respective trade areas. There is evidence as to the customary wholesale and retail markup of hosiery products which when applied to respondent's selling price would indicate a retail price somewhat less than

$2.00 per pair. However, there is testimony that the retail price of identical hosiery varies widely depending upon the store selling it and there is no evidence from which we could conclude that respondent's customers ordinarily applied the customary markup in arriving at the price at which respondent's hosiery products were sold. In the circumstances, we do not believe the record supports a finding that the usual and regular retail price of respondent's hosiery is less than $2.00 per pair.

In view of the foregoing, the appeal of counsel supporting the complaint is denied. The initial decision, in those respects in which it is contrary to the views expressed herein, is modified to conform wth such views. An appropriate order will be entered.

ORDER DISMISSING COMPLAINT

This matter having been heard by the Commission upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision dismissing the complaint; and

The Commission, for the reasons stated in the accompanying opinion, having denied the aforementioned appeal, and having modified the initial decision to the extent it is contrary to the views expressed in the said opinion:

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

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

---

IN THE MATTER OF

## WETTER NUMBERING MACHINE COMPANY, INC.

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

*Docket 7700. Complaint, Dec. 21, 1959—Decision, May 10, 1960*

Consent order requiring a Brooklyn, N.Y., manufacturer of typographical numbering machines for the graphic arts industry to cease violating Sec. 2(d) of the Clayton Act by paying promotional allowances to certain favored customers—such as a payment of $1,500 for advertising to a Philadelphia

customer—while failing to make comparable allowances available to their competitors.

COMPLAINT

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

PARAGRAPH 1. Respondent 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 Atlantic Avenue and Logan Street, Brooklyn, New York.

PAR. 2. Respondent is now and since 1903 has been engaged in the manufacture and sale of typographical numbering machines for the graphic arts industry. It sells its products to a large number of customers throughout the United States both directly to the consumer and through dealers. Respondent's dealers are in competition with each other and may sell anywhere in the United States. Respondent's total sales for the year 1958 were in excess of $500,000; ninety percent of said sales being domestic.

PAR. 3. In the course and conduct of its business respondent has engaged, and is now engaging, in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondent causes its products to be transported from its principal place of business located in the State of New York to its customers in the various states of the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent paid, or contracted for the payment of, something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by said respondent, and such payments were not made available on proportionally equal terms to all customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, during the period between July 1, 1958 and June 30, 1959, respondent contracted to pay and did pay to Foster Type and Equipment Company, Inc., Philadelphia, Pennsylvania, $1,500 as compensation or as allowance for advertising or other service or facilities furnished by or through Foster Type and Equipment Company, Inc., in connection with its offering for sale

or sale of products sold to it by respondent. Such compensation or allowance was not offered or otherwise made available on proportionally equal terms to all other customers competing with Foster Type and Equipment Company, Inc. in the sale and distribution of respondent's products.

PAR. 6. The acts and practices of respondent, as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

*Mr. Fredric Suss* for the Commission.

*Schneider, Bronstein & Shapiro*, by *Mr. Harold Rosenwald*, of Boston, Mass., for respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On December 21, 1959, the Federal Trade Commission issued its complaint against the above-named respondent, charging it with violating the provisions of subsection (d) of the Clayton Act, as amended, in connection with the manufacture and sale of typographical numbering machines for the graphic arts industry. On February 29, 1960, the respondent 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 respondent admits the jurisdictional facts alleged in the complaint and agrees, 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 respondent 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 respondent that it has 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, Wetter Numbering Machine Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Atlantic Avenue and Logan Street, Brooklyn, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under subsection (d) of section 2 of the Clayton Act, as amended.

ORDER

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

Making or contracting to make, to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any advertising or other services or facilities furnished by or through such customer, in connection with the handling, resale or offering for resale of typographical numbering machines manufactured, sold, or offered for sale by respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in the resale or distribution of such products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

# MUSIC SUPPLIERS, INC., ET AL.

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

*Docket 7775. Complaint, Feb. 5, 1960—Decision, May 10, 1960*

Consent order requiring record distributors in Boston, Mass., to cease paying concealed "payola" to disc jockeys of radio and television programs as inducement to have their records broadcast frequently in order to increase sales.

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

*Mr. Edward F. Smith*, of Boston, Mass., 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 an independent distributor for several record manufacturers 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 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, 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, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Music Suppliers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 263 Huntington Avenue, Boston, Massachusetts; that individual respondent Harry Carter is president and treasurer of the corporate respondent; and that indi-

vidual respondent Gordon J. Dinerstein is vice president of the corporate respondent, the address of the individual respondents 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 Music Suppliers, Inc., a corporation, and its officers, and Harry Carter and Gordon J. Dinerstein, individually and as officers 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 10th day of May, 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

## RECORD MERCHANDISERS, INC., ET AL.

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

*Docket 7791. Complaint, Feb. 25, 1960—Decision, May 10, 1960*

Consent order requiring St. Louis record distributors to cease paying concealed "payola" to disc jockeys of radio and television programs as inducement to have their records broadcast frequently in order to increase sales.

*Mr. John T. Walker* and *Mr. James H. Kelley* for the Commission.
*Mr. Ben G. Landau*, of St. Louis, Mo., 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 by the payment of money or other valuable consideration to induce the playing of certain phonograph records over radio and television stations in order to enhance the popularity of such records. On April 1, 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 it is recommended that the complaint be dismissed insofar as it relates to Ben G. Landau as an individual but not as an officer of the corporate respondent. An affidavit attached to the agreement recites that Mr. Landau, an attorney, performs only legal services for the corporate respondent, having nothing to do with the promotion or sale of records or with company policy. The agreement recites that there is no available evidence contrary to said affidavit. Under the circumstances there is no basis for the attachment of individual liability.

Under the foregoing agreement the respondents admit all the jurisdictional allegations in the complaint. The agreement also provides that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, the respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

1. Respondent Record Merchandisers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws

of the State of Missouri, with its principal office and place of business located at 1933 Washington Avenue, in the City of St. Louis, State of Missouri.

Respondents Charles D. Gorman, Alfred L. Chotin, and Ben G. Landau are president, vice president and treasurer, and secretary, respectively, of the corporate respondent, and have the same address as that of 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 the respondents, Record Merchandisers, Inc., a corporation, and its officers, and Charles D. Gorman and Alfred L. Chotin, individually, and as officers of said corporation, and Ben G. Landau, 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.

*It is further ordered*, That the complaint be, and hereby is, dismissed as to Ben G. Landau individually, but not as an officer of said corporate respondent.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 10th day of May, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondent Record Merchandisers, Inc., a corporation and Charles D. Gorman and Alfred L. Chotin, individually, and as officers of said corporation, and Ben G. Landau, 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

## STATE RECORD DISTRIBUTORS, INC., ET AL.

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

*Docket 7798. Complaint, Mar. 2, 1960—Decision, May 10, 1960*

Consent order requiring Cincinnati and Indianapolis record distributors to cease paying concealed "payola" to disc jockeys of radio and television programs as inducement to have their records broadcast frequently in order to increase sales.

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

*Bagal and Talesnick*, of Indianapolis, Ind., by *Mr. Seymour M. Bagal*, for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding, issued March 2, 1960, charges that the respondents have violated the provisions of the Federal Trade Commission Act in connection with the sale and distribution of phonograph records.

Respondents State Record Distributors, Inc., Whirling Disc Record Distributors, Inc., and Indiana State Record Distributors, Inc., are corporations organized, existing and doing business under the

laws of the State of Indiana. Respondents State Record Distributors, Inc. and Whirling Disc Record Distributors, Inc. have their principal office and place of business located at 140 West 5th Street, Cincinnati, Ohio. Respondent Indiana State Record Distributors, Inc. has its principal office and place of business located at 1311 North Capitol Avenue, Indianapolis, Indiana.

Respondent Melvin Herman is president of State Record Distributors, Inc. and Indiana State Record Distributors, Inc., and is vice president of Whirling Disc Record Distributors, Inc. Respondent Carl G. Herman is secretary-treasurer of State Record Distributors, Inc., and Indiana State Record Distributors, Inc., and is president of Whirling Disc Record Distributors, Inc. Respondent Herbert Harloe is secretary treasurer of Whirling Disc Record Distributors, Inc. The address of the individual respondents is 140 West 5th Street, Cincinnati, Ohio.

After the issuance of the complaint respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues as to all parties in this proceeding.

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

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

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

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

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

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and

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

ORDER

*It is ordered*, That respondents State Record Distributors, Inc., a corporation, Whirling Disc Record Distributors, Inc., a corporation, Indiana State Record Distributors, Inc., a corporation, and their officers, and Melvin Herman, and Carl G. Herman, individually, and as officers of said corporations, and Herbert Harloe, individually, and as an officer of Whirling Disc Record Distributors, Inc. 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 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 10th day of May, 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

## HERMAN LUBINSKY DOING BUSINESS AS SAVOY MUSIC COMPANY

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

*Docket 7826. Complaint, Mar. 17, 1960—Decision, May 10, 1960*

Consent order requiring record distributors in Newark, N.J., to cease paying concealed "payola" to disc jockeys of radio and television programs as inducement to have their records broadcast frequently in order to increase sales.

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

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent, who is engaged, as a music-publishing concern, in the business of promoting, selling and distributing phonograph records on behalf of several record manufacturers located in various states of the United States, with violation of the Federal Trade Commission Act, in that respondent, alone or with certain unnamed record manufacturers, has 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 respondent is 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, respondent and counsel supporting the complaint entered into an agreement containing consent

order to cease and desist, which was approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Herman Lubinsky is the sole proprietor of Savoy Music Company, with his offices and principal place of business located at 56 Ferry Street, Newark, New Jersey.

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

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

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

*It is ordered*, That respondent Herman Lubinsky, an individual doing business as Savoy Music Company, or under any other name or names, and his 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 respondent has 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 respondent has 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 10th day of May, 1960, become the decision of the Commission; and, accordingly:

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

---

## IN THE MATTER OF

## PARKER-LEVY JUNIORS, INC., ET AL.

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

*Docket 7621. Complaint, Oct. 22, 1959—Decision, May 11, 1960*

Consent order requiring New York City manufacturers to cease violating the Wool Products Labeling Act by failing to label women's wool dresses as required.

*Mr. Terral A. Jordan* for the Commission.
*Mr. Joseph Radest*, of New York, N.Y., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

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 with violation of the Federal Trade Commission Act, the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in connection with their sale, offering for sale, delivery and introduction into commerce of certain wool products.

On March 16, 1960 there was submitted to the undersigned hearing examiner an agreement between the respondents, their counsel and counsel supporting the complaint, providing for the entry of a consent order.

Under the foregoing agreement the corporate respondent and Jack Parker and Kalman C. Levy, incorrectly designated as Cal Levy, individually and as officers of said corporation, admit all of the jurisdictional allegations in the complaint. The agreement provides that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, the signatory respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by such respondents that they have violated the law as alleged in the complaint.

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

1. Respondent Parker-Levy Juniors, Inc., is a corporation existing and doing business under and by virtue of the laws of the State

of New York. Individual respondent Jack Parker is president of said corporate respondent. Individual respondent Kalman C. Levy is incorrectly named in the complaint as Cal Levy so that Kalman C. Levy and Cal Levy are one and the same persons. Said Kalman C. Levy is secretary and treasurer of the corporate respondent. All respondents have their office and principal place of business located at 1375 Broadway, in the City of New York, State of New York.

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

ORDER

*It is ordered*, That the respondents Parker-Levy Juniors, Inc., a corporation, and its officers, and Jack Parker and Kalman C. Levy, individually and as officers of said corporation, and their representatives, agents and employees, directly or through any corporate or other device in connection with the 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 women's dresses 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 be represented to contain "wool," "reprocessed wool" or "reused wool" as those terms are defined in said Act, do forthwith cease and desist from:

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

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

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 11th day of May, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents Parker-Levy Juniors, Inc., a corporation, Jack Parker and Kalman C. Levy, incorrectly designated as Cal Levy, 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

## JOSEPH ZABLE TRADING AS J. I. ZABLE FUR CO., ETC.

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

*Docket 7704. Complaint, Dec. 22, 1959—Decision, May 12, 1960*

Consent order requiring a Dallas, Tex., furrier to cease violating the Fur Products Labeling Act by labeling and invoicing fur products falsely with respect to the animal producing the fur; by advertising in newspapers which failed to disclose the names of animals producing the fur contained in fur products, represented sale prices as reduced from regular prices which were in fact fictitious, and used earlier comparative prices without designating the time they were in effect; by failing to maintain adequate records as a basis for said pricing claims; and by failing in other respects to comply with requirements of the Act.

*Mr. Charles S. Cox* supporting the complaint.
*Mr. Norman A. Zable*, of Dallas, Tex., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that Joseph Zable, an individual trading as J. I. Zable Fur Co. and Joseph Zable Furs, hereinafter referred to as respondent, misbranded, falsely and deceptively invoiced and advertised fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act and the rules and regulations promulgated under the last named act.

