IN THE MATTER OF

SAM ASHKENAS ET AL. TRADING AS B. A. FUR COMPANY

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

Docket 7884. Complaint, May 12, 1960—Decision, Nov. 23, 1960

Consent order requiring furriers in Nassau, N.Y., to cease violating the Fur Products Labeling Act by labeling, invoicing, and advertising fur products deceptively with respect to the name of the animal producing the fur; by invoicing fur products falsely to show that imported furs contained therein were domestic; by advertising "Factory prices direct to you" when part of the fur products thus advertised were purchased from outside supply sources; and by failing in other respects to comply with requirements of the Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Sam Ashkenas and William Ashkenas, individually and as copartners trading as B. A. Fur Company, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Sam Ashkenas and William Ashkenas are copartners trading as B. A. Fur Company with their office and principal place of business located at 18 Lake Avenue, Nassau, New York.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the advertising and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled, or otherwise falsely and deceptively identified with respect to the name or names of the animal or

animals that produced the fur from which said fur products had been manufactured, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a) of said Rules and Regulations.

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

(d) Required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced or otherwise falsely and deceptively identified with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the furs contained therein were domestic when in fact such furs were imported in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 9. Certain of said fur products were falsely and deceptively involved in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations

promulgated thereunder in that information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 40 of said Rules and Regulations.

PAR. 10. Certain of said fur products were falsely and deceptively advertised, in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 11. Among and included in the advertisements, as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Times Union, a newspaper published in the City of Albany, State of New York, and having a wide circulation in said state and various other states of the United States.

By means of said advertisements and others of similar import and meaning, not specifically referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements:

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

(b) Contained information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which was not set forth in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of said Rules and Regulations.

PAR. 12. In advertising fur products for sale, as aforesaid, respondents falsely and deceptively advertised fur products, or otherwise falsely and deceptively identified said fur products with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 13. In advertising fur products for sale, as aforesaid, respondents' advertisements contained the false representation "Factory prices direct to you," thereby implying that purchasers could save amounts equal to the middleman's profit when in fact part of the fur products thus advertised and offered for sale were not manufactured by the respondents but were purchased from separate and distinct outside sources of supply, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 14. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Charles W. O'Connell, Esq., for the Commission.

Richard E. Bolton, Esq., of Albany, N.Y., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 12, 1960, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by misbranding, falsely invoicing and falsely representing their fur products. Respondents appeared by counsel and entered into an agreement, dated September 26, 1960, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with § 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent

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

1. Respondents are Sam Ashkenas and William Ashkenas and are copartners trading as B. A. Fur Company, with their office and principal place of business located at 18 Lake Avenue, in the City of Nassau, State of New York.

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

ORDER

It is ordered, That Sam Ashkenas and William Ashkenas individually and as copartners trading as B. A. Fur Company, or under any other trade 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 sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. 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;

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

3. Setting forth on labels affixed to fur products:

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

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

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

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

B. Falsely or deceptively invoicing fur products by:

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

2. Setting forth the name of an animal other than the name of the animal that produced the fur from which a fur product is manufactured;

3. Representing that fur products contain "domestic furs" when in fact such furs are imported;

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

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

1. Fails to disclose the name of the animal that produced the fur contained in the fur product as set forth in the Fur Products Name Guide, and as prescribed under the Rules and Regulations;

2. Sets forth the name of an animal other than the name of the animal that produced the fur from which a fur product is manufactured;

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

4. Represents, directly or by implication, that any such fur products are being offered for sale at factory prices or without a middleman's profit, when such is not the fact;

5. Misrepresents in any manner the savings available to purchasers of respondents' fur 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 23d day of November 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

B. LOWENSTEIN & BROTHERS, INC., ET AL.

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

Docket 7981. Complaint, June 24, 1960—Decision, Nov. 24, 1960

Consent order requiring furriers in Memphis, Tenn., to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to disclose the names of animals producing the fur in certain fur products or that some fur products contained artificially colored fur, represented falsely that fur products offered for sale amounted to a "Magnificent $250,000 collection of Fine Furs", and failed in other respects to comply with requirements of the Act; and by failing to keep adequate records as a basis for pricing and value claims for fur products.

Charges dismissed on June 3, 1961, as to respondent Philip de Journo.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that B. Lowenstein & Brothers, Inc., a corporation, and Stanley Fried and Philip De Jorno, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. B. Lowenstein & Brothers, 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 35 South Main Street, Memphis, Tennessee.

Respondent Stanley Fried is president of the said corporate respondent and respondent Philip De Jorno is vice president and general merchandising manager of the said corporate respondent. These individuals control, direct and formulate the acts, practices and policies of the said corporate respondent. Their address is the same as that of the said corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in of fur products, and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 4. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Commercial Appeal, a newspaper published in the City of Memphis, State of Tennessee, and having a wide circulation in said State and various other States of the United States.

By means of said advertisements and others of similar import and meaning, not specifically referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements:

(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 Section 5(a)(1) of the Fur Products Labeling Act.

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

(c) Represented that the fur products offered for sale amounted to a "Magnificent $250,000 collection of Fine Furs" when such was

not the fact in violation of Section 5(a) of the Fur Products Labeling Act.

(d) Contained information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which was not set forth in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of said Rules and Regulations.

PAR. 5. In advertising fur products for sale as aforesaid respondents made claims and representations respecting the prices and values of fur products. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

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

Mr. Charles S. Cox for the Commission.

Mr. Abe D. Waldauer, of Memphis, Tenn., for respondents.

INITIAL DECISION AS TO ALL RESPONDENTS EXCEPT PHILIP DE JORNO

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act and the Fur Products Labeling Act in connection with the sale, advertising, offering for sale and distribution in commerce of fur products.

On September 27, 1960 there was submitted to the undersigned hearing examiner an agreement between certain respondents, their counsel and counsel supporting the complaint, providing for the entry of a consent order.

Under the foregoing agreement, B. Lowenstein & Brothers, Inc., a corporation, and Stanley Fried individually and as an officer of said corporation admitted 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 B. Lowenstein & Brothers, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 35 South Main Street, in the City of Memphis, State of Tennessee.

Respondent Stanley Fried is an officer of said corporation. His address is the same as that of the corporate respondent.

2. The agreement does not dispose of this proceeding as to Philip De Jorno, who is subject to further proceedings.

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

ORDER

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

1. Falsely 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.

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

C. Represents, directly or by implication, that the quantity or amount of fur products offered for sale is greater than is the fact.

2. Making price claims and representations 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 24th day of November 1960, become the decision of the Commission; and, accordingly:

It is ordered, That B. Lowenstein & Brothers, Inc., a corporation, and Stanley Fried, 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

SLOTKIN'S, INC., ET AL.

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

Docket 7990. Complaint, June 24, 1960—Decision, Nov. 24, 1960

Consent order requiring Buffalo, N.Y., furriers to cease violating the Fur Products Labeling Act by failing to set forth the term "Dyed Broadtail processed Lamb" on invoices as required, and by failing in other respects to comply with invoicing and labeling provisions.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Slotkin's, Inc., a corporation, and Sidney Main and Florence Main, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Slotkin's, 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 Mohawk Street, Buffalo, New York.

Sidney Main is vice president of the said corporate respondent and Florence Main is secretary-treasurer of the said corporate respondent. These individuals control, formulate and direct the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the said corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Labels affixed to fur products did not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches, in violation of Rule 27 of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mindled with non-required information, in violation of Rule 29(a) of said Rules and Regulations.

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not completely set out on one side of labels, in violation of Rule 29(a) of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in smaller than pica or twelve point type in violation of Rule 29(a) of said Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that the term "Dyed Broadtail processed Lamb" was not set forth in the manner required where an election was made to use that term instead of Dyed Lamb in violation of Rule 10 of said Rules and Regulations.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DeWitt T. Puckett, Esq., supporting the complaint.

Adelbert Fleischman, Esq., of *Jaeckle, Fleischman, Kelly, Swart and Augspurger*, of Buffalo, N.Y., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On June 24, 1960, the Federal Trade Commission issued a complaint against the above-named respondents, in which they were charged with violating the Federal Trade Commission Act, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder by, among other things, misbranding by failing to label, affixing labels which fail to comply with minimum size requirements, mingling required with non-required information, failing to set out completely on one side of a label information required by the law and rules and regulations promulgated thereunder,

setting forth required information in smaller type than is permitted by law, and falsely and deceptively invoicing fur products sold by respondents in interstate commerce. A true and correct copy of the complaint was served upon the respondents and each and all of them, as required by law. Thereafter respondents appeared by counsel and agreed to dispose of this proceeding without a formal hearing pursuant to the terms of an agreement dated September 14, 1960, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on September 28, 1960, in accordance with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The agreement purports to dispose of this proceeding as to the respondents and each and all of them and contains the form of a consent cease-and-desist order which the parties have represented is dispositive of the issues involved in this proceeding. The agreement has been signed by the corporate respondent by its president, by the individual respondents individually and as officers of said corporation, by the attorneys for the respondents, by counsel supporting the complaint, and has been approved by the Assistant Director, Associate Director and Acting Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement of September 14, 1960, respondents admit all of the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the respondents waive: (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all rights respondents may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The parties further agree, in said agreement, that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the 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 Federal Trade Commission; that the order to cease and desist entered in this proceeding by the Commission may be entered without further notice to the respondents, and when so entered such order will have the same force and effect as if entered after a full hearing. Said order may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

The parties have covenanted that the said agreement 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of September 14, 1960, containing consent order, and it appearing that the order which is approved in and by said agreement disposes of all the issues presented by the complaint as to all of the parties involved, said agreement of September 14, 1960, is hereby accepted and approved as complying with § 3.21 and § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. 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 findings and issues the following order:

FINDINGS

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

2. Respondent Slotkin's, 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 15 East Mohawk Street, Buffalo, New York;

3. Individual respondents Sidney Main and Florence Main are officers of the corporate respondent and as such, formulate, direct and control the acts, practices and policies of the corporate respondent, their address being the same as that of the corporate respondent;

4. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act and the Fur Products Labeling Act;

5. The complaint filed herein states a cause of action against the respondents under the Federal Trade Commission Act and under the Fur Products Labeling Act and the Rules and Regulations issued pursuant thereto; and this proceeding is in the public interest. Now, therefore,

It is ordered, That Slotkin's, Inc., a corporation, and its officers, and Sidney Main and Florence Main, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur"

and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

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

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

D. Failing to set forth on labels affixed to fur products all the information required to be disclosed by § 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on one side of such labels;

E. Failing to set forth the information required under § 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in a legible manner and in not smaller than pica or twelve point type;

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products invoices showing all 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 invoices the term "Dyed Broadtail processed Lamb" where an election is made to use that term instead of Dyed Lamb.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 24th day of November 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Slotkin's, Inc., a corporation, and Sidney Main and Florence Main, 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

HOLT, RINEHART AND WINSTON, INC.

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

Docket 8042. Complaint, July 13, 1960—Decision, Nov. 24, 1960

Consent order requiring New York City publishers to cease representing falsely in advertising that the book "Folk Medicine" by Dr. D. C. Jarvis, which they published, was an effective treatment, cure, and prevention for a long list of ailments and diseases, was a guide to good health, and had been scientifically tested.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Holt, Rinehart and Winston, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Holt, Rinehart and Winston, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 383 Madison Avenue, in the City of New York, State of New York. The name of this corporation was formerly Henry Holt and Company, Inc.

PAR. 2. Respondent is now, and for more than three years last past has been, engaged in the publication, distribution and sale of books. Respondent causes said books when sold to be transported from its place of business in New York, New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said books in commerce among and between the various States of the United States and in the District of Columbia. Respondent's volume of business in the sale of said books in commerce is, and has been, substantial.

Among said books, caused to be sold and distributed as aforesaid, is a book entitled "Folk Medicine" by Dr. D. C. Jarvis.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has made many statements concerning said book "Folk

Medicine" in advertisements inserted in newspapers, having national circulation, and by means of circulars and other printed matter distributed through the United States mail. By means of the statements made in said advertisements, respondent represents, and has represented, directly and indirectly, that the regimen in said book:

1. Constitutes an adequate, effective or reliable treatment for the common cold, arthritis, kidney trouble, digestive disorders, high blood pressure, overweight and obesity, chronic fatigue, headaches including migraine, hay fever, asthma, dizziness, run down feelings, lack of energy, lack of fertility, sinus infections, or other nagging ills and chronic ailments, or diseases which defy conventional medical diagnosis and treatment.

2. Arrests the progress of, corrects the underlying causes of, prevents or cures the common cold, arthritis, kidney trouble, digestive disorders, high blood pressure, overweight and obesity, chronic fatigue, headaches including migraine, hay fever, asthma, dizziness, run down feelings, lack of energy, lack of fertility, sinus infections, or other nagging ills and chronic ailments, or diseases which defy conventional medical diagnosis and treatment.

3. Prevents or cures sickness, maintains good health or prolongs the life span.

4. Gives vigor to young and old and is a guide to good health.

5. Has been scientifically tested.

PAR. 4. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, the regimen set forth in the book "Folk Medicine":

1. Does not constitute an adequate, effective or reliable treatment for the common cold, arthritis, kidney trouble, digestive disorders, high blood pressure, overweight and obesity, chronic fatigue, headaches including migraine, hay fever, asthma, dizziness, run down feelings, lack of energy, lack of fertility, sinus infections, or other nagging ills and chronic ailments, or for diseases which defy conventional medical diagnosis and treatment.

2. Will not arrest the progress of, correct the underlying causes of, prevent or cure the common cold, arthritis, kidney trouble, digestive disorders, high blood pressure, overweight and obesity, chronic fatigue, headaches including migraine, hay fever, asthma, dizziness, run down feelings, lack of energy, lack of fertility, sinus infections, or other nagging ills and chronic ailments, or diseases which defy conventional medical diagnosis and treatment.

3. Will not prevent or cure sickness, maintain good health or prolong the life span.

4. Will not give vigor to young and old and is not a guide to good health.

5. Has not been scientifically tested.

PAR. 5. The use by respondent of the foregoing false, misleading and deceptive statements has had, and now has, the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements are true and into the purchase of substantial quantities of respondent' said book by reason thereof.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

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

Satterlee, Warfield & Stephens, by *Mr. James F. Dwyer*, of New York, N.Y., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on July 13, 1960, charging Respondent with violation of the Federal Trade Commission Act by the use of false, misleading and deceptive statements in advertisements concerning a book entitled "Folk Medicine", which Respondent publishes, distributes and sells.