After issuance and service of the complaint, the above-named respondent, his attorney, and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been

approved by the Director and the Assistant Director of the Bureau of Litigation. The agreement disposes of the matters complained about.

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

The undersigned hearing examiner having considered the agreement and proposed order, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent Joseph Zable is an individual trading as J. I. Zable Fur Co. and Joseph Zable Furs, with his office and principal place of business located at 3400 Oak Lawn Avenue, Dallas 19, Texas.

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

ORDER

*It is ordered*, That Joseph Zable, an individual trading as J. I. Zable Fur Co. and Joseph Zable 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 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 products as to the name or names of the animal or animals that produce the fur from which such products were manufactured.

C. 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 Rules and Regulations promulgated thereunder mingled with non-required information.

2. Falsely and 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 on invoices pertaining to fur products the name or names of animals other than the names or names provided for in Section 5(b)(1) of the Fur Products Labeling Act.

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

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

B. Represents, directly or by implication, that the respondent's usual or regular price of any fur product is any amount in excess of the price at which the respondent has usually or customarily sold the product in the recent regular course of business.

C. Setting forth former prices without designating the time of such former prices.

4. Misrepresenting in any manner the savings available to purchasers of respondent's fur products.

5. Making claims or representations in advertisements respecting prices or values of fur products unless respondent maintains 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 12th day of May, 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

## ALVIN M. HAYIM ET AL. DOING BUSINESS AS HAYIM & COMPANY

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

*Docket 7749. Complaint, Jan. 18, 1960—Decision, May 12, 1960*

Consent order requiring New York City distributors of rugs and floor coverings, many of them of foreign origin, to cease representing falsely on attached labels, invoices, price lists, etc., that they manufactured their products; that certain mixed fiber rugs were composed entirely of wool and that others were predominantly of wool; and that some, branded with American place names, were made in the United States.

*Mr. Terral A. Jordan* for the Commission.
Respondents, for themselves.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the advertising, offering for sale, sale and distribution in commerce of rugs and floor coverings, a substantial portion of which are imported from foreign countries, with the use of false, misleading and deceptive statements as to the fiber content and origin of said products, in violation of the Federal Trade Commission Act.

After the issuance of the complaint, respondents 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 respondents Alvin M. Hayim and Ella M. Hayim are individuals trading and doing business as a copartnership under the name of Hayim & Company, with their office and principal place of business located at 295 Fifth Avenue, New York, New York.

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 complain 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 Alvin M. Hayim and Ella M. Hayim, as individuals or as copartners trading and doing business as Hayim & Company, or under any other trade name, 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 rugs or floor coverings or any other textile product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, through the use of the word "manufacturer" or by any other means that respondents own, operate or control the manufacturing plant or facilities in which the aforesaid products are made in whole or in part, unless such shall be the fact;

2. Using the terms "wool" or "all 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 there 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;

3. Using the words "Southhampton," "Bar Harbor," "Northhampton," "Miami Shores," "Palm Beach," or "Pinehurst," or any other distinctively American name in advertising or in labeling to designate or describe the aforesaid products which are not in fact made in the United States, or using any other word or term in advertising or in labeling as descriptive of the aforesaid products which represents, directly or indirectly, that said products are made in a country other than the one in which they are in fact made, without clearly and conspicuously revealing in immediate connection with each of the aforesaid names, words or terms, the actual country of origin of such products;

Provided, however, that nothing herein shall relieve the respondents from their obligation to comply with the requirements of the Textile Fiber Products Identification Act after the effective date thereof or forbid the respondents thereafter from labeling and otherwise offering products subject to that Act in the manner prescribed thereby and rules and regulations promulgated thereunder by the Commission.

The terms "reprocessed wool" and "reused wool," as herein used, are to be defined in §2(c) and §2(d) of the Wool Products Labeling Act.

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 May, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents Alvin M. Hayim and Ella M. Hayim, individually and as copartners doing business as Hayim & Company, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

---

## IN THE MATTER OF

## ALL-STATE NEW JERSEY, INC., ET AL.

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

*Docket 7805. Complaint, Mar. 2, 1960—Decision, May 12, 1960*

Consent order requiring distributors of phonograph records in the New Jersey-New York area to cease giving concealed "payola" to television and radio disc jockeys to induce playing their records in order to increase sales.

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

Respondents, *pro se*.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on March 2, 1960, 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.

After issuance and service of the complaint, the above-named respondents and counsel supporting the complaint entered into an

agreement for a consent order. The agreement disposes of the matters complained about.

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

The undersigned hearing examiner having considered the agreement and proposed order hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent All-State New Jersey, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 87 Stecher Street, Newark, New Jersey.

2. Respondents Melvin Koenig, Sidney Koenig, Sherman Koenig, Irwin R. Fink, are president, treasurer, secretary and vice-president, respectively, of the corporate respondent. Said individual respondents formulate, direct and control the acts and practices of the corporate respondent. The address of the individual respondents 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 hereinabove named and the proceeding is in the public interest.

ORDER

*It is ordered*, That respondents All-State New Jersey, Inc., a corporation, and its officers, and Melvin Koenig, Sidney Koenig,

Sherman Koenig and Irwin R. Fink, individually, and as officers 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 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 May, 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

# SAM GOLDMAN ET AL. TRADING AS EXCELLED SHEEPSKIN & LEATHER COAT CO.

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

*Docket 7473. Complaint, Apr. 13, 1959—Decision, May 13, 1960*

Order requiring a New York City manufacturer of leather jackets and coats for men and boys to cease violating the Fur Products Labeling Act by improperly describing in advertising the fur collars on said jackets, and by failing to disclose, in labeling and invoicing, the true name of the fur-producing animal and the fact that the fur was dyed.

*Mr. Thomas A. Ziebarth* for the Commission.
*Mr. Paul Kozinn*, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondents have violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and in doing so have engaged in acts and practices which constitute unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act.

The particular violations charged are:

A. That certain wool products were misbranded in violation of §4(a)(2) of the Wool Act and as prescribed by the Rules thereunder;

B. That certain fur products were misbranded in that they were not labeled as required by §4(2) of the Fur Act and as prescribed by the Rules thereunder;

C. That certain fur products were falsely and deceptively invoiced in that they were not invoiced as required by §5(b)(1) of the Fur Act and as prescribed by the Rules thereunder; and

D. That certain fur products were falsely and deceptively advertised in that respondents

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur product as set forth in the Fur Products Name Guide, in violation of §5(a)(1) of the Fur Products Labeling Act;

(b) Failed to disclose that fur products were composed of bleached, dyed or otherwise artificially colored fur, in violation of §5(a)(3) of the Fur Products Labeling Act.

Upon consideration of the entire record, after hearings and the filing of proposed findings and conclusions, the following findings are made.

1. Respondents Sam Goldman and Sol Goldman are doing business individually, and as copartners trading as Excelled Sheepskin & Leather Coat Co., with their office and principal place of business located at 832 Broadway, New York, New York.

2. They are now and have been for several years engaged in the manufacture and sale of leather jackets and coats. Respondent Sol Goldman has been in the leather coat business for 32 years. They sell only to the wholesale or jobber trade, and their business amounts to approximately three-quarters of a million dollars per year. They do no retail business.

Their garments, some of which contain wool or part-woolen interlinings, and some having fur collars, have been sold and transported by respondents to customers living in states other than the one in which respondents' place of business is located, and in connection with such transactions respondents have engaged in commerce as that term is defined in the Wool Products Labeling Act and in the Fur Poducts Labeling Act. They have also manufactured for sale, sold, advertised and distributed fur products made in whole or in part of fur which had been shipped and received in commerce. Their business in commerce is subtantial.

3. Some of respondents' coats have quilted interlinings; some have, or in the past had, fur collars. The interlinings and the fur collars are the two items that are in dispute in this proceeding. In 1957 respondents made approximately 80,000 leather coats or jackets, of which approximately 5,000 had quilted linings and about 1,000 had fur collars. In 1958 the total production was greater, but the number of garments with quilted interlinings and fur collars was less. The amount of interlining per full-size coat is approximately one yard and costs the manufacturerer 18¢ to 20¢ per garment. Fur is purchased by respondents at from 50¢ to 55¢ per foot, and each garment to which a fur collar is attached requires about three-quarters of a foot of fur.

4. The quilted interlinings used by respondents for added warmth consist of three layers—a layer of reprocessed wool or other filler between a layer of rayon fabric and a layer of cheesecloth, which are stitched together so as to contain the filler. The wool content,

if any, is in the middle layer. Respondents' quilted linings come from one source under a contract, by the terms of which respondents furnish the rayon facing to which the supplier attaches the filler and the cheesecloth backing. The contract usually calls for 4-ounce or 6-ounce quilting, which indicates the weight per running yard of material 41 inches wide,—more specifically, the weight of the filling material, exclusive of the weight of the cheesecloth backing and the rayon facing. There is no designation or specification in the contract as to the fiber content of the filling material, and in selling their leather coats and jackets respondents do not label the garments to show the wool fiber content of the interlinings. Two samples of respondents' quilted interlinings were tested; the filling material of one had a wool fiber content of 68.5%, and the other, 67.4%.

5. Under the Wool Products Labeling Act, respondents' interlinings are wool products and should be properly labeled, "wool product" being defined in §2(e) thereof as meaning:

> any product, or any portion of a product, which contains, purports to contain, or in any way is represented as containing wool, reprocessed wool, or reused wool.

§4(a)(2) of said Act describes the manner in which a wool product shall be labeled. §4(d) of the Act provides:

> This section shall not be construed as requiring designation on garments or articles of apparel of fiber content of any linings, paddings, stiffening, trimmings, or facings, except those concerning which express or implied representations of fiber content are customarily made, nor as requiring designation of fiber content of products which have an insignificant or inconsequential textile content: *Provided*, That if any such article or product purports to contain or in any manner is represented as containing wool, this section shall be applicable thereto and the information required shall be separately set forth and segregated.
>
> The Commission, after giving due notice and opportunity to be heard to interested persons, may determine and publicly announce the classes of such articles concerning which express or implied representations of fiber content are customarily made, and those products which have an insignificant or inconsequential textile content.

Rule 24(c) of the Rules and Regulations interprets §4(d) of the Act as follows:

> In the case of garments which contain interlinings, the fiber content of such interlinings shall be set forth separately and distinctly as part of the required information on the stamp, tag, label, or other mark of identification of such garment. For purposes of this paragraph (c) the term "interlinings" shall not be construed as embracing paddings or stiffening ordinarily used in garments for structural purposes and not for warmth.

In failing to label their quilted-interlined garments as to wool content of the interlining, respondents have failed to label their wool products as required, and have violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.

6. The fur collars used on respondents' garments are referred to by them as "Mouton," which, they state, "has been a generally accepted trade term for 25 or 30 years." It is a processed lamb collar which has been dyed, and under Rule 9 of the Rules and Regulations promulgated under the Fur Products Labeling Act, should be designated "Dyed Mouton-processed Lamb." The only representation made by respondents as to the type of fur is in price lists used in 1956 and thereafter, which are primarily for salesmen, but are sent also to the wholesale and jobber trade. On these price lists the fur collars are uniformly designated as Mouton—frequently the letter "M," in place of the full word "Mouton," is used in style designations. Where used, the word "Mouton" is a wrongful designation of the fur product. On the labels which are attached to the garments there is no fur designation whatsoever, and no fur designation whatsoever was used on respondents' invoices or shipping memoranda.

7. "Fur product" as defined in §2(d) of the Fur Act means

> any article of wearing apparel made in whole or in part of fur or used fur; except that such term shall not include such articles as the Commission shall exempt by reason of the relatively small quantity or value of the fur or used fur contained therein.

Interpreting this definition is Rule 39 of the Rules and Regulations, "Exempted Fur Products," which provides:

> (a) Where the cost of any manufactured fur or furs contained in a fur product, exclusive of any costs incident to its incorporation therein, does not exceed five dollars ($5.00), or where a manufacturer's selling price of a fur product does not exceed five dollars ($5.00), and no express or implied representation is made concerning the fur contained in such product * * *, the fur product shall be exempt from the requirements of the Act and Regulations; * * *.

8. The cost of the fur collars which are used on respondents' leather jackets and coats does not exceed $5.00 each; hence, if no express or implied representations were made concerning the fur contained therein, respondents would be exempt from the disclosure requirements of the Act and the Regulations. The only alternative to making no representations, under the Act and the Rules, is that the Act and the Rules thereunder be fully complied with.

9. Respondents' price lists (those for the years 1956, 1957, 1958

and 1959 are in the record as exhibits) depicted the various styles of garments offered by respondents. Also there were designated style numbers with a brief description and the price of each. Typical designations used in the price lists where fur collars were offered are:

A 22 QM * * * With a Genuine *Mouton Collar*;
907 M * * * with Genuine *Mouton Collar*;
904 QM * * * Genuine Mouton Collar.

No further information was contained in the price lists as to the character or type of fur used in the collars. Obviously the price lists were for advertising purposes, and by making reference therein to the Mouton collars, respondents made express representations concerning the fur contained in their garments, and made themselves subject to the Fur Act and the Regulations thereunder, which they have violated by not complying fully therewith.

CONCLUSIONS

1. The aforesaid acts and practices of respondents are in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, as charged.

2. Said acts and practices constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

3. The Federal Trade Commission has jurisdiction over respondents and their acts and practices in this proceeding, which is in the public interest. Therefore,

*It is ordered*, That respondents Sam Goldman and Sol Goldman, individually and as copartners trading as Excelled Sheepskin & Leather Coat Co., or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the 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 garments containing woolen linings or other "wool products" as such products are defined in and subject to the said Wool Products Labeling Act, do forthwith cease and desist from:

A. Misbranding such products by:

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

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

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

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

*It is further ordered* that Sam Goldman and Sol Goldman, individually and as copartners trading as Excelled Sheepskin & Leather Coat Co., or under any other name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products, or in connection with the manufacture, sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as' 'commerce," "fur" and "fur product" as defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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

B. Falsely or deceptively invoicing fur products by failing to furnish to purchasers of fur products invoices showing all of the information required to be disclosed by each of the subsections of §5(b)(1) of the Fur Products Labeling Act;

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

1. Fails to disclose:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur

Products Name Guide and as prescribed under the Rules and Regulations;

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

OPINION OF THE COMMISSION

By KERN, *Commissioner:*

The hearing examiner found that respondents had violated the Wool Products Labeling Act and the Fur Products Labeling Act and designated rules and regulations promulgated under those statutes. Respondents have appealed from those findings and the order contained in the initial decision which would require the respondents, among other things, to affix labels to their garments supplying the information prescribed by such statutes.

Respondents manufacture and sell in commerce jackets and coats for men and boys which are made from horsehide and other leathers. Some of the garments have quilted interlinings containing woolen fiber. The collars used on some of the coats are composed of dyed lamb fur. It is undisputed that the labels attached to such articles have not included the information which those statutes direct be disclosed respecting products subject to them.

Under the Fur Products Labeling Act and rules, the dyed lamb fur used for the collars of some of such garments can be properly designated as dyed mouton-processed lamb. The garments' collars, however, are designated improperly in illustrated pricing brochures as "Genuine Mouton." The collars cost respondents approximately 35¢ each and the wholesale prices of the jacket line range from approximately $8.00 upward. Rule 39(a)[1] of the aforementioned Rules and Regulations exempts fur products from the Act's requirements provided specified conditions are met. One category excluded is furs costing $5.00 or less, exclusive of costs of incorporating them in the fur products; but one of the conditions imposed under the rule to qualify for the exemption is that no express or implied representation be made concerning fur contained in the product. Because statements and, in a few instances, pictorial representations concerning the fur have been included by the respondents in the

[1] "Where the cost of any manufactured fur or furs contained in a fur product, exclusive of any costs incident to its incorporation therein, does not exceed five dollars ($5.00), or where a manufacturer's selling price of a fur product does not exceed five dollars ($5.00), and no express or implied representation is made concerning the fur contained in such product * * *, the fur product shall be exempt from the requirements of the Act and Regulations * * *."

pricing brochure, their contention that such garments are excluded by that rule is wrong.

Nor are such articles excepted from the Act's requirements because respondents make no sales directly to consumers or because there is no record showing the brochures are intended for retailers' display to prospective consumers. The brochures containing the incorrect fur designation were for display by salesmen to the wholesale trade and to assist their explaining of price differentials among the coats resulting from collar and other variations. They were used and disseminated in commerce and clearly intended to promote and assist, directly and indirectly, in the sale by respondents of the products. The Act requires that the fur products covered by it be truthfully labeled and invoiced in the manner there prescribed. It is not controlling that the term "mouton" may be recognized in the garment trade as dyed and otherwise processed lamb fur.

The record, therefore, supports the determination that the respondents have misbranded their fur products by failing to attach labels showing the information required by Section 4(2)(a) and Section 4(2)(c) of the Act in the manner and form prescribed by the Rules and Regulations thereunder and have falsely and deceptively invoiced such products by failing to invoice them as required by Section 5(b)(1)(A) and 5(b)(1)(C) and in the manner and form prescribed by such rules; and the record additionally establishes, and we find, that the respondents, in violation of said Act and rules, have offered for sale and sold in commerce fur products which were falsely and deceptively advertised in commerce in that such advertisements did not show the information prescribed by Section 5(a)(1) and Section 5(a)(3) of said Act.

We next consider the exceptions by respondents to the initial decision's findings of violation of the Wool Products Labeling Act. The quilting or interlinings used for certain of the garments consist of three layers, namely, a layer of woolen or other fiber between a layer of rayon fabric and a layer of cheesecloth. These are stitched together, and any woolen content present forms the middle layer. The quilting comes from one supplier to whom respondents furnish the rayon facing fabric; and he attaches the cheesecloth and filler, the fiber content of such filler being at his option. Under Section 2(e) of the Wool Products Labeling Act, a wool product is defined as any product, or any portion of a product, which contains, purports to contain, or in any way is represented as containing wool, reprocessed wool or reused wool. Respondents' garments containing the woolen interlinings thus are wool products within the purview of that subsection.

However, another section of the Act, namely, Section 4(d),[2] states that the Act shall not be construed to require designations on garments as to the fiber content of their linings, paddings or other named components except, among others, those for which express or implied representations of fiber content are customarily made; and it also empowers the Commission to promulgate rules in reference to classes of articles concerning which such representations are customarily made. Rule 24(c) prescribes that the label for a wool garment product containing interlinings show their fiber content separately, but excludes those interlinings ordinarily used in garments for structural purposes and not for warmth.

The hearing examiner found that the interlinings were used for added warmth. Counsel supporting the complaint did not question the respondent testifying at the hearing as to his motives for using the quilted material. On the other hand, respondents introduced no testimony showing that their interlinings constituted paddings or stiffening materials used for structural purposes. The aforementioned witness when testifying did, however, display several of the garments to the hearing examiner and counsel. Although a sample of the quilting material was received, the exhibits of record include no garment for our inspection. That the facts pertinent to the warmth issue were inadequately developed is obvious, and we think that the record we are called on to review does not suffice for informed decision on that issue.

As we noted above, the dyed lamb fur used by respondents for the collars of the garments cost respondents approximately 35 cents each. Furthermore, the record indicates that the woolen quilting used in each garment costs only 20 cents. Finally, as previously noted, the wholesale prices of the jackets range around $8.00. On an $8.00 garment, even the most gullible could not expect much mouton, either dyed mouton-processed lamb or genuine mouton. However, there having been established by the record a clear violation with respect to the "Genuine Mouton" representation, we are sustaining the Hearing Examiner's decision finding a violation of the Fur Products Labeling Act.

---

2 "This section shall not be construed as requiring designation on garments or articles of apparel of fiber content of any linings, paddings, stiffening, trimmings, or facings, except those concerning which express or implied representations of fiber content are customarily made, nor as requiring designation of fiber content of products which have an insignificant or inconsequential textile content: *Provided,* That if any such article or product purports to contain or in any manner is represented as containing wool, this section shall be applicable thereto and the information required shall be separately set forth and segregated.

"The Commission, after giving due notice and opportunity to be heard to interested persons, may determine and publicly announce the classes of such articles concerning which express or implied representations of fiber content are customarily made, and those products which have an insignificant or inconsequential textile content."

In retrospect we feel that the length of time already expended on this somewhat picayunish matter is regrettable; to expend the additional time required to develop an adequate record with respect to the Wool Products Labeling Act aspect of the case involving woolen quilting costing some 20 cents per garment would be deplorable. While the Commission has the power to remand a case for the reception of such additional evidence as may be necessary to provide an adequate basis for decision on questions presented for review, such a procedure would be time consuming, would be an unconscionable waste of public funds, and likewise would be to a degree harrassing to parties respondent. Under all the circumstances we think that the public interest would not be served by remanding the case for further proceedings.

The hearing examiner's findings of violation of the Fur Products Labeling Act are approved but those to like effect respecting the Wool Products Labeling Act are rejected. The charges of the complaint in reference to the latter are, accordingly, being dismissed without prejudice to the Commission's right to reopen for further proceedings should future conditions warrant, or to take such further action as may be warranted by then existing circumstances. As so modified, the initial decision is being adopted as the decision of the Commission.

FINAL ORDER

This matter having come on for hearing upon the appeal by the respondents from the initial decision of the hearing examiner and the Commission, for reasons stated in the accompanying opinion, having granted the appeal in part and denied it in part:

*It is ordered*, That the findings as to the facts contained in the initial decision be, and they hereby are, modified (1) by striking the words "for added warmth" appearing in the first sentence of paragraph 4 thereof, (2) by striking from the first sentence of paragraph 5 thereof the words "and should be properly labeled, 'wool product' being" and (3) by substituting the following language in lieu of the last sentence contained in said paragraph 5:

"The facts pertinent to whether the quiltings or interlinings were for warmth rather than structural purposes were inadequately developed for the record. The record accordingly does not suffice for informed decision on whether the respondents have or have not violated the Wool Products Labeling Act."

*It is further ordered*, That paragraph 1 of the "Conclusions" contained in the initial decision be, and it hereby is, modified (1) by adding after the word "respondents" in the first line thereof the

words "as found in paragraphs 6 to 9, inclusive, above" and (2) by striking therefrom the words "the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and."

*It is further ordered*, That the following order be, and it hereby is, substituted in lieu of that contained in the initial decison:

"*It is ordered*, That Sam Goldman and Sol Goldman, individually and as copartners trading as Excelled Sheepskin & Leather Coat Co., or under any other name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products, or in connection with the manufacture, sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as 'commerce,' 'fur' and 'fur product' are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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

"B. Falsely or deceptively invoicing fur products by failing to furnish to purchasers of fur products invoices showing all of the information required to be disclosed by each of the subsections of §5(b)(1) of the Fur Products Labeling Act;

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

1. Fails to disclose:

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

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

"*It is further ordered*, That the charges contained in paragraph 3 of the complaint be, and they hereby are, dismissed without prejudice."

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

*It is further ordered*, That 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 as modified.

---

IN THE MATTER OF

## INDEPENDENT QUILTING 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 7754. Complaint, Jan. 25, 1960—Decision, May 13, 1960*

Consent order requiring New York City manufacturers to cease violating the Wool Products Labeling Act by tagging and invoicing as "100% Reprocessed Wool" and "80% Reused Wool, 20% other fibers," wool products which contained substantially less wool than so indicated.

*Mr. DeWitt T. Puckett* for the Commission.
No appearance for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with certain violations of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admis-

sion by respondents that they have violated the law as alleged in the complaint.

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

1. Respondent Independent Quilting Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal place of business located at 330 West 38th Street, New York, New York. Individual respondents Abraham Saltzman, Larry Greenwald and Emmett Greenwald are president, vice president and secretary treasurer, respectively, of the corporate respondent, and 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 Independent Quilting Company, Inc., a corporation, and its officers, and Abraham Saltzman, Larry Greenwald, and Emmett Greenwald, 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 Prducts Labeling Act of 1939, of wool interlining materials or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

*It is further ordered*, That respondents Independent Quilting Company, Inc., a corporation, and its officers, and Abraham Saltzman, Larry Greenwald and Emmett Greenwald, individually and as officers of said corporation, and respondents' representatives, agents

and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of fabrics or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fibers of which their products are composed, or the percentages thereof, on invoices, shipping memoranda or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of May, 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

## RAYMOND M. HORWITZ TRADING AS GYRO FAMILY MASSAGE EQUIPMENT

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

*Docket 7787. Complaint, Feb. 24, 1960—Decision, May 17, 1960*

Consent order requiring a distributor of massage equipment in Upper Darby, Pa., to cease advertising falsely that his "Gyro Massage and Heat Pillow" would relieve the pain of arthritis, bursitis, etc., and would "Contour You"; that his "Gyro Belt" plan would reduce particular areas of the body, tone the muscles, and reduce flabbiness; and that his "Gyro Lounge Chairs" would slenderize the body.

*Mr. Morton Nesmith* for the Commission.
*Mr. Michael Francis Doyle*, of Philadelphia, Pa., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of the Federal Trade Commission Act through the use of certain advertisements in connection with massage equipment sold by him. An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other

things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

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

1. Respondent Raymond M. Horwitz is an individual trading as Gyro Family Massage Equipment, with his principal office and place of business located at 41–43 South Sixty-Ninth Street, Upper Darby, 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 Raymond M. Horwitz, trading as Gyro Family Massage Equipment, or under any other name, and his representatives, agents or employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his devices designated as Gyro Massage and Heat Pillow, Gyro Belt, and Gyro Lounge Chairs, or any other devices of substantially similar design or operation, whether sold under the same or any other name, do forthwith cease and desist from:

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, which advertisement represents, directly or by implication:

(a) That the use of the Gyro Massage and Heat Pillow will relieve the pain of arthritis, bursitis, aching joints, sore muscles or any other pains, unless expressly and clearly limited to the temporary relief of minor aches and pains, or that its use will have any effect upon the contour of the body.