Thereafter, on September 23, 1960, Respondent, its 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 October 4, 1960, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Holt, Rinehart and Winston, Inc., as a Delaware corporation, with its office and principal place of business located at 383 Madison Avenue, New York, New York.

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 it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement;

that the order to cease and desist, as contained in the agreement, 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 it has violated the law as alleged in the complaint.

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

It is ordered, That Respondent Holt, Rinehart and Winston, 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 a book entitled "Folk Medicine", or any other book or books of the same or of approximately the same content, material, or methods, whether sold under the same name or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that the regimen in said book:

1. Constitutes an adequate, effective or reliable treatment for the common cold, arthritis, kidney trouble, digestive disorders, high blood pressure, overweight and obesity, chronic fatigue, headaches including migraine, hay fever, asthma, dizziness, run down feelings, lack of energy, lack of fertility, sinus infections, or other nagging ills and chronic ailments, or diseases which defy conventional medical diagnosis and treatment;

2. Arrests the progress of, corrects the underlying causes of, prevents or cures the common cold, arthritis, kidney trouble, digestive disorders, high blood pressure, overweight and obesity, chronic fatigue, headaches including migraine, hay fever, asthma, dizziness, run down feelings, lack of energy, lack of fertility, sinus infections, or other nagging ills and chronic ailments, or diseases which defy conventional medical diagnosis and treatment;

3. Prevents or cures sickness, maintains good health or prolongs the life span;

4. Gives vigor to young and old or is a guide to good health;
5. Has been scientifically tested.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 24th day of November 1960, become the decision of the Commission; and, accordingly;

It is ordered, That respondent Holt, Rinehart and Winston, 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

NATIONAL FIORITA FRUIT COMPANY

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

Docket 8055. Complaint, July 26, 1960—Decision, Nov. 24, 1960

Consent order requiring a St. Louis, Mo., distributor of citrus fruit, produce, and other food products to cease violating Sec. 2(c) of the Clayton Act by receiving and accepting brokerage from suppliers on purchases for its own account for resale, such as a discount of 10 cents per 1⅗ bushel box on purchases of citrus fruit from Florida packers and lower prices reflecting commissions on many purchases.

COMPLAINT

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

PARAGRAPH 1. Respondent National Fiorita Fruit Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 93-95 Produce Row, St. Louis, Missouri.

PAR. 2. Respondent is now, and for the past several years has been, engaged in business primarily as a wholesale distributor, buy-

ing, selling and distributing citrus fruit, produce and other food products, all of which are hereinafter sometimes referred to as food products. Respondent purchases its food products from a large number of suppliers located in many sections of the United States. The annual volume of business done by respondent in the purchase and sale of food products is substantial.

PAR. 3. In the course and conduct of its business for the past several years, respondent has purchased and distributed, and is now purchasing and distributing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several states of the United States other than the State of Missouri, in which respondent is located. Respondent transports or causes such food products, when purchased, to be transported from the places of business or packing plants of its suppliers located in various other states of the United States to respondent who is located in the State of Missouri, or to respondent's customers located in said state, or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines between respondent and its respective suppliers of such food products.

PAR. 4. In the course and conduct of its business for the past several years, but more particularly since January 1, 1959, respondent has been and is now making substantial purchases of food products for its own account for resale from some, but not all, of its suppliers, and on a large number of these purchases respondent has received and accepted, and is now receiving and accepting, from said suppliers a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith. For example, respondent makes substantial purchases of citrus fruit from a number of packers or suppliers located in the State of Florida, and receives on said purchases, a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per 1⅗ bushel box, or equivalent. In many instances respondent receives a lower price from the supplier which reflects said commission or brokerage.

PAR. 5. The acts and practices of respondent in receiving and accepting a brokerage or a commission, or an allowance or discount in lieu thereof, on its own purchases, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. Cecil G. Miles and *Mr. Ernest G. Barnes* for the Commission.

Respondent for itself.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on July 26, 1960, charging Respondent with violation of § 2(c) of the Clayton Act, as amended, (U.S.C. Title 15, § 13), by receiving and accepting a brokerage or a commission, or an allowance or discount in lieu thereof, on its own purchases of food products.

Thereafter, on October 3, 1960, Respondent and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Associate Director and the Director of the Commission's Bureau of Litigation, and thereafter, on October 4, 1960, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent National Fiorita Fruit Company as a Missouri corporation, with its office and principal place of business located at 93–95 Produce Row, St. Louis, Missouri.

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 it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, 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 it has violated the law as alleged in the complaint.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, that 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 Respond-

ent and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent National Fiorita Fruit Company, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of citrus fruit or other food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or other food products for Respondent's own account, or where Respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 24th day of November 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent National Fiorita Fruit Company, 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

TELEVIDEO CORPORATION OF AMERICA ET AL.

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

Docket 8025. Complaint, June 27, 1960—Decision, Nov. 26, 1960

Order requiring Culver City, Calif., manufacturers of rebuilt television picture tubes, which they sold to dealers for resale to the public, to cease selling such tubes without disclosing that they contain used parts when such was the fact.

Michael J. Vitale, Esq., for the Commission.

No appearance for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The complaint charges respondents with failure to disclose the true nature of the used or rebuilt television picture tubes which they sell and distribute in commerce, thereby misleading and deceiving the public into the erroneous belief that such tubes are unused, new, and first quality tubes, in violation of the provisions of the Federal Trade Commission Act.

Respondents were duly served with a copy of the complaint, but filed no answer thereto. On September 14, and October 4, 1960, respondents were served with a copy of a notice and supplemental notice, respectively, that a hearing for the reception of evidence upon the issues as they relate to them would be held, beginning at 10:00 a.m. on October 11, 1960, in Room 780, Federal Trade Commission Building, Washington, D.C. No appearance was made by respondents or by anyone else in their behalf. Said respondents are therefore in default for answer and appearance in this proceeding, and, under the Rules of Practice of the Federal Trade Commission the Hearing Examiner is authorized without further notice to respondents to find the facts to be as alleged in the complaint, and to enter an initial decision containing such findings, appropriate conclusions and order.

Accordingly, the following findings are made, conclusions reached, and order issued:

1. Respondent Televideo Corporation of America 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 6006 West Washington Boulevard, Culver City, California. Said corporation trades under the name of Picture Tube Mart. Respondents Thurman D. Brooms, Kenneth A. Redshaw and Milton Tobias are officers of said corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

2. Respondents are now, and for more than two years last past have been, engaged in the sale and distribution of television picture tubes containing used parts, to dealers for resale to the public. In the course and conduct of such business they have caused and now cause their products, when sold, to be shipped from their place of business in the State of California to customers located in other States of the United States; and they 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.

3. Said respondents are now, and at all times mentioned herein have been, in substantial competition with firms, persons, corporations and partnerships engaged in the sale and distribution of television tubes in commerce, between and among the various States of the United States.

4. In the course and conduct of their business, said respondents have offered for sale, sold and distributed a large number of used or rebuilt television tubes without disclosing on the tube, box, carton, invoice, or in advertising the nature of these tubes. By failing to disclose these material facts, said respondents place in the hands of their customers, and others, means and instrumentalities by which the purchasing public may be misled into believing that said tubes are new, unused and first quality tubes.

5. When such tubes are offered to the purchasing public without being clearly and conspicuously marked, labeled and advertised as used or rebuilt tubes, they are readily accepted by members of the purchasing public as new, unused and first quality tubes.

6. The failure of said respondents to disclose the true nature of their tubes as aforesaid has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such tubes were new, unused and first quality tubes, and into the purchase of respondents' products by reason of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

7. The aforesaid acts and practices of said respondents, as herein found, were and are all 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.

8. This proceeding is in the public interest. Therefore,

It is ordered, That respondent, Televideo Corporation of America, a corporation, and its officers, and Thurman D. Brooms, Kenneth A. Redshaw and Milton Tobias, 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 rebuilt television picture tubes containing used parts, in commerce, as "commerce" is defined

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

1. Failing to clearly disclose on the tubes, on the cartons in which they are packed, on invoices and in advertising, that said tubes are rebuilt and contain used parts;

2. Placing any means or instrumentality in the hands of others whereby they may mislead the public as to the nature and condition of their television picture tubes.

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 November 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

INTERSTATE RUBBER AND MANUFACTURING COMPANY, INC., ET AL.

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

Docket 7006. Complaint, Dec. 23, 1957—Decision, Nov. 28, 1960

Order dismissing, for failure of proof, complaint charging New York and New Jersey respondents with representing falsely, by use of a "hallmark" and on labels on their products and in promotional literature distributed to dealers, that three adhesives for the installation of clay tile which they distributed complied with Commercial Standard 181-52 of the U.S. Department of Commerce.

Mr. Edward F. Downs and *Mr. Garland S. Ferguson* for the Commission.

Breeden, Howard & MacMillan, of Norfolk, Va., and *Mr. George H. Hafner*, of Woodhaven, N.Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

The respondents are charged with falsely representing that their products "Carbo-cement DC-40", "Mason-Mastic B-20", and "Mason-Mastic B-30", complied with the requirements of Commercial Stand-

ard 181–52, issued by the United States Department of Commerce. This Commercial Standard covers water-resistant organic adhesives for installation of clay tile, and specifies minimum requirements and methods of test for stability in storage, sheer strength under various temperatures and conditions of use, sheer strength at intervals of time, cohesive strength immediately after application, solubility in water, and resistance to mold growths.

The respondents deny the charges and hearings have been held at New York, New York, Philadelphia, Pennsylvania and Washington, D.C. After the Commission rested its case, the respondents filed a motion that the complaint herein be dismissed on the following grounds:

1. The complaint filed in this proceeding alleges that on December 23, 1957, and for several years prior to December 23, 1957, the respondents engaged in "false, misleading and deceptive practices", but no evidence adduced in this proceeding relates to the allegations of the complaint, which allegations were directly denied in respondents' answer.

2. The testimony of complainant's witness, John Parsons Frenck, should be struck and the complaint dismissed, as Witness Frenck, by his own admission and testimony, was not qualified to conduct the test of respondents' products as specified in Commercial Standard 181–52.

3. The evidence shows conclusive that Witness Frenck failed to properly conduct all tests involving "constant weight" in accordance with the provisions of Commercial Standard 181–52.

4. The evidence shows conclusively that Witness Frenck failed to determine the absorption of the tile used in the test conducted of respondents' product; and, further, that the tests he did conduct established that 60 percent of the tile tested failed to pass the absorption test required by Commercial Standard 181–52.

5. That portion of the Bill of Complaint relating to respondents' product "Mason-Mastic B–30" should be dismissed, as no test data or proof of defect of any nature was presented by the complainant.

6. That portion of the Bill of Complaint relating to "Carbo-Cement DC–40" should be dismissed as the complainant has failed to prove that respondents' annual gross interstate sales of the product were "substantial."

It is the opinion of the hearing examiner there is no merit to the contention of the respondents with reference to grounds 1, 2 and 6 of the motion. The reasons for arriving at such a conclusion will not be discussed in view of the manner in which the motion is disposed.

The only testimony offered in support of the complaint relating to the alleged failure of respondents' products to meet the requirements of Commercial Standard 181–52 was that of a technician who conducted tests in relation to requirements for sheer strength of "Carbo-cement DC–40" and "Mason-Mastic B–20". There was no evidence offered with respect to "Mason-Mastic B–30" complying or failing to comply with the Commercial Standard.

Commercial Standard 181–52 set forth the type of tile to be used in making the tests and the method of test to be employed to determine if the product meets the requirements.

It is the opinion of the hearing examiner that the tile used in the subject tests did not meet the requirements of the Commercial Standard and the tests were not conducted as directed by the Commercial Standard. The testimony received in this case fails to substantiate the charges of the complaint, and for the reasons stated the motion of the respondents to dismiss should be allowed.

ORDER

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice.

FINAL ORDER

Counsel supporting the complaint having filed an appeal from the hearing examiner's initial decision dismissing the complaint herein, and the matter having been heard by the Commission on the whole record, including briefs and oral argument; and

The Commission having concluded that the hearing examiner's initial decision is correct, both on the law and the facts, and that it constitutes an appropriate disposition of this proceeding:

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

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

IN THE MATTER OF

ALPINE QUILTING COMPANY, INC., ET AL.

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

Docket 7619. Complaint, Oct. 22, 1959—Decision, Nov. 28, 1960

Order requiring New York City manufacturers to cease violating the Wool Products Labeling Act by labeling as "100% Reprocessed Wool", "80%

Reused Wool, 20% other Unknown Fibers", and 70% Reprocessed Wool, 30% Man-Made Fibers", interlining materials which contained substantially less reprocessed or reused wool than the percentages thus set out; and by failing to label certain of such wool products as required.

Ames W. Williams, Esq., supporting the complaint.

Alex. Akerman, Jr., Esq., of *Shipley, Akerman & Pickett* of Washington, D.C., for respondents.

Initial Decision by Leon R. Gross, Hearing Examiner

PRELIMINARY STATEMENT

The complaint issued in these proceedings on October 22, 1959, charges respondents with violating the Federal Trade Commission Act, the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, by falsely and deceptively labeling and tagging their wool products sold in interstate commerce, with respect to the character and amount of the constituent fibers contained therein. Answer was filed November 25, 1959. By motion filed December 16, 1959, and renewed January 12, 1960, respondents requested that the Commission stay this proceeding for the purpose of permitting respondents to enter into a voluntary agreement to cease and desist from the practices alleged to be unlawful. Such motion was denied by the Commission by order issued January 27, 1960.

On January 7, 1960, counsel signed a stipulation of facts to be considered by the Hearing Examiner in deciding the issues involved in this proceeding. The stipulation provided that the individual responsibility of respondent Harry Haberman "is subject to further proceeding." Those "further proceedings" took place on April 26, 1960, in New York, New York, at a hearing at which respondent Harry Haberman testified. Counsel for all of the parties reaffirmed in the record on April 26, 1960, that the stipulation of January 7, 1960, was and is in full force and is to be considered by the Hearing Examiner in adjudicating this case. This initial decision is based upon the facts so stipulated, and the facts adduced at the hearing on April 26, 1960.