(b) That the use of respondent's Gyro Belt will cause any reduction in weight in any area of the body or in the over-all body weight, or that the use of said device in conjunction with a plan which provides for a low calorie diet will cause any reduction in weight in any area of the body or in the over-all body weight, unless it is clearly stated that any reduction in weight will be solely by reason of the diet.

(c) That the use of respondent's Gyro Lounge Chairs will slenderize the body.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of May, 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

## CHUDIK FURS, INC., ET AL.

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

*Docket 7757. Complaint, Jan. 26, 1960—Decision, May 18, 1960*

Consent order requiring furriers in Detroit, Mich., to cease violating the Fur Products Labeling Act by mutilating labels attached to fur products prior to ultimate sale; by labels falsely identifying furs with respect to the name of the animal producing them; by failing to set forth the term "Dyed

Broadtail-processed Lamb" on invoices and in advertising; by newspaper advertising which failed to disclose the names of animals producing certain furs, the country of origin of imported furs, or the fact that some products contained artificially colored fur, and which made claims respecting prices and values of fur products without adequate records as a basis therefor; and by failing in other respects to comply with requirements of the Act.

*Mr. Garland S. Ferguson* for the Commission.
*Mr. Martin Schlesinger*, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondents have violated the Federal Trade Commission Act, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, by multilating or causing or participating in the multilation of labels required by the Fur Products Labeling Act to be affixed to fur products; by misbranding and falsely and deceptively invoicing and advertising certain fur products; and by failing to maintain full and accurate records disclosing the facts upon which their claims and representations respecting the prices and values of fur products were based.

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 Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that corporate respondent Chudik Furs, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 326 Fisher Building, 3011 West Grand Boulevard, Detroit, Michigan, and that Edward H. Chudik is president of said corporate respondent and controls, formulates and directs the acts, practices and policies of the corporate respondent, his address 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, and of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

*It is ordered*, That respondents Chudik Furs, Inc., a corporation, and its officers, and Edward H. Chudik, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, 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. 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;

B. 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 §4(2) of the Fur Products Labeling Act;

C. Setting forth on labels affixed to fur products: (1) Information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form;

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

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

D. Failing to set forth all the information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on one side of labels;

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

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

2. Mutilating, or causing the mutilation, or participating in the mutilation 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 of the information required to be disclosed by each of the subsections of §5(b)(1) of the Fur Products Labeling Act;

B. Setting forth information required under §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 "Dyed Broadtail processed Lamb" when an election is made to use that term instead of "Lamb";

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

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

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

B. Fails to set forth the term "Dyed Broadtail processed Lamb" when an election is made to use that term instead of "Lamb";

C. Sets forth the term "blended" as part of the information required under §5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs;

D. Fails to set forth separately, in advertisements relating to fur products composed of two or more sections containing different animal furs, the information required under §5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, with respect to the fur comprising each section;

5. 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 18th day of May, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents Chudik Furs, Inc., a corporation, and Edward H. Chudik, 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

## MILGRIM, INC.

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

*Docket 7758. Complaint, Jan. 26, 1960—Decision, May 18, 1960*

Consent order requiring Cleveland, Ohio, merchandisers to cease violating the Fur Products Labeling Act by mutilating labels on fur products prior to ultimate sale; by advertising in newspapers which failed to disclose the names of animals producing the fur in certain products or the fact that

some fur products contained artificially colored fur, and used the term "blended" to describe the bleaching, tip-dyeing, etc., of furs; and by failing in other respects to comply with labeling, invoicing, and advertising requirements of the Act.

*Mr. Garland S. Ferguson* for the Commission.
*Mr. Sidney S. Friedman*, of Cleveland, Ohio, for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondent has violated the Federal Trade Commission Act, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, by mutilating or causing or participating in the mutilation of labels required by the Fur Products Labeling Act to be affixed to fur products; and by misbranding and falsely and deceptively invoicing and advertising certain fur products.

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

The agreement states that respondent Milgrim, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1310 Huron Road, Cleveland, Ohio, and that respondent's fur department is operated in conjunction with the lessee thereof.

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

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

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

*It is ordered*, That respondent Milgrim, Inc., an Ohio corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which are made in 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 §4(2) of the Fur Products Labeling Act;

B. Setting forth on labels affixed to fur products:

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

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

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

2. Mutilating, or causing the mutilation or participating in the mutilation 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 failing to furnish to purchasers of fur products an invoice showing all the information required to be disclosed by each of the subsections of §5(b)(1) of the Fur Products Labeling Act;

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;

B. Fails to set forth separately in advertisements relating to fur products composed of two or more sections containing different animal furs, the information required under §5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, with respect to the fur comprising each section;

C. Sets forth the term "blended" as part of the information required under §5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 18th day of May, 1960, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF

# SIDNEY J. KREISS, INC., ET AL.

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

*Docket 7264. Complaint, Sept. 30, 1958—Decision, May 19, 1960*

Consent order requiring New York City distributors of women's hosiery to retail stores, to cease representing falsely—in advertising in magazines and newspapers and in "mailers" supplied their customers for use in promoting sales—that certain of their hosiery was created, designed or fashioned by famous fashion designers.

Charges of fictitious pricing and of offering hosiery "free of charge" were dismissed.

*Mr. Edward F. Downs* for the Commission.
*Guzik and Boukstein*, of New York, N.Y., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is based upon a complaint brought under Section 5 of the Federal Trade Commission Act charging respondents with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in connection with the sale and distribution of their hosiery.

This proceeding is now before the hearing examiner for final consideration upon the complaint, answers thereto, testimony and other evidence, proposed findings of fact and conclusions of law filed by all parties and brief filed by respondent. The hearing examiner has given consideration to the proposed findings of fact and conclusions submitted by the parties, and brief in support thereof, and all findings of fact 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 duly advised in the premises makes the following findings as to the facts, conclusions drawn therefrom, and order:

1. Respondents Sidney J. Kreiss, Inc., and Picturesque Hosiery Company, Inc., are corporations organized under the laws of the State of New York with their offices and principal places of business located at 350 Fifth Avenue, New York, New York. Respondents Sidney J. Kreiss and Mildred Kreiss are individuals and officers of both corporate respondents. Respondent Sidney J. Kreiss formulates, directs and controls the acts and practices of said corporate respondents. Respondent Mildred Kreiss, wife of Sidney J. Kreiss,

does not actively participate in the management or operation of the business of said corporations.

2. Respondents are now and for several years last past have been engaged in the sale and distribution in interstate commerce of women's hosiery to retail stores for resale to the consuming public. In such sale and distribution respondents are engaged in substantial competition with corporations, firms and individuals who are likewise engaged in the sale and distribution of hosiery products in interstate commerce.

3. On or about June 1, 1956, the respondent Picturesque Hosiery Company, Inc., entered into an agreement with Jeanne Lanvin, S. A., a corporation of Paris, France, and through and by virtue of the terms of this agreement said Jeanne Lanvin, S. A., granted to said respondent an exclusive license to use the name "Jeanne Lanvin" as a brand name or trade mark for its women's hosiery sold and distributed in the United States.

4. On or about the 27th day of June 1956, respondent Sidney J. Kreiss, Inc., entered into a contract with Oleg Cassini by the terms of which contract Oleg Cassini granted to said respondent an exclusive license to use the name, likeness and crest of said licensor in connection with the manufacture, sale, distribution and advertising of said respondent's hosiery.

5. Jeanne Lanvin, S. A., and Oleg Cassini are engaged in the designing and styling and in the manufacture and sale of women's apparel in Paris, France, and New York, New York. In some instances the corporate respondents purchased greige goods which were sent to a finisher for dying and finishing, and in other instances bought the finished hosiery from the mill. This hosiery was variously sold under the brand name of Lanvin and Oleg Cassini by the corporate respondents. The hosiery was not created, designed, styled or manufactured or in any other way controlled by Jeanne Lanvin and Oleg Cassini.

6. The respondents have falsely represented that the hosiery sold by them under the brand names Lanvin and Oleg Cassini were created, designed and fashioned by famous fashion designers such as Jeanne Lanvin and Oleg Cassini. Such representations were made by respondents in advertising placed by them in magazines having a national circulation and in local advertising disseminated by customers of respondents with the cooperation of respondents. Typical of representations in national magazines were advertisements placed by respondent for its Lanvin brand hosiery bearing the legend:

NYLONS BY JEANNE LANVIN

7. The corporate respondents granted advertising allowances to all their retailer customers advertising their Lanvin and Cassini hosiery. The advertising issued by respondents' retailer customers with reference to the Lanvin brand hosiery consisted of newspaper advertising and circulars or cards generally referred to as mailers. In such consumer advertising it was represented directly and by implication that respondents' Lanvin hosiery was created, designed or fashioned by famous fashion designers such as Jeanne Lanvin. Among and typical of the representations contained in such consumer advertising of respondents' Lanvin brand of hosiery were the following:

Jeanne Lanvin, the world renowned couturiere, brings you her luxurious nylons.

* * * exciting as the fashions from Lanvin's Paris atelier.

Only Paris could inspire such fantastically-flattering nylons!

* * * French couturier nylons, created by the famous Parisian designer and parfumer.

Newest fashion from Lanvin studios in Paris * * *

* * * you know Lanvin is a great house of the Paris couture * * * now meet Lanvin hosiery exclusively at Davison's.

French couturier nylons created by the famous Parisian designer, Jeanne Lanvin.

8. The plans of distribution used in connection with the Oleg Cassini stockings was to offer one box of three as a gift, provided the purchaser agreed to purchase three additional boxes. In 1957 this plan of sale was discontinued and this stocking was sold on the same plan as that of Lanvin hosiery. The circulars and mailers used by respondents and their retailer customers to advertise Oleg Cassini hosiery generally contained, among other things, the likeness and crest of Oleg Cassini with representations and statements similar to those used in connection with respondents' Lanvin hosiery, namely, that the hosiery sold under the Cassini brand name was created, designed or fashioned by famous fashion designers. Among and typical of the representations contained in such consumer advertising of respondents' Oleg Cassini hosiery were the following:

Prized above all else—glamorous nylons by Paris-born Oleg Cassini, a man who really knows beauty. Internationally famous as a couturier, he has created the ultimate in stocking elegance * * *.

* * * This famed designer's talented touch is obvious in every crystal-clear pair * * *.

In the highly competitive world of fashion design, few names are regarded as highly as that of Paris born Oleg Cassini. The skill, imagination and craftsmanship which are found in his creations have endowed him with a reputation of international scope. Mr. Cassini has now turned his talents to the

manufacturing of exquisitely beautiful nylon stockings which we now have the pleasure of presenting to you at this Christmas Season for your gift requirements and for yourself.

9. It was contended by the respondents that they did not participate in the local advertising of their customers, consisting of newspaper advertisements, circulars and mailers in which appeared the false representations above described. Respondent Sidney J. Kreiss testified that the corporate respondents granted advertising allowances to all their retailer customers advertising their Lanvin and Cassini hosiery in local newspapers and in circulars and mailers; that all such advertising was prepared by the retailer customer and not seen by the respondents until submitted for payment of advertising allowances. This testimony is completely refuted by documentary evidence in the record:

(1) On July 11, 1957, respondent Sidney J. Kreiss wrote Miss Jean Rothenberg, Hecht Company, Washington, D.C., which letter read in part as follows:

When you were in my office last week, we discussed with you the possibility of your store running a promotion on Jeanne Lanvin nylons using a direct mailing piece such as has been used very successfully by many of our other customers.

In line with that discussion, I had our printer set up a mailing piece for you to consider. I did this so that if you were to give the matter further consideration you would have the mailing piece in front of you so that you and whoever in the store might be concerned with this promotion could consider the matter further.

(2) On February 11, 1957, respondent Sidney J. Kreiss, Inc., wrote McCurdy's Department Store, Rochester, New York, which letter read in part as follows:

In reply to our conversation of last week, Sidney J. Kreiss feels that it would be impossible to run Oleg Cassini as we have in the past. Due to the fact that it was a losing proposition, we are presenting this promotion in a different way.

In the very near future, I will have for you a copy of a mailer on Oleg Cassini. This mailer will offer $1.50 per pair Oleg Cassini hose at $1.09. The prices are to be $7.25 for 60's and $7.75 for Seamless. We will pay for the complete mailer plus half the postage on a minimum order roughly from 400 to 500 dozen. I will have further details on this later on.

(3) On March 20, 1957, respondent Sidney J. Kreiss, Inc., wrote Karl Hoffman, McCurdy's Department Store, Rochester, New York, which letter read in part as follows:

In reference to my past letter to you concerning our new Oleg Cassini promotion, I am enclosing herewith a mailer just made for the May Company, which with this I feel sure that you can get an idea of what we intend to do.

* * * This mailer is self explanatory, and I would appreciate your reading it through and giving me your opinion regarding same. As previously written you, we supply the mailer free of charge.