The parties also agreed that the Commission's decision in Docket 7401, *Hunter Mills Corporation*, should be dispositive of respondents' challenge of the efficacy of the laboratory tests performed upon the material allegedly improperly labelled. On February 17, 1960, the Commission's decision in *Hunter Mills* validated such tests.

The record made at the hearing in New York, N.Y., on April 26, 1960, adduced sufficient facts to dispose adequately of Harry Haber-

man's contention that he should not be held personally responsible.

Proposed findings, conclusions, and suggested orders were filed by all parties on May 27, 1960.

The Hearing Examiner finds that counsel supporting the complaint has proven the legally essential allegations of the complaint by a preponderance of reliable, probative and substantial evidence in the record, and an order is herein entered granting to counsel supporting the complaint the relief which he has requested.

Findings requested by counsel which are not specifically adopted and incorporated herein are rejected and refused. The fact that the Examiner has not incorporated in this initial decision, nor rejected, nor dismissed specifically, evidence which is in the record, should not be construed as indicating that such evidence has not been fully considered by the Examiner in preparing this initial decision. It indicates merely that the evidence which the Examiner has specifically incorporated in his findings of fact is sufficiently preponderant, reliable, probative and substantive for a proper adjudication of the issues presented by the record in this proceeding.

FINDINGS OF FACT

Respondent, Alpine Quilting Company, Inc., is a corporation which was organized in 1953. It is existing and doing business under and by virtue of the laws of the State of New York with its offices and principal place of business located at 470 West 128th Street, New York, New York.

Individual respondent Harry Haberman is president and treasurer of Alpine Quilting Company, Inc. He owns 100 per cent of its stock; is its chief executive officer; makes all its policies, and is dependent upon his salary from Alpine for his livelihood. Haberman is not otherwise employed; and has been in the textile industry most of his productive life. The office and principal place of business of the individual respondent, Haberman, is the same as that of the corporate respondent, Alpine Quilting Corporation.

Harry Haberman controls the acts, practices and policies of the corporate respondent.

Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January, 1957, respondents have manufactured for introduction into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in the Act, quilted interlining materials, made in whole or in part of reprocessed wool or reused wool, which are wool products, as "wool products" are defined therein. Respondents' gross sales amount to about $200,000 per

year. Approximately half of this volume consists of quilted woolen interlining material.

Federal Trade Commission investigators obtained representative samples of quilted woolen interlining materials sold by respondents to two different customers. For the purpose of this stipulation, these samples were designated samples A and B.

Sample A was taken from interlining materials sold by respondent Alpine Quilting Company, Inc., to Lehigh Trouser Co., Wilkes Barre, Pennsylvania, by invoice dated July 3, 1957, respondents' Order No. 2500. The shipment from which Sample A was taken consisted of pieces of interlining materials totalling 1729 yards. The aforesaid invoice, sent by the respondent corporation from its place of business in the State of New York, to Lehigh Trouser Co. in the State of Pennsylvania, represents the interlining materials as being "100 per cent Reprocessed Wool." The pieces of said interlining materials, including the piece from which Sample A was taken, were all labeled as "100 per cent Reprocessed Wool." This sample was tested in the Federal Trade Commission screening laboratory by Marjorie A. Molloy, who is qualified, both by training and by experience, to conduct such tests. The manner in which the test was performed is set out below. The test showed that Sample A contained 92.8 per cent wool, 1.3 per cent acetate, and 5.9 per cent other fibers.

Sample B was taken from interlining materials sold by respondent corporation to Timely Togs, Inc., 715 Broadway, New York, New York, by invoice dated October 2, 1958, respondents' Order No. 2809-2818. Timely Togs, Inc., purchaser of Sample B, does approximately 70 per cent of its wool products business in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939. The aforesaid interlining had been labeled and invoiced by respondent Alpine as 80 per cent Reused Wool, 20 per cent Other Unknown Fibers. A sample was tested, also by Marjorie A. Molloy, named above, and this sample was found, according to such test, to contain 64.1 per cent wool, 3.0 per cent acetate, and 32.9 per cent other fibers.

In the course and conduct of their business, respondents have been and are now in substantial competition with corporations, firms and individuals similarly engaged in the business of selling wool products, including interlining materials, in commerce.

The tests, for wool fiber content of the Samples A and B referred to above, were conducted in accordance with standard procedures, as follows:

The total weight of the samples was 3 to 4 grams. The total sample was drawn from several areas chosen at random. After the covering fabric (and the threads holding it) were removed, the sample was soaked in carbon tetrachloride for at least a half hour, with frequent stirring. Any oils or grease would be dissolved at this step. Then the sample was placed in a beaker of boiling water, and was boiled for five minutes. This boiling removed any dirt present, and also made certain that all the carbon tetrachloride was gone. Then the sample was rinsed several times, and placed in the oven to dry.

After it had dried, the sample was removed from the oven, divided into two parts, and each half was placed in a weighing bottle, and a first weighing was made. These bottles were put back in the oven for several hours, then removed and placed in a dessicator until cool, and weighed again. This process was repeated until a constant weight was obtained, showing that all the moisture has been removed. (The oven temperature is kept at 100° Centigrade.) This final weight is entered on the data sheet as "weight of sample minus carbon tetrachloride."

After this constant weight has been obtained, the samples are extracted with acetone for 45 minutes, in order to remove any acetate fibers present. (This step also removes Vinyon and Dynel if they are present, but it is unlikely that they ever would be.) After the extraction, the sample is rinsed repeatedly in order to remove all the acetone; is placed in the weighing bottle again and put back into the oven. A constant weight is again obtained before proceeding any further. The loss in weight after this step is the amount of acetate present.

The final step is one which removes all the wool (and any other animal fiber) from the sample. It is boiled for five minutes in a 5 per cent solution of sodium hydroxide, after which the residue, if any, is rinsed thoroughly, dried (to constant weight), and weighed. After this last weight is obtained, the residue is examined microscopically to determine its contents and also to make sure that all the wool has been removed. It has never been found that the wool was not all removed by this treatment.

The rinsing procedures used were as follows: After the first step—the cleaning of the sample—the total mass of the fibers were held in the hand during the final rinsings. After the sample was weighed for the first time, it was not handled again. The latter rinsings were done with the sample in a porous crucible, after which the sample was returned to the bottle with the aid of a glass rod.

The rinsing procedure used for the samples in this case, after the first step, was the same procedure which was used in the matter of

Hunter Mills Corporation, et al., Docket No. 7401. It is subject to the same arguments as were urged in *Hunter Mills.* The Federal Trade Commission's opinion dated February 17, 1960, in *Hunter Mills* specifically approved the procedures used in this case for testing the wool content of the samples.

The Hearing Examiner finds that respondents, after January, 1957, manufactured for introduction into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, "wool products" as defined in said act.

Certain of respondents wool products were misbranded within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act, and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled, or tagged, with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products were interlining materials labeled or tagged by respondents as consisting "of 100 per cent Reprocessed Wool," 80 per cent Reused Wool, 20 per cent Other Unknown Fibers and "70 per cent Reprocessed Wool, 30 per cent Man-Made Fibers," whereas in truth and in fact the interlining materials to which said tags or labels were attached contained substantially less reprocessed or reused wool than the percentage set out on said tags or labels.