(4) On September 25, 1957, respondent Sidney J. Kreiss wrote Miss Helen Pinkus, Lansburgh's, Washington, D.C., which letter read in part as follows:

We are enclosing herewith the proof for your Oleg Cassini mailer. Please look this over and make any corrections, and send it back to us as soon as possible, so we can get to work on it.

(5) On October 8, 1957, respondent Sidney J. Kreiss wrote Miss Jean Rothenberg, Hecht Company, Washington, D.C., which letter read in part as follows:

I am having my office set up the quantities for the Lanvin promotion. I thought it would be a good idea to confirm our deal in writing so that we both know what is involved in this matter.

We are printing 200,000 triplefold direct mail cards which we will ship to you free of charge. We are also going to absorb the cost of the POSTAGE to cover the mailing of these 200,000 cards. This amounts to $3000 to cover the cost of 200,000 cards at a penny and a half a card. All other costs involved in the mailing of these cards are to be absorbed by your store. These are the costs involved: The addressing of the cards and the actual cost of giving the cards to the post office for mailing. Our expense, therefore, will be the $3000 to cover the postage and $1600 which we are spending to print the 200,000 cards.

10. The corporate respondents from time to time advertised Lanvin and Oleg Cassini hosiery in magazines having national circulation, and in local newspapers in cooperation with their retailer customers, in which advertisements the price of said Lanvin hosiery was listed at $1.65 for the 60 gauge, $1.95 for the 66 gauge, and $2.50 for the 75 gauge hosiery per pair; and the Oleg Cassini hosiery at $1.50 per pair. The wholesale price charged by the respondents for said hosiery was $10.50, $13.50 and $15.00 per dozen pair for Lanvin, and $10.50 per dozen pair for Cassini hosiery.

11. As a general practice it was understood by the corporate respondents and their retailer customers that such customers would conduct one or two sales a year on such hosiery, at 33⅓ to 50 percent off advertised price, the sale period lasting from two to four weeks. During the sale period, said corporate respondents sold said hosiery to their retailer customers at a substantially reduced price of from $7.00 to $7.50 per dozen pair. At times other than the sale periods respondents' retailer customers purchased at the regular wholesale price and sold said branded hosiery at the advertised price.

## CONCLUSIONS

1. The charge in the complaint that the respondents used fictitious prices in connection with the sale of their hosiery has not been sustained. The holding of annual or semi-annual sales by retail stores

and the allowance of a lower wholesale price during the sale period by the manufacturer is a customary practice in the hosiery industry. During the period when respondents' hosiery was not on sale by the retailers, such hosiery was sold at the advertised retail price. During the sales held by retailer customers of the respondents, the hosiery was actually sold at a discount off the advertised retail price.

2. Respondents have falsely represented that certain of their hosiery was created, designed or fashioned by famous fashion designers, both in advertising disseminated by the respondents in magazines of national circulation and in circulars, mailers and other advertising material furnished by the respondents to their retailer customers.

3. The plan of respondents of giving a box of Cassini stockings free on condition that the recipient purchase three additional boxes of said stockings was not in violation of the Federal Trade Commission Act. All the conditions, obligations and other prerequisites to the receipt and retention of the free or gift article of merchandise was clearly explained in the circular, by which said offer was made so as to leave no reasonable probability that the terms of the advertisement or offer might be misunderstood.[1] In the circular it was clearly stated—

> When you mail to us the enclosed subscription form, you will receive OLEG CASSINI'S *gift box* of three pairs of nylons at once. Beginning one month later, you will receive 1 box of three (3) pairs each month for the next three months, and you will be billed on your regular charge account in the amount of $4.50 for each box of three pairs. If you cancel your three box subscription before its completion, it will be necessary for us to charge you for the *gift box*.

4. The record fails to show that Mildred Kreiss participated in any of the acts and practices of the corporate respondents and the complaint should be dismissed as to this respondent.

5. The acts and practices of the respondents, consisting of representations that the hosiery sold under the brand names of Lanvin and Oleg Cassini were created, designed, fashioned or manufactured by famous fashion designers, and the placing in the hands of others a means or opportunity to make such representations as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

*It is ordered*, That respondents Sidney J. Kreiss, Inc., a corporation, and Picturesque Hosiery Company, Inc., a corporation, and

[1] Walter J. Black, Inc., et al., Docket No. 5571.

their respective officers, and respondent Sidney J. Kreiss, individually and as officer of said corporations, and their respective agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of hosiery or other similar products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication, that respondents' hosiery or any other similar product has been created, designed, styled or manufactured by anyone other than the respondents or the person who actually did create, design, style or manufacture such hosiery or other similar products.

(2) Placing in the hands of others a means or opportunity of representing to purchasers or prospective purchasers that the hosiery or other products supplied by the respondents were created, designed, styled or manufactured by famous fashion designers or any other person who did not actually create, design, style or manufacture such hosiery or other product.

*It is further ordered*, That the complaint be, and the same is hereby, dismissed as to the respondent Mildred Kreiss.

*It is further ordered*, That all charges of the complaint not prohibited by this order be dismissed.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner:*

The complaint in this matter charges respondents with violation of Section 5 of the Federal Trade Commission Act in three respects. The hearing examiner held that one of the allegations of the complaint was sustained by the evidence and ordered respondents (except for an individual as to whom the complaint was dismissed) to cease and desist the practice found to be illegal. He ordered that the remaining two allegations be dismissed. Both sides have appealed from this decision.

We consider first the appeal of counsel supporting the complaint from the dismissal of the charge that respondents used fictitious retail prices to promote the sale of their hosiery at lesser prices. The record shows that during the years 1956 and 1957 respondents sold their Lanvin and Cassini brands of hosiery under the following plan. Retailers were required to purchase a basic stock of hosiery at wholesale prices ranging from $10.50 to $15.00 per dozen pairs and offer it to the public at retail prices ranging from $1.50 to $2.50 per pair. Respondents permitted these retailers to sell the hosiery

at about one-half of that retail price on special sales for which the retailers could purchase the hosiery at wholesale prices ranging from $6.50 to $8.50 per dozen pairs. As a result, approximately 95% of all sales, totalling about 70,436 dozen pairs, were made by respondents during 1956 and 1957 at the lower wholesale price. In substance, counsel supporting the complaint argues that the evidence supports a finding that sales at the higher retail prices did not establish the customary and usual prices of respondents' hosiery and therefore such prices were fictitious.

We have carefully considered the points presented and we are not convinced that the higher retail price is fictitious as alleged. Respondents sold their hosiery to retailers located in cities throughout the country. The special sales conducted by those retailers who elected to conduct them lasted from two to four weeks each, with a maximum of two such sales annually. The testimony of the three retailers called in this proceeding discloses that it is the usual practice for suppliers of branded hosiery, such as respondents', to allow their customers to conduct one or two sales a year for which the hosiery may be purchased at reduced wholesale prices. Except for the special sales periods, those retailers who purchased respondents' hosiery, stocked, displayed, offered for sale and sold such hosiery at the higher retail prices. Thus, for a period of from ten to eleven months of the year, respondents' hosiery was available to consumers only at the higher retail price. The record shows that at least 3,729 dozen pairs were sold at the higher retail prices by a total of 34 different retailers during 1956 and 1957 and a proportionate amount was sold at those prices in 1958.

In our opinion, there are other significant facts of record which militate against the position of counsel supporting the complaint. For the two-year period covered by the documentary evidence, there were nine retailers located in all parts of the country who made purchases of respondents' hosiery only at the higher wholesale prices. There is undisputed testimony that these nine retailers sold this hosiery only at the higher retail prices and at no time did they conduct special sales or offer the hosiery at a reduced price. In addition, there is evidence that retailers who did conduct sales purchased at the higher wholesale prices between sales periods to maintain their stock. The record also shows that hosiery purchased at the lower wholesale price was marked up to the higher retail price after the sale period.

On the basis of the entire record, we are of the opinion that the evidence fails to sustain the allegation that the higher retail prices

of respondents' hosiery are fictitious. Accordingly, the appeal of counsel supporting the complaint on this issue must be denied.

Counsel supporting the complaint also contends that the hearing examiner erred in failing to find that certain of respondents' hosiery was not free of charge as represented. The record shows that this free offer was made only in connection with a so-called subscription plan for the sale of respondents' Cassini line of hosiery. Retailers using this plan offered their customers a box of three pairs of Cassini hosiery without charge on the condition that the customers accept a box of three pairs for each of the next three months which would be billed to their account in the amount of $4.50 per box. If the customer cancelled the subscription before its completion, he was charged for the "gift" box. From the evidence, it appears that retailers when using the subscription plan did not sell or offer for sale Cassini hosiery in any other manner. Retailers who did not use the plan purchased Cassini hosiery from respondents at different wholesale prices as previously described. These retailers sold the hosiery at a retail price of $1.50 per pair except for a reduction in price during the two special sale periods.

The hearing examiner found that all of the terms and conditions of the free offer were fully explained in the promotional material disseminated to consumers by retailers. Counsel supporting the complaint does not dispute this finding. However, he contends that the offer is deceptive for the reason that the price of the "free" box is included in the price of the other boxes sold under the plan, citing the Commission's decision *In the Matter of Walter J. Black, Inc., et al.*, Docket 5571 (1953). In support of his position, he relies on evidence that in some instances, respondents sold Cassini hosiery to retailers under the plan at a lower wholesale price than it sold to those retailers not under the plan whose retail price, as we have stated, was $1.50 per pair. He argues that those retailers under the plan paying the lower wholesale price, by charging $1.50 per pair ($4.50 for a box of three pairs) were getting more than the customary mark-up on this hosiery. He contends that this additional mark-up constituted the difference between a retail price of $1.50 per pair and $1.00 per pair and thus these retailers were including the price of the gift box in the price charged for the hosiery they sold under the plan.

The "free" representation was made to consumers by respondents' retailers. Those consumers who did not complete their subscriptions were required to pay $1.50 per pair. It is clear that those consumers who completed their subscriptions did in fact receive three pairs of Cassini hosiery which were otherwise available to them

only at a price of $1.50 per pair from any source. Under these circumstances, the fact that certain retailers using the plan were able to purchase this hosiery at a low wholesale price is not controlling. We must conclude that the evidence fails to sustain the allegation pertaining to the free offer. The argument of counsel supporting the complaint on this point is also rejected.

Respondents have appealed from the hearing examiner's holding that they falsely represented that certain of their hosiery was created, designed or fashioned by famous fashion designers. The first point presented is whether respondents are responsible for the representations. The hearing examiner quoted at length from the documentary evidence of record in support of his conclusion that circulars, mailers and other advertising material containing the representations were furnished by respondents to their retail customers. Moreover, there is undisputed testimony that the mailer used by one retailer was prepared and paid for by respondents. There can be no doubt that the representations in question were made by the respondents.

The next question is whether the hosiery was in fact created, designed or fashioned by famous fashion designers. Although respondents were granted the right to use the names of two fashion designers, Jeanne Lanvin and Oleg Cassini, in their sale of hosiery, the record clearly establishes that neither of these at any time created, designed or styled the hosiery carrying their names. As shown by the hearing examiner, this hosiery was either purchased by respondents as greige goods and sent to a mill for dyeing and finishing or was purchased in finished form from the mill. In addition, the admission by respondent Sidney J. Kreiss, that identical hosiery was sold under both the Lanvin and Cassini names would of itself warrant a finding that the representations in question were false. Accordingly, the appeal of respondents on this point is denied.

Respondents also contend that the order is too broad. Specifically, they object to that part of the order which requires them to cease placing in the hands of others a means or opportunity for deceiving purchasers as to the identity of the person who created, designed or styled their hosiery. As previously shown, respondents did provide their retail customers with the means and opportunity for such deception. It is obvious that this part of the order is necessary to prevent such a practice in the future. Respondents' argument on this point is rejected on the authority of *Consumer Sales Corp.* v. *Federal Trade Commission*, 198 F. 2d 404, and *Herzfeld et al.* v. *Federal Trade Commission*, 140 F. 2d 207. See also *Federal Trade*

*Commission* v. *Winsted Hosiery Co.*, 258 U.S. 483, and *C. Howard Hunt Pen Co.* v. *Federal Trade Commission*, 197 F. 2d 273.

The order dismisses the complaint as to respondent Mildred Kreiss by name, presumably in both her individual and official capacities. Although we believe there is sufficient grounds to justify dismissal in her individual capacity, no showing has been made to justify the dismissal as to her in her official capacity. The order should therefore be modified to dismiss the complaint as to respondent Mildred Kreiss as an individual but not as an officer of the corporations. As so modified, the initial decision is adopted as the decision of the Commission. An appropriate order will be entered.

Chairman Kintner and Commissioner Secrest dissent in part.

OPINION OF COMMISSIONER SECREST DISSENTING IN PART

In my opinion the price at which 95% of respondents' merchandise is sold is the regular price as indicated by this record. The respondents have engaged in fictitious pricing and an order should issue.

Chairman Kintner joins in this partial dissent.