Certain of respondents' wool products sold in interstate commerce are hereby found to have been misbranded by respondent in that they were not stamped, tagged or labeled as required under the provision of Section 4(a)(2) of the Wool Products Labeling Act of 1939, and in the manner and form as proscribed by the Rules and Regulations promulgated under said act.

The Federal Trade Commission has jurisdiction over the respondents, and over the subject matter of this proceeding.

DISCUSSION

There is no controversy over the legally operative facts in this proceeding. Those facts which would determine whether a cease and desist order should be issued are stipulated, with the sole exception of the question of whether the testing procedure used on the samples was and is dependable.

This Commission's decision in the *Hunter Mills* case, Docket 7401, disposes of all of the legal issues which have been raised in the instant proceeding. Moreover, the same firm of attorneys who represented the respondents in the *Hunter Mills* case represents the re-

spondents in the instant proceeding, and have attempted to reassert legal defenses which were and are definitely disposed by the Commission's opinion in *Hunter Mills*. In *Hunter Mills* the Commission found that the test procedure for ascertaining a fiber content, which is the same procedure used in this proceeding, did not result in a loss of fiber from the materials being tested and render unreliable the fiber content findings. It held (p. 3):

> The Commission sees little merit in this contention. The witness performing these tests, a graduate chemist with some nine years' experience, clearly demonstrated her familiarity with the various fiber identification tests, including the standard "boil-out" test used here. She testified that she has performed this same type of test some 700 to 800 times and that she clearly recognized the necessity for careful handling of the materials to be tested. She readily admitted the possibility of a loss of some of the shorter fibers in the cleansing and preparation of materials if the materials are carelessly handled, but had no doubt that as handled by her the loss would be insignificant. Nor was this contradicted by the witness Masterson who, while he testified that materials to be tested are not hand-rinsed in his organization, agreed that if the rinsing were carefully done there would be "very, very little loss" of fibers. In the circumstances, the Commission is satisfied that any small loss of fibers which may have occurred here cannot reasonably account for the presence in these samples of fibers other than wool ranging up to 18 percent of the total fiber weight. Nor can the possible presence of "ornamentation," account for other fibers in such amounts. Section 4(a)(2)(A) of the statute provides for exclusion of "ornamentation" from the statement of fiber contents only when it does not exceed 5 percent of the total fiber weight of the product, and Rule 16 of the Rules and Regulations promulgated under the Act expressly requires disclosure of the percentage of fibers in the ornamentation when it exceeds the 5 percent limit.

Moreover, counsel in *Hunter Mills*, as in this case, sought to exempt the individual respondents in *Hunter Mills*, William Trakinski and Simon Trakinski, from the prohibition of the cease and desist order in that case. In this case, as in *Hunter Mills*, the individual respondent is the sole stockholder and "there are no other stockholders, officers, or directing officials." "The individual respondent(s) are not only officers of the corporation—they are the corporation—engaged in the daily performance of the most intimate details of its operation; and in such a situation the necessity for joining them individually in the order to cease and desist is obvious." *Hunter Mills* Decision, pp 4, 5.

And as the Commission took pains to point out in *Hunter Mills*, Section 9 of the Federal Trade Commission Act does not provide any basis for arguing that the order in this case should not run against the individual sole stockholder and chief executive officer, Harry Haberman. "The statute does not immunize a witness from a cease and desist order, which is prospective only and has been

aptly described as 'purely remedial and preventive.' *Chamber of Commerce of Minneapolis* v. *Federal Trade Commission*, 13 F. 2d 673, 685 (8th Cir. 1926). * * * One is not prosecuted by being told to desist from illegal conduct, nor does he thereby suffer the imposition of a penalty or the forfeiture of any legally-protected right or property." (*Carl Drath, trading as Broadway Gift Company* v. *Federal Trade Commission*, 239 F. 2d 452, 454 (D.C. Cir. 1956).)

It would serve no useful purpose to labor the points which were argued at length in the *Hunter Mills* case, particularly since counsel for the respondents in that case is the same counsel who represents the respondents in this case.

CONCLUSIONS

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

2. Counsel supporting the complaint has proven the legally essential allegations of the complaint by a preponderance of reliable, probative and substantial evidence in the record.

3. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act.

4. The complaint filed herein states a good cause of action and this proceeding is in the public interest.

5. The acts and practices of the respondents which have been proven in this record violated the Wool Products Labeling Act of 1939, 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.

6. The use by respondents of false, misleading and deceptive statements and representations on invoices, with respect to the wool content of interlining materials had and now has the tendency and capacity to deceive clothing manufacturers, and others, purchasing same and relying on respondent's statement as to fiber content.

7. The acts and practices of respondents as found above were and are to the prejudice and injury of the public and of the 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 and the Wool Products Labeling Act of 1939. Now, therefore,

ORDER

It is ordered, That respondents Alpine Quilting Company, Inc., a corporation, and its officers, and Harry Haberman, individually

and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of woolen stocks, or other wool products, do forthwith cease and desist from:

A. Misbranding such products by:

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

2. Failing to affix labels to wool 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 Alpine Quilting Company, Inc., a corporation, and its officers, and Harry Haberman, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of woolen stocks, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Misrepresenting the character or amount of the constituent fibers contained in such products on invoices or shipping memoranda applicable thereto or in any other manner.

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; and

It appearing that the contentions made by respondents on said appeal are that the decision is not supported by substantial evidence, that in the absence of evidence showing numerous instances of misbranding the provision of the order to cease and desist in said decision requiring disclosure of all information prescribed by Section 4(a)(2) of the Wool Products Labeling Act is too broad in scope, and that the order to cease and desist should not include respondent Harry Haberman in his individual capacity; and

The Commission having determined that the stipulation between counsel concerning the label and invoicing of two representative samples of respondents' products constitutes proof of substantial violations of the Wool Products Labeling Act and the Federal Trade Commission Act, as found by the hearing examiner, and that

the order contained in the initial decision properly prohibits such violations; and

The Commission having further determined that Harry Haberman as the sole stockholder and the only active officer of Alpine Quilting Company, Inc., is responsible for the activities of that corporation and that the order to cease and desist to be fully effective should include this respondent in his individual capacity as well as in his capacity as an officer of the corporation:

It is ordered, That the aforesaid appeal be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision, filed June 9, 1960, be, and it hereby is, adopted as the decision of the Commission.

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

Commissioner Mills not participating for the reason that he did not hear oral argument herein.

IN THE MATTER OF

BOB WILSON, INC., ET AL.

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

Docket 7913. Complaint, June 3, 1960—Decision, Nov. 30, 1960

Consent order requiring used car dealers in Washington, D.C., to cease making false claims concerning down payments, financing rates and plans, monthly terms, guarantees on their used cars, etc., as in the order below indicated.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Bob Wilson, Inc., a corporation, trading as Dan Brown, and Monroe Lenoff, individually and as an officer of the corporate respondent, and Marvin H. Greenfield, Phillip Rubenstein and Jack Kennedy, individually, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Bob Wilson, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Maryland and licensed to transact business in the District of Columbia. Said corporation trades under the name of Dan Brown. Its office and principal place of business is located at 3rd and K Streets, NW., Washington, D.C.