FINAL ORDER

This matter having been heard by the Commission upon cross-appeals from the hearing examiner's initial decision, filed by respondents and counsel in support of the complaint; and

The Commission having rendered its decision denying both appeals and directing modification of the initial decision:

*It is ordered*, That the order to cease and desist contained in the initial decision be, and it hereby is, modified by adding to the preamble thereof the words "and respondent Mildred Kreiss as an officer of said corporations" immediately following the words "and their respective officers" and by striking therefrom the next to last paragraph and substituting therefor the paragraph:

*It is further ordered*, That the complaint be, and the same hereby is, dismissed as to respondent Mildred Kreiss in her individual capacity but not in her capacity as an officer of respondent corporations.

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

Chairman Kintner and Commissioner Secrest dissenting in part.

IN THE MATTER OF

# M. S. DISTRIBUTING COMPANY ET AL.

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

*Docket 7745. Complaint, Jan. 12, 1960—Decision, May 19, 1960*

Consent order requiring Chicago distributors of phonograph records to cease giving concealed "payola" to television and radio disc jockeys to induce playing their records in order to increase sales.

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

*Rothschild, Hart, Stevens & Barry* by *Mr. Edward I. Rothschild*, of Chicago, Ill., 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 an independent distributor for several record manufacturers 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 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, 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, the Associate Director and the Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent M. S. Distributing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1700 South Michigan Avenue, Chicago, Illinois, and that individual respondents Milton T. Salstone and M. G. McDermott are president and vice president, respec-

tively, of the corporate respondent, and formulate, direct and control the acts and practices of said corporate respondent, their 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 coning consent order to cease and desist as part of the record upon which this decision is based. Therefore,

*It is ordered*, That respondents, M. S. Distributing Company, a corporation, and its officers, and Milton T. Salstone and M. G. McDermott, individually and as officers 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 19th day of May, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents M. S. Distributing Company, a corporation, and Milton T. Salstone and M. G. McDermott, 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

## MILGRIM, INC.

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

*Docket 7759. Complaint, Jan. 26, 1960—Decision, May 19, 1960*

Consent order requiring Detroit, Mich., merchandisers to cease violating the Fur Products Labeling Act by labeling which falsely identified the animal producing the fur in certain products; by failing to set forth the term "Dyed Broadtail processed Lamb" on invoices and in advertising; by advertising in newspapers, which failed to disclose the names of animals pro-

ducing certain furs or the country of origin of imported furs or the fact that some furs were artificially colored, which used the term "blended" to describe the bleaching, dyeing, etc., of furs, and which failed to maintain adequate records for pricing and value claims; and by failing in other respects to comply with labeling, invoicing, and advertising requirements.

*Mr. Garland S. Ferguson* for the Commission.
*Mr. Martin Schlesinger*, of New York, N.Y., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondent has violated the Federal Trade Commission Act, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, by misbranding and falsely and deceptively invoicing and advertising certain fur products, and by failing to maintain full and accurate records disclosing the facts upon which its claims and representations respecting the prices and values of fur products were based.

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

The agreement states that respondent Milgrim, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 326 Fisher Building, 3011 West Grand Boulevard, Detroit, Michigan.

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

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

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

*It is ordered*, That respondent Milgrim, Inc., a Michigan corporation, and its officers and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, 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. 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;

B. 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 §4(2) of the Fur Products Labeling Act;

C. Setting forth on labels affixed to fur products:

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

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

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

D. Failing to set forth all the information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on one side of labels;

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

F. Failing to set forth on labels the item number or mark assigned to a 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 §5(b)(1) of the Fur Products Labeling Act;

B. Setting forth information required under §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 "Dyed Broadtail processed Lamb" when an election is made to use that term instead of "Lamb";

D. 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. 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 by 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. The name of the country of origin of any imported furs contained in the fur product;

B. Fails to set forth the term "Dyed Broadtail processed Lamb" when an election is made to use that term instead of "Lamb";

C. Sets forth the term "blended" as part of the information required under §5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs;

D. Fails to set forth separately in advertisements relating to fur products composed of two or more sections containing different animal furs, the information required under §5(a) of the Fur Prod-

ucts Labeling Act and the Rules and Regulations promulgated thereunder, with respect to the fur comprising each section;

4. Making claims and representations in advertisements respecting prices and values of fur products unless respondent maintains 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 19th day of May, 1960, become the decision of the Commission; and, accordingly:

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

---

IN THE MATTER OF

## UNITED ARTISTS RECORDS, INC.

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

*Docket 7804. Complaint, Mar. 2, 1960—Decision, May 19, 1960*

Consent order requiring a New York City manufacturer and distributor of phonograph records to cease giving concealed "payola" to television and radio disc jockeys to induce playing their records in order to increase sales.

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

*Mr. Sidney Shemel*, of New York, N.Y., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on March 2, 1960, charging it 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.

After issuance and service of the complaint, the above-named respondent, its attorney, and counsel supporting the complaint en-

tered into an agreement for a consent order. The agreement disposes of the matters complained about.

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

The undersigned hearing examiner having considered the agreement and proposed order, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent United Artists Records, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 792 Seventh Avenue, New York, New York.

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

ORDER

*It is ordered*, That respondent United Artists Records, Inc., a corporation, and its officers, 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 respondent has 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 respondent has 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 19th day of May, 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

## THE FAIR

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

*Docket 6822. Order, May 23, 1960*

Order modifying desist order of March 4, 1959,[1] to conform to order of the U.S. Court of Appeals for the Seventh Circuit of April 7, 1960, by substituting a new Paragraph A for the original Paragraphs A and B.

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

*Mr. Henry D. Stringer* for the Commission.

*Wilson & McIlwaine*, of Chicago, Ill., for respondent.

[1] 55 F.T.C. 1367.

ORDER MODIFYING ORDER TO CEASE AND DESIST AND ORDER TO CEASE AND DESIST AS MODIFIED

Respondent having on the 29th day of April, 1959, filed in the United States Court of Appeals for the Seventh Circuit its petition for review [1] of and to set aside the order to cease and desist issued by the Commission on the 4th day of March, 1959; and the Court having heard the cause on briefs and oral argument and having thereafter, on the 8th day of December, 1959, handed down its opinion, and on the same date entered its decree, in which it modified the aforesaid order by vacating and setting aside the order of the Commission "insofar as it relates to the subject of misbranding"; and as thus modified, affirmed and enforced the said order; and the Court having, thereafter on the 7th day of April, 1960, entered another decree further modifying the aforesaid order to cease and desist by ordering that the cease-and-desist order "shall be rephrased to enjoin falsely or deceptively invoicing fur products by failing to furnish invoices showing each element of information required by the Act in lieu of the specific prohibitions contained in said order as issued"; and as thus further modified, affirmed and enforced the said order in all other respects; and,

The Commission being of the opinion that its said order to cease and desist issued on the 4th day of March, 1959, as aforesaid, should be modified so as to bring it into conformity with the decision of the United States Court of Appeals for the Seventh Circuit:

*It is therefore ordered*, That the said order to cease and desist be modified by striking therefrom paragraphs lettered A and B and all of their subsections, relettering paragraphs C and D as paragraphs B and C and adding the following paragraph to be lettered paragraph A:

A. Falsely or deceptively invoicing fur products by:

(1) Failing to furnish to purchasers of fur products invoices 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.

(2) Setting forth on invoices required information in abbreviated form.

and as thus modified to issue and serve upon respondent the following modified order:

MODIFIED ORDER

*It is ordered*, That respondent, The Fair, a corporation, and its officers, representatives, agents and employees, directly or through

[1] Amended by order of the Court entered on the 8th day of May, 1959, on motion of respondent.

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

A. Falsely or deceptively invoicing fur products by:

(1) Failing to furnish to purchasers of fur products invoices 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.

(2) Setting forth on invoices required information in abbreviated form.

B. Falsely or deceptively advertising fur products through the use of any advertisement, public announcement, notice or in any other manner 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:

(1) That the regular or usual price of any fur product is any amount which is in excess of the price at which respondent has usually and customarily sold such products in the recent regular course of its business;

(2) That such product is of a higher grade, quality or value than is the fact, by means of illustrations or depictions of higher priced or more valuable products than those actually available for sale at the advertised selling price, or by any other means.

C. Making pricing claims or representations of the type referred to in paragraph B(1) above, unless there is maintained by respondent full and adequate records disclosing the facts upon which such claims or representations are based.

*It is further ordered*, That the charges of the complaint relating to alleged violations of Rule 44(b) of the Rules and Regulations promulgated under the Fur Products Labeling Act be, and the same hereby are, dismissed.

*It is further ordered*, That the respondent, The Fair, a corporation, shall within ninety (90) days from the 7th day of April, 1960, as required by the said decree of the United States Court of Appeals for the Seventh Circuit entered on the 7th day of April, 1960, as aforesaid, file with the Commission a report in writing setting forth

in detail the manner and form in which it has complied with this modified order to cease and desist.

---

IN THE MATTER OF

## NATE GELLMAN ET AL. DOING BUSINESS AS GELLMAN BROTHERS

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

*Docket 7298. Complaint, Nov. 6, 1958—Decision, May 23, 1960*

Order requiring a Minneapolis, Minn., partnership to cease selling and distributing lottery devices for the sale of merchandise to the public through games of chance.

*Mr. William A. Somers* for the Commission.
*Mr. Maurice Weinstein*, of Milwaukee, Wisc., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Respondents, who are engaged in the sale and distribution of punchboards, are charged with violating the Federal Trade Commission Act by thus placing in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale and distribution of merchandise.

Upon the basis of the entire record, and after considering the proposed findings of facts, conclusions and legal memoranda submitted by counsel, the following findings of facts are made, conclusions reached, and order issued:

1. Respondents Nate Gellman, Burt Horwitz and Peter Podany are individuals and co-partners trading and doing business as Gellman Brothers. The office and principal place of business of all respondents is located at 119 North Fourth Street in the City of Minneapolis, State of Minnesota.

2. Respondents are now, and for more than a year last past have been, engaged in the sale and distribution of merchandise, including devices commonly known as punchboards, to retail dealers, organizations and individuals located in the several states of the United States. Their gross sales, including punchboard sales, for 1957 were in excess of $1,400,000, and approximately the same for 1958. Of this, approximately 50% represented sales outside the State of Minnesota. The volume of respondents' punchboard business was not ascertainable for two reasons: (1) respondents kept no separate

record of punchboard sales, and (2) although a subpoena duces tecum was issued for their production, no records of punchboard purchases could be found by respondents even after diligent search. Since punchboard items are carried and prominently displayed in respondents' catalogue, it is presumed that they constitute a substantial part of respondents' sales.

3. Respondents cause and have caused said devices, when sold, to be transported from their place of business in the State of Minnesota to purchasers located in various states of the United States, other than the State of Minnesota, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their said business, respondents sell and distribute, and have sold and distributed, to said retail dealers, organizations and individuals, punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the public.

5. One of respondents' punchboards presented in evidence is a "GETZUM SMOKES" board (Commission's Exhibit 4) which is, as referred to in respondents' 1957–58 Annual Buyer's Guide No. 72, page 324, a "600-holes, 5¢ play, red, white and blue tickets, semi-thick style board," which takes in $30.00 and pays out, as shown by the legend thereon, 80 packages of cigarettes. The punches are 5¢ each. Red tickets 15, 35, 55, 75, 115 and 135, when punched, each entitle the player to five packs of cigarettes; white tickets 20, 40, 60, 80, 100 and 120 likewise entitle the lucky player to five packs each, as do blue tickets 22, 44 and 66; the last punch on the board also is good for five packs. Thus, out of 600 punches, only sixteen entitle the player to a share of the merchandise, and the merchandiser takes in $30.00 for eighty packs of cigarettes. Each lucky winner gets five packs of cigarettes for one 5¢ punch. Those who punch other than the designated lucky names receive nothing. Another of respondents' boards which is in evidence (Commission's Exhibit 1; Respondents' No. 6455) is described in the catalogue as follows:

GRAND PRIZE
MERCHANDISE
BOARD
POCKET SIZE
BOOK STYLE

No. 6455—Grand Prize Board. 200-hole, 1¢ to 35¢ prize board. Regular Midget style, desirable pocket size. Takes in $63.50 and pays out one Grand Prize as offered by the oper-

ator. Suitable for use by Legions, Churches, Lodges, and similar organizations.
Each ---------- $1.60.

The only legend on this board is—

Numbers Ending in
0 and 5
Register For
GRAND PRIZE
Numbers 1 to 15
ARE FREE
Numbers 16 to 35
Pay What You Draw
Over 35 Pay Only 35¢.

A third board (Commission's Exhibit 2; respondents' No. 6454) is in evidence, which is identical with the board just described except that it "(t)akes in $86.55" and provides that punched numbers 16 to 49 must be paid for in the amount of cents represented by the numbers on the punched slips, and those with numbers larger than 49 sell for 50¢ each.