Respondent Monroe Lenoff is an officer of the respondent corporation and together with respondents Marvin H. Greenfield and Phillip Rubenstein, principal stockholders therein, and Jack Kennedy, formulate, direct and control the acts and practices of the corporate respondent, as hereinafter set forth. Their business address is the same as the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of used automobiles in the District of Columbia. Their volume of business is substantial.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the sale of their used automobiles, respondents have made certain statements in newspapers published in the District of Columbia and in radio broadcasts emanating from the District of Columbia, concerning their said automobiles and their method of doing business. Typical but not all inclusive of said statements are the following:

$1.00 Down Payments as Low as $14 Per Mo.
Only $1 Down Charge the Balance.
No Down Payment Too Small to Consider.
$1.00 Down and Assume Balance Due.
$1 Down on Any Car on lot.
No Cash Needed.
No Small Loan Needed.
Name Your Terms.
Up to 48 Months to Pay.
Bank Financing and 1 Year 100% Warranty.
All Cars Guaranteed.
100% Parts and Labor Guarantee Available.
All Cars Approved for D.C. & Va. Inspection.
Special Financing for D.C. and Federal Employees.
Extra Special Financing for Military Personnel.
Special Department for Military Personnel.
New and Lower Financing Plans for All Grades and Department of D.C. and Federal Government Workers.
Special Bank Financing for Military Personnel.

PAR. 4. Through the use of the aforesaid statements the respondents represent that:

(a) They sell used automobiles on credit accounts with little or no down payment.

(b) No small loans are necessary to make a purchase of a used car.

(c) Terms as low as $14.00 per month and over a period of 48 months are available to used car purchasers.

(d) They offer bank rate financing.

(e) All cars are guaranteed.

(f) All cars are approved by the District of Columbia and State of Virginia.

(g) Special financing plans are offered for all grades of District of Columbia and Federal Government employees.

(h) A special department and financing plans are operated for the benefit of military personnel.

PAR. 5. Said statements and representations are false, misleading and deceptive. In truth and in fact:

(a) Respondents do not sell cars without a down payment. When a minimum sum such as one dollar is accepted by the respondents it is not as a down payment, but is for the purpose of providing a consideration for a contract of purchase.

(b) Purchasers of respondents' used cars have been and frequently are required to contract for small loans, mostly with sources outside the District of Columbia, in addition to installment financing in order to meet respondents' down payment requirements.

(c) Used cars have seldom, if ever, been sold on terms as low as $14.00 a month or over a period of 48 months.

(d) Bank rate financing is not offered by the respondents with respect to sales of used cars.

(e) Respondents, in most instances, sell their used cars with a purported 30 day, 50-50 guarantee or warranty which requires all work to be done in their shop. The limitations imposed upon the purchasers by this "written-in" purported warranty are not fully disclosed and, in some instances, are changed without the purchasers' knowledge. In those cases where a purported guarantee or warranty is given beyond 30 days, it is charged for in the guise of a delivery and handling charge on the car order or bill of sale.

(f) Respondents' used cars are not, in fact, approved by the District of Columbia and State of Virginia.

(g) Respondents have no special financing plans for the benefit of District of Columbia and Federal Government employees; likewise they do not operate any special department or financing plan for the benefit of military personnel.

PAR. 6. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of used automobiles.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of a substantial number of respondents' used automobiles by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all 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.

Mr. Ames W. Williams and *Mr. Michael P. Hughes* for the Commission.

Mr. Stanley M. Kaiser, of Washington, D.C., for respondent Monroe Lenoff; and *Mr. John T. Bonner*, of Washington, D.C., for all other respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the advertising, offering for sale, sale and distribution of used automobiles in the District of Columbia, with violation of the Federal Trade Commission Act by the use of false, misleading and deceptive statements and representations in newspapers published in the District of Columbia, and in radio broadcasts emanating from the District of Columbia, concerning their said automobiles and their method of doing business.

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 Acting Director, the Associate Director, and the Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the Hearing Examiner for consideration.

This agreement states that respondent Bob Wilson, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Maryland and licensed to transact business in the District of Columbia; that said corporation trades under the name of Dan Brown, with its office and principal place of business located

at 3rd and K Streets, N.W., Washington, D.C.; that respondent Monroe Lenoff was an officer of the respondent corporation and together with respondents Marvin H. Greenfield and Philip Rubinstein (erroneously named in the complaint as Phillip Rubenstein) formulated, directed and controlled the acts and practices of the corporate respondent; that the business address of Marvin H. Greenfield and Philip Rubinstein is the same as that of the corporate respondent; and that the former address of Monroe Lenoff was the same as that of the corporate respondent, his present address being 4301 Rhode Island Avenue, Brentwood, Maryland.

The agreement further states that according to the deposition of John F. Kennery, erroneously named in the complaint as Jack Kennedy, which deposition is attached to and made a part of the agreement, this respondent had no part in formulating, directing or controlling the acts and practices of the corporate respondent, and it is therefore agreed that the complaint should be dismissed as to him; and that according to an affidavit attached to the agreement and made a part thereof, respondent Monroe Lenoff is no longer an officer of the corporate respondent, and it is therefore agreed that the complaint should be dismissed as to him as an officer 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 Hearing Examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for

an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered, That respondents Bob Wilson, Inc., a corporation, doing business under its own name or trading as Dan Brown, or under any other name, and its officers, and Monroe Lenoff, Marvin H. Greenfield and Philip Rubinstein, individually, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of used automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Used automobiles will be delivered to purchasers upon the payment of one dollar or any other amount, or without a payment, unless after purchasers make such payment, or the sale is made without a down payment, the automobile is in fact put into the purchasers' unrestricted possession;

2. No loans are necessary to make a purchase of a used automobile, for the purchase or delivery of which the purchaser must in fact obtain a loan;

3. They offer terms of $14.00 per month or over a period of 48 months; or that they offer terms in any other amount per month or any other period of time, that is not in accordance with the facts;

4. They offer or make available bank rate financing; or misrepresenting in any manner the financing rate under which used automobiles are sold;

5. Used automobiles are guaranteed unless the terms and conditions of the guarantee and the manner in which the guarantor will perform are clearly set forth;

6. Used automobiles are approved for District of Columbia or Virginia inspection;

7. Special financing plans are offered for any grade of District of Columbia or Federal Government employees or that a special department or special financing plan is available for military personnel.

It is further ordered, That respondents Bob Wilson, Inc., a corporation, trading as Dan Brown, or under any other name, and its officers, and Monroe Lenoff, Marvin H. Greenfield, and Philip Rubinstein, individually, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of used automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from: Making any false, misleading or deceptive statement, directly or by im-

plication, concerning the down payment, financing costs, rates, terms, plans respecting and methods of financing, or the guarantees or warranties offered with respect to such used automobiles.

It is further ordered, That the complaint, insofar as it relates to respondent John F. Kennedy, be, and the same hereby is, dismissed, and that the complaint be, and the same hereby is, dismissed as to respondent Monroe Lenoff as an officer of the 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 30th day of November, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Bob Wilson, Inc., a corporation doing business under its own name or trading as Dan Brown, and Monroe Lenoff, Marvin H. Greenfield and Philip Rubinstein, individually, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

BANKERS SECURITIES CORPORATION

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

Docket 7039. Complaint, Jan. 15, 1958—Decision, Dec. 1, 1960

Order requiring the corporate operator of Snellenbergs, a Philadelphia retail department store, to cease advertising in newspapers fictitious prices for its rugs and carpets through use of the abbreviation "Reg." and the word "usually" followed by amounts falsely represented thereby as its regular selling prices.