6. On the lids of the latter two boards are lines in which those who punch the lucky qualifying numbers may register their names. From this list the "grand prize" winner is determined by punching the number in the starred circle at the upper right corner of the board. The purchasers and users of boards of this type can select whatever grand prize they choose, and customarily each board is used for the disposition of a single item of merchandise. Thus there would be but one prize or item of merchandise disposed of by the 200 punches.

7. Respondents' catalogue, pages 324 and 325, describes several money-type boards, and other boards of various sizes and types, some of which obviously are intended for, and conveniently can be used for disposition and sale of merchandise. Typical of these are boards which provide for one "grand prize" and eight to twelve "consolation winners." On many of these boards the price per punch is not designated, the catalogue stating:

Operator sets his own payout and price per sale;
Operator sets his own price per sale and amount of all awards;
Designed to enable the dealer to decide his own price per sale and amounts of awards for consolation and grand prize winners.

Across the tops of the two catalogue pages on which respondents' punchboards are described are the words, in 24-point type,

Cigarette, Put and Take and Tip Sales Boards and Cards The Ever Popular Selling Charley and Color Sales Boards.

The prices of the boards vary from $2.50 per dozen to $2.95 each. Of the punchboards in evidence, Commission's Exhibits 1 and 2 are catalogue-priced at $1.60 each; Commission's Exhibit 4 at $1.95.

8. The operation of these punchboards is similar to that of other merchandise boards, which have been described in several Commission decisions. The numbers on the slips which are to be punched are effectively concealed from the purchaser or prospective purchaser until the selection has been made and the punch completed. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail prices of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of having made a futile punch. The articles of merchandise which are used as prizes are thus distributed to the purchasing and consuming public wholly by lot or chance.

9. Purchasers of respondents' boards have used them as a means of selling and distributing various types and articles of merchandise, which is the purpose for which the boards hereinabove described were designed, made and distributed. Because of the element of chance involved in connection with the sale and distribution of merchandise by means of punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers, organizations and individuals selling or distributing said merchandise by means thereof.

10. The sale of merchandise to the purchasing public through the use of, or by the means of, such devices in the manner above described involves a lottery, game of chance or gift enterprise through the sale of a chance to procure articles of merchandise at a price much less than the normal retail prices thereof; it teaches and encourages gambling among members of the public, is contrary to established public policy, and constitutes unfair acts and practices in commerce in violation of the Federal Trade Commission Act.

11. The sale or distribution of said punchboard devices by respondents supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises in connection with the sale or distribution of merchandise, and thus of engaging in unfair methods of competition and unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

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

13. The Federal Trade Commission has jurisdiction over the acts and practices of the respondents as herein found, and this proceeding is in the public interest. The order which follows effectively disposes of respondents' motion to dismiss.

Accordingly,

*It is ordered*, That respondents Nate Gellman, Burt Horwitz and Peter Podany, individually or as co-partners trading under the name of Gellman Brothers or any other name, and their agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having been heard on the respondents' appeal from the hearing examiner's initial decision wherein the respondents were ordered to forthwith cease and desist from selling or distributing in commerce 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; and

The Commission, on the authority of *R. B. James and Patrick Zurla, trading as Chicago Board Company* v. *Federal Trade Commission*, 253 F. 2d 78 (7th Cir. 1958), *cert. denied*, 358 U.S. 821; *Bernice Feitler, et al., trading as Gardner & Company* v. *Federal Trade Commission*, 201 F. 2d 790 (9th Cir. 1953); and *Gay Games, Inc., et al.* v. *Federal Trade Commission*, 204 F. 2d 197 (10th Cir. 1953), having determined that the initial decision is adequate and appropriate in all respects to dispose of this proceeding:

*It is ordered*, That the respondents' appeal be, and it hereby is, denied.

*It is further ordered*, That the hearing examiner's initial decision, filed December 23, 1959, be, and it hereby is, adopted as the decision of the Commission.

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

IN THE MATTER OF

# CHAS. PFIZER & CO., INC.

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

*Docket 7487. Complaint, May 14, 1959—Decision, May 23, 1960*

Order dismissing, following voluntary abandonment of the challenged practices two years previously, complaint charging a large drug manufacturer with falsely representing, in advertising its antibiotic "Sigmamycin," that fictitiously named physicians were actual doctors who prescribed the product.

*Mr. Edward F. Downs* supporting the complaint.

*Dewey, Ballantine, Bushby, Palmer & Wood* by *Mr. John E. F. Wood, Mr. Charles E. Stewart, Jr.*, and *Mr. L. Robert Fullem* of New York, N.Y., for respondent.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

On May 14, 1959 the Federal Trade Commission issued its complaint herein alleging that respondent had engaged in false and misleading advertising by representing that fictitiously named physicians were actual physicians who prescribed its product "Sigmamycin." Respondent filed its answer admitting the use of this advertising and denying that such advertising was false, misleading or deceptive. A hearing was held at which evidence was received in support of the allegations of the complaint and counsel supporting the complaint rested his case-in-chief. Thereafter respondent filed a motion to dismiss the complaint and a hearing was held at which evidence was received in support of this motion.

Upon consideration of the entire record, as it now stands before respondent offers its evidence in defense, it is found that the allegations in paragraphs 1 through 6 of the complaint are proved and they are incorporated herein by reference, as a part of this initial decision and all of the statements in paragraphs 1 through 6 of the complaint are found to be facts.

It is further found that two of the grounds stated for respondent's motion are supported by the evidence and they are found as facts as follows:

(1) The acts complained of in the instant proceeding occurred approximately two years prior to the issuance of the complaint herein.

(2) Prior to issuance of the complaint herein, and prior to any knowledge on the part of the respondent that any governmental

investigation was contemplated, the respondent voluntarily abandoned the acts complained of in the complaint and instituted appropriate procedures to insure that such acts would not be repeated.

It is further found that the circumstances of abandonment indicate that there is no reasonable likelihood that the acts hereinabove found to have been done will be repeated.

Although the advertising involved by respondent had the capacity to lead some of those to whom the advertisements were sent to believe that the physicians depicted in the advertising were in fact actual persons, it would appear that this was not a matter of great significance since there were many physicians prescribing the product for their patients. Respondent concedes that it now believes that the advertising may have had the capacity to deceive some of the physicians to whom it was sent and the record shows that procedures have been adopted requiring consultation between several members of respondent's management prior to the approval of any advertising to guard against any recurrence of the approval of questionable advertising. The advertising involved here was the product of an advertising agency and was used by respondent without its careful consideration. The record further shows that upon learning that its use of fictitious names in its advertising had been criticized in a magazine article, which had brought forth further criticism from individuals, respondent's management abandoned the practice prior to its being aware that the Federal Trade Commission was to commence an investigation of the matter. Respondent made a public announcement of its abandonment. It is believed that the practice charged has been completely abandoned and because of the circumstances of its abandonment that it is improbable that it will ever be resumed by the present management of respondent or any successor. If the product involved had been a proprietary product or if it had been a prescription drug which was not in widespread use, the issue would be entirely different, but since respondent could have truthfully advertised that thousands of physicians prescribe its product for various infections the device of using a few fictitious names or, as respondent would have it, "symbolic" names, appears less effective than a statement of the literal truth. It is not difficult to be persuaded that respondent's management was sincere and sound in its conclusion that the advertising was both questionable and ineffective. Further, it would seem that in the event a resumption of the practice is later contemplated the prospect of another Commission proceeding with its attendant publicity would dissuade respondent.

It is concluded that the acts herein found to have been engaged

in by respondent were unfair and deceptive and constitute violations of the Federal Trade Commission Act, but it is also concluded that they were abandoned prior to any knowledge on the part of respondent that the Commission was commencing an investigation of these acts and it appears highly improbable that they will be repeated or resumed.

ORDER

Respondent's motion to dismiss is granted and it is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to take such further action as circumstances may warrant.

DECISION OF THE COMMISSION

Counsel in support of the complaint having filed an appeal from the hearing examiner's initial decision dismissing the complaint herein without prejudice, and the Commission having considered the matter on the record, including briefs and oral argument of counsel, and having determined that the initial decision is appropriate in all respects to dispose of this proceeding:

*It is ordered*, That the appeal of counsel in support of the complaint be, and it hereby is, denied.

*It is further ordered*, That the hearing examiner's initial decision, filed January 14, 1960, wherein the complaint was dismissed without prejudice be, and it hereby is, adopted as the decision of the Commission.

---

## IN THE MATTER OF

## R. H. MACY & COMPANY, INC.

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

*Docket 7573. Complaint, Sept. 1, 1959—Decision, May 25, 1960*

Consent order requiring a New York City department store to cease violating the Fur Products Labeling Act by labeling fur products with excessive prices represented thereby as the usual retail prices; by failing to set forth on invoices the terms "Dyed Mouton-processed Lamb" and "Dyed Broadtail-processed Lamb" as required; by advertising in newspapers which failed to disclose that certain fur products contained artificially colored or cheap or waste fur or were "second-hand" or "used," and to disclose the country of origin of imported furs; which contained the names of animals other than those producing certain furs and represented prices falsely as

"below wholesale cost"; by failing to maintain adequate records as a basis for said pricing claims; and by failing in other respects to comply with labeling and invoicing requirements.

*Mr. Charles W. O'Connell* supporting the complaint.
*Mr. Marvin Fenster*, of New York, N.Y., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On September 1, 1959, the Federal Trade Commission, pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, issued its complaint against R. H. Macy & Company, Inc., a corporation, charging said respondent with violating the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, by misbranding and falsely and deceptively invoicing and advertising certain of its fur products, and by failing to maintain full and adequate records disclosing the facts upon which were based its pricing claims and representations for said fur products. A true and correct copy of said complaint was served upon respondent as required by law. After being served with the complaint, respondent appeared by counsel and entered into an agreement dated March 31, 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 respondent, its counsel, and by counsel supporting the complaint; and has been approved by the Director, the Associate 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 as to all parties. On April 6, 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.

Said agreement contains, *inter alia*, an agreement by the parties that certain amendments be made to the complaint, which amendments, in the opinion of the hearing examiner, do not materially affect the gravamen of the complaint as originally issued, and the hearing examiner has, by order dated April 6, 1960, amended the complaint as agreed to by counsel supporting the complaint, and respondent.

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

agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. 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 as amended may be used in construing the terms of said order; (3) the record herein shall consist solely of the complaint as amended and said agreement; and (4) that said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the amended complaint.

This proceeding having now come on for final consideration on the complaint as amended and the aforesaid agreement of March 31, 1960, containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint as amended and provides for an appropriate disposition of this proceeding as to all parties; the agreement of March 31, 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. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. Respondent R. H. Macy & Co., Inc., incorrectly referred to in the complaint as R. H. Macy & Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 151 West 34th Street, New York 1, New York.

3. Respondent is engaged in commerce as "commerce" is defined in the Fur Products Labeling Act.

4. The complaint as amended states a cause of action against said respondent under the Federal Trade Commission Act and under the Fur Products Labeling Act and the Rules and Regulation promulgated thereunder, and this proceeding is in the public interest.

ORDER

*It is ordered*, That respondent R. H. Macy & Co., Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which 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 §4(2) of the Fur Products Labeling Act;

B. Failing to set forth on labels attached to fur products the item number or mark assigned to a fur product;

C. Falsely or deceptively labeling such products as to the regular prices thereof by means of any label representing that respondent's regular or usual prices of such products are any amounts in excess of the prices at which respondent has usually or customarily sold such products in the recent regular course of business;

D. Setting forth on labels affixed to fur products:

1. Required information in abbreviated form or in handwriting;

2. Non-required information mingled with required information;

2. Falsely or deceptively invoicing fur products by:

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

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

C. Setting forth on any invoice required information in abbreviated form;

D. Failing to set forth the terms, "Dyed Mouton Processed Lamb" and "Dyed Broadtail Processed Lamb" in the manner required;

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

A. Fails to disclose:

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

2. That the fur product is composed in whole or in substantial part of flanks, when such is the fact;

3. The name of the country of origin of any imported furs contained in a fur product when the option afforded by Rule 38(b) is not exercised;

B. Sets forth the name or names of any animal or animals other than the name or names specified in §5(a)(1) of the Fur Products Labeling Act;

C. Represents directly or by implication that the prices of fur products are "below wholesale cost" when such is not the fact;

D. Fails to set forth the term "used," where applicable, in close proximity and in type of equal size with other required information;

E. Fails to designate the fur product as "second hand" where applicable;

4. Making pricing claims and representations in advertisements of the type referred to in Paragraph 3C above unless respondent maintains full and adequate records disclosing the facts upon which such claims or representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

## RITTER BROTHERS, INC., ET AL.

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

*Docket 7627. Complaint, Oct. 23, 1959—Decision, May 25, 1960*

Order dismissing complaint charging a manufacturing furrier with violations of the Fur Products Labeling Act revealed by subsequent investigation to be attributable to a large department store customer in Dallas, Tex., which was cited in a separate complaint.

*Mr. Garland S. Ferguson* for the Commission.
*Leon, Weill & Mahony,* of New York, N.Y., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, the Federal Trade Commission issued and subsequently served its complaint in this proceeding against the above-named respondents, charging them with violation of said acts and the Rules and Regulations promulgated under the Fur Products Labeling Act in connection with the labeling, invoicing and advertising of certain fur products. In their answer respondents categorically denied the charged violations.

Thereafter, on March 31, 1960, counsel supporting the complaint filed a motion to dismiss the complaint without prejudice stating:

The complaint in this matter grew out of the investigation of the fur department of a large department store in Dallas, Texas. Two of the department store's fur suppliers became involved in the investigation. Following said investigation separate complaints were issued against said department store and against each of said suppliers for violations of the Fur Products Labeling Act. One of the said suppliers was Ritter Brothers, Inc., respondent in Docket 7627.

Following the issuance of complaint in Docket 7627, several conferences were held between counsel supporting the complaint and the attorney for the respondents. Two of the said conferences were attended by the Project Attorney in this matter. At the conferences, mentioned herein, respondents' attorney displayed documents and gave oral information which tended to support respondents' answer filed herein.

As a result of the said conferences a further investigation has been conducted, and it has now been determined that the respondents have not violated the Fur Products Labeling Act as alleged in the complaint, and that acts and practices charged to the respondents in Docket 7627 were in fact attributable to the department store mentioned herein. The said department store and the other fur supplier as previously mentioned herein are subject to separate complaints . . .

Under the circumstances set forth in this motion to dismiss, I agree with counsel supporting the complaint that further continuation of this matter will not be in the public interest. Accordingly,

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to take such further action against respondents as future facts and circumstances 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 shall, on the 25th day of May, 1960, become the decision of the Commission.

---

IN THE MATTER OF

## DONALD C. SUSSMAN TRADING AS WATERMAN PHARMACY, ETC.

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

*Docket 7788. Complaint, Feb. 24, 1960—Decision, May 25, 1960*

Consent order requiring a Detroit distributor of drug products to cease representing falsely in advertising in newspapers and magazines, etc., that his antacid preparation "Cel-Ate Tablets" would cure ulcers and the pain and discomfort thereof, and was an effective treatment for ulcers.

*Mr. John W. Brookfield, Jr.*, for the Commission.
*Mr. Bernard S. Kahn*, of Detroit, Mich., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on February 24, 1960, charging respondent with violation of the Federal Trade Commission Act by the dissemination by various means in commerce of false advertisements for the purpose of inducing the purchase of his preparation "Cel-Ate Tablets" as a cure or treatment for ulcers.

Thereafter, on March 29, 1960, respondent, his counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter, on April 6, 1960, submitted to the hearing examiner for consideration.

The agreement identifies respondent Donald C. Sussman as an individual trading as Waterman Pharmacy and as Waterman Drug Company, with his principal office and place of business located at 6656 West Fort Street, Detroit, Michigan.

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

Respondent waives any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

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

*It is ordered*, That respondent Donald C. Sussman, an individual trading as Waterman Pharmacy and as Waterman Drug Company, or any other name or names, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the drug preparation "Cel-Ate Tablets," or any preparation of substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that Cel-Ate Tablets are an adequate, effective or reliable treatment for the cure of or will afford complete relief from ulcers, or have a therapeutic effect on the symptoms or manifestations thereof, or have any beneficial effect on ulcers in excess of affording temporary relief from the discomforts of some peptic ulcers;

2. Disseminating or causing to be disseminated any advertise-

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 25th day of May, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondent Donald C. Sussman, an individual trading as Waterman Pharmacy and as Waterman Drug Company, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

---

## IN THE MATTER OF

## BEECHAMS PILLS, INC., ET AL.

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

*Docket 5459. Complaint, Aug. 26, 1946—Decision, May 26, 1960*

Consent order requiring the successors in interest to the original respondents named in the complaint and their advertising agency to cease representing falsely in advertising that their "Beechams Pills" would aid and regulate digestion, cure constipation and its symptoms, restore regular bowel movement, tone the intestinal muscles, promote the flow of bile, etc.

*Mr. Fletcher G. Cohn* supporting the complaint.

*Townley, Updike, Carter & Rodgers*, of New York, N.Y., for Stuart N. Updike and Harold F. Ritchie, Inc.

*Mr. Eugene H. Nickerson*, of New York, N.Y., for Street & Finney.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

On August 26, 1946, the Federal Trade Commission issued its complaint charging respondents named in the caption hereof with violating the Federal Trade Commission Act by making false and deceptive representations in advertising the product known as

"Beechams Pills." Thereafter these respondents agreed to discontinue making the representations alleged to be false and deceptive pending final disposition of similar issues in *Carter Products, Inc.*, Docket No. 4970, and they also agreed to execute a stipulation as to the facts based on the facts relating to these issues as would be found by the Commission in the *Carter Case*. On account of this agreement, proceedings in this matter have been held in abeyance until this time.

Since the issuance of the complaint respondent Beechams Pills, Inc. was dissolved under the laws of the State of New York and Stuart N. Updike, director of liquidated corporate respondent Beechams Pills, Inc., has assumed certain of its obligations. Since this dissolution "Beechams Pills" have been imported from England and marketed by Harold F. Ritchie, Inc., a New Jersey corporation. An agreement has been entered into between counsel supporting the complaint and Stuart N. Updike, as a director of the liquidated corporate respondent Beechams Pills, Inc. and Harold F. Ritchie, Inc., a corporation, and their attorneys in which this former director of respondent Beechams Pills, Inc. and this present marketer of Beechams Pills consent that they may be legally bound as successors in interest by the complaint served on their predecessors as though the complaint had been served upon them and they consent that they may be made parties respondent herein.

The agreement referred to above with the existing respondents was submitted to the hearing examiner on March 22, 1960. This agreement also provides for the entry of a consent order. Under 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 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. Respondent Beechams Pills, Inc. was a corporation organized under the laws of the State of New York and has been dissolved under the laws of that State.

2. Respondent Stuart N. Updike is an individual who was a director of Beechams Pills, Inc. at the time of its dissolution and has assumed the obligations originally agreed to by respondent Beechams Pills, Inc. and is a party to the agreement upon which the following order is based. His present address is 220 East 42d Street, New York, New York.

3. Respondent Harold F. Ritchie, Inc., is a corporation, organized under the laws of the State of New Jersey, with its office and principal place of business located at Clifton, New Jersey.

4. Respondent Street & Finney is a corporation, organized and existing under the laws of the State of New York with its office and principal place of business at 45 W. 45th Street, New York, New York.

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

ORDER

*It is ordered*, That the respondents, Stuart N. Updike, as a director of the liquidated corporation, Beechams Pills, Inc.; Harold F. Ritchie, Inc., and Street & Finney, Inc., corporations, by their respective officers, agents, representatives and employees: shall all, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the product designated "Beechams Pills," or any other product of substantially similar composition or possessing substantially similar properties under whatever name sold, do forthwith cease and desist from:

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

(a) That said preparation will stimulate, promote, aid, or help the digestion of food, or regulate digestion or the digestive system;

(b) That said preparation is a competent or effective remedy for gaseous, bloated, or tight feeling around the waist;

(c) That said preparation will bring on or restore regularity of bowel movement, or is a cure, remedy or competent or effective

treatment for constipation, or has any beneficial value in the treatment of any of the symptoms thereof in excess of temporary relief afforded by its laxative action;

(d) That constipation has any appreciable effect on the digestion of food or that it causes food to ferment or decay excessively in the bowels;

(e) That said preparation is unqualifiedly safe;

(f) That regular and satisfactory bowel movements are dependent to any substantial degree upon proper food digestion;

(g) That said preparation will have any favorable effect on the tone of the intestinal muscles;

(h) That said preparation will aid in promoting the flow of bile, or that it will increase, or beneficially influence the formation, secretion or flow of bile from the liver or gall bladder.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 26th day of May, 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents Stuart N. Updike, as a director of the liquidated corporation, Beechams Pills, Inc.; Harold F. Ritchie, Inc., and Street & Finney, Inc., corporations, 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

## ELECTRO MUSIC ET AL.

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

*Docket 7431. Complaint, Mar. 11, 1959—Decision, May 26, 1960*

Consent order requiring a Pasadena, Calif., manufacturer of loud speakers and accessories for use with electric organs to cease entering into, in State

where such pacts were not lawful, resale price maintenance agreements with its retailer customers by which the latter agreed to sell its goods only at the prices it set out on its "suggested retail price list."

*Mr. Lynn C. Paulson* supporting the complaint.

*Flam and Flam* and *Chase Rotchford Downen & Drukker* by *Mr. Richard T. Drukker* of Los Angeles, Calif., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that the above-named respondents in the course and conduct of their business have violated Section 5 of the Federal Trade Commission Act by conspiring illegally with many of its retailers to hinder and restrain price competition.

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

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

The undersigned hearing examiner having considered the agreement and proposed order hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent Electro Music is a corporation organized, existing and doing business under and by virtue of the laws of the State of

California with its office and principal place of business located at 313 South Fair Oaks Avenue, Pasadena, California.

2. Respondent Donald J. Leslie is president of the corporate respondent with his office and principal place of business located at the same address as the corporate respondent.

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

ORDER

*It is ordered*, That respondents Electro Music, a corporation, and its officers, and Donald J. Leslie, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of loud speaker units, or any other similar products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, (U.S.C. Title 15, Sec. 45) do cease and desist from:

Entering into, continuing, cooperating in or carrying out any planned course of action, agreement, understanding, combination or conspiracy with customer retailers of said respondents or with any other customer of said respondents engaged in the sale of said product or with any other person, whereby the resale price of respondents' loud speaker units or other similar products is established, fixed or agreed upon unless such contracts or agreements of that description are lawful as applied to intrastate transactions under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale.

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 26th day of May, 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

# LUMAR, INC., ET AL.

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

*Docket 7571. Complaint, Aug. 26, 1959—Decision, May 26, 1960*

Consent order requiring a Dallas, Tex., manufacturer to cease violating the Wool Products Labeling Act and the Federal Trade Commission Act by labeling and invoicing as "100% reprocessed wool" and "70% reprocessed wool, 30% Man Made Fibers," interlining materials, the actual wool content of which was substantially less than so represented, and by failing in other respects to comply with labeling requirements of the Wool Act.

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

*Mr. Ellsworth A. Weinberg*, of *Weinberg & Sandoloski*, of Dallas, Tex., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On August 26, 1959, the Federal Trade Commission, pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, issued its complaint against Lumar, Inc., a corporation, and Martin Rosenbaum, individually and as an officer of said corporation, charging said respondents with violating said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act, by misbranding certain of their wool products, and by the use on invoices and shipping memoranda of false, misleading and deceptive statements and representations as to the fiber content of said wool products. A true and correct copy of said complaint was served upon the respondents as required by law. After being served with the complaint, respondents appeared by counsel and entered into an agreement dated February 19, 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 corporate respondent, its 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 as to all parties. On April 6, 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.

In the said agreement, it is stated that individual respondent Martin Rosenbaum died on February 24, 1959, and for that reason, as set forth in an affidavit attached to and made by reference, a part of the agreement, all parties recommend that the complaint, in so far as it relates to Martin Rosenbaum, individually and as an officer of Lumar, Inc., be dismissed; and the order agreed upon so provides.

The corporate respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional facts alleged in the complaint, and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that the corporate respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. 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 the corporate respondent that it has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of February 19, 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 February 19, 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. The Federal Trade Commission has jurisdiction over the parties and the subject-matter of this proceeding.

2. Respondent Lumar, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2002 North Field Street, Dallas, Texas (incorrectly set forth in the complaint as 414 South Poydras Street, Dallas, Texas).

3. Respondent is engaged in commerce as "commerce" is defined in the Wool Products Labeling Act of 1939.

4. The complaint herein states a cause of action against said respondent under the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and this proceeding is in the public interest.

ORDER

*It is ordered*, That respondent Lumar, Inc., a corporation, and its officers, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of woolen interling materials or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding said products by:

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

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

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

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

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

*It is further ordered*, That Lumar, Inc., a corporation, and its officers, and respondent's representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of woolen interlining material or any other materials in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly, misrepresenting the constituent fibers of which their products are composed or the percentages or amounts thereof in sales invoices, shipping memoranda or in any other manner.

*It is further ordered*, That the complaint herein, in so far as it relates to respondent Martin Rosenbaum, individually and as an officer of Lumar, Inc., 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 26th day of May, 1960, become the decision of the Commission; and, accordingly:

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

---

IN THE MATTER OF

## JAMES H. MARTIN, INC., ET AL.

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

*Docket 7738. Complaint, Jan. 8, 1960—Decision, May 26, 1960*

Consent order requiring Chicago distributors of phonograph records to cease giving concealed "payola" to television and radio disc jockeys to induce playing their records in order to increase sales.

*Mr. John T. Walker* and *Mr. James H. Kelley* for the Commission.
*Mr. Warren E. King*, of Chicago, Ill., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On January 8, 1960, 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