Mr. Ames W. Williams for the Commission.

Wolf, Block, Schorr & Solis-Cohen, of Philadelphia, Pa., for respondent.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint herein charges the respondent, Bankers Securities Corporation, a corporation, with violation of the Federal Trade Commission Act by engaging in false, misleading and deceptive advertising as to the regular and usual retail price of rugs and

carpets offered for sale or sold by Snellenburgs, a retail department store operated by said respondent. The respondent was duly served with the aforesaid complaint according to law and, within the required time, filed answer thereto denying the pertinent charges of violation.

On the issues thus joined the matter proceeded to trial during the course of which certain testimony was had, and exhibits received in evidence, all of which testimony was stenographically reported and, together with the exhibits, duly filed of record in the Office of the Commission in Washington, D.C., as required by law.

Subsequent thereto, both parties were accorded an opportunity, of which they availed, of filing with the hearing examiner their respective Proposed Findings of Fact and Conclusions of Law, those deemed proper to be admitted having been incorporated herein, and those rejected being ignored, as a reading of this Initial Decision may indicate.

FINDINGS AS TO THE FACTS

1. Respondent Bankers Securities Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania. Respondent has its office and principal place of business at 1315 Walnut Street, Philadelphia, Pennsylvania.

2. Respondent is engaged primarily in the real estate business, but operates, as a division, separate and distinct from all its other activities, a retail department store in Philadelphia known as "Snellenburgs."

3. In the course and conduct of its operation of Snellenburgs, a retail department store, the respondent now causes, and has caused, rugs and carpets, when sold, to be transported from its establishment in Philadelphia, Pennsylvania, to purchasers located in other states of the United States. It was stipulated that on the basis of 12 representative test days in 1956, 9.1 percent of Snellenburgs' sales were made to out of state customers. In the record as Commission Exhibits 6, 7, 8 and 9 are four "Cut Slips" indicating sales of carpets or rugs to be sent, and in some instances installed, by respondent for customers located in New Jersey, on dates and in amounts as follows:

9-10-56: $1,257.83
10-29-56: $196.78
9-18-56: $847.60
9-22-56: $708.32

The respondent has maintained a substantial course of trade in such merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. Respondent at all times mentioned herein has been in substantial competition with other persons, partnerships and corporations engaged in the retail sale of rugs and carpets in commerce between and among the various states of the United States.

5. On September 10, October 28 and November 4, 1956, respondent inserted Snellenburgs' full page advertisements in the Sunday Morning issues of The Philadelphia Inquirer, a Philadelphia, Pennsylvania newspaper, having interstate circulation in which statements were made respectively as follows:

SUPER-CARVED WILTON OR 5-PLY WOOL TWIST; 10.89 sq. yd.: Reg. 15.95–16.95

SUPER-CARVED WILTON OR 5-PLY WOOL TWIST; 10.96 sq. yd.: Reg. 15.95–16.95

5-PLY SUPER TWISTWEAVE OR LUXURY CARVED WILTON; Usually 15.95–16.95 Sq. Yd. 10.96 sq. yd.

6. Respondent, through the use of the abbreviation "Reg." and the word "Usually" accompanied by price figures, represented that said figures were the prices at which the merchandise referred to had been regularly and usually sold by respondent and that the difference between such figures and the price at which the merchandise was offered for sale represented savings to a purchaser.

7. Respondent agreed by stipulation that the rugs described in the advertisements hereinabove referred to and quoted from had not been sold by Snellenburgs for prices of $15.95–16.96 per square yard. Respondent urges that by such advertising Snellenburgs "intended * * * to inform the public that $15.95–16.95 was the regular and usual price in the Philadelphia area for the quality of rugs which Snellenburgs was advertising for sale at $10.89–10.96 per square yard." In support of that theory it was stipulated by Commission's counsel and counsel for respondent, subject to the right of objection as to relevancy, materiality and competency "that rugs of identical quality and pattern may have been sold—and were being offered for sale—by competitors at prices of $15.95–16.95 during the relevant period involved."

8. Respondent's argument and the foregoing stipulation raise the conformity with the Commission's decisions and the rulings of the terms "regular" and "usually." Upon this issue the Commission has spoken frequently and consistently to the effect that the terms refer to and mean the prices at which the advertiser has regularly and usually sold the merchandise referred to. The interpretation of respondent's advertising as given in paragraph 6 above is in conformity with the Commission's decision and the rulings of the courts. In *Mandel Brothers, Inc.* v. *F.T.C.*, decided by the U.S. 7th

Cir. Ct. of Appeals, 4–1–58, (Commission Docket 6434—7th Cir. No. 12128) the court said:

Petitioner's contention that the issue here is not the regular and usual price of the specific garments sold by Mandel but the regular and usual price of similar or comparable garments fails inasmuch as the customer would make no such distinction.

In the Fair case, Docket 6822, the Commission interpreted the term "usually," when used in advertising to describe prices, as meaning prices at which the merchandise had been regularly or usually sold by respondent in the recent regular course of its business and ordered respondent to cease and desist from representing:

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.

9. Respondent's advertisements, therefore, are found to be false and deceptive in that in fact and by admission the rugs described therein had not been sold regularly and usually by respondent at the prices described as "reg." and "usually." The fact that rugs of identical quality and pattern "may have been sold" or "were being offered for sale" by competitors at the prices described in respondent's advertisements as "reg." and "usually" is immaterial and irrelevant.

10. The use by the respondent of false, misleading and deceptive statements has the tendency and capacity to lead members of the purchasing public into the erroneous and mistaken belief that such statements are true and into the purchase of substantial quantities of respondent's carpets and rugs because of such mistaken and erroneous belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondent from its competitors and substantial injury has been done to competition in commerce.

ORDER

It is ordered, That the respondent, Bankers Securities Corporation, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of carpets, rugs, or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing in any manner that certain amounts are the regular and usual retail prices of merchandise when such amounts are in excess of the prices at which such merchandise is usually and regularly sold by respondent at retail, in the recent regular course of its business.

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 by misrepresenting the usual and regular prices of carpets and rugs offered for sale and sold by Snellenburgs, a department store operated by respondent in Philadelphia, Pennsylvania. The hearing examiner in his initial decision held that the allegations of the complaint were sustained by the evidence and included an order to cease and desist. Respondent has appealed from this decision.

The record discloses that the representations challenged by the complaint appeared in advertisements published in the Philadelphia Inquirer during the latter part of 1956. The following are typical of such representations:

Super-Carved Wilton or 5-Ply Wool Twist; 10.89 Sq. Yd.: Reg. 15.95–16.95
5-Ply Super Twistweave or Luxury Carved Wilton; Usually 15.95–16.95 Sq. Yd.: 10.96 Sq. Yd.

The complaint alleges and the hearing examiner found that respondent had represented through use of these statements that the advertised merchandise was usually and customarily sold by Snellenburgs at the prices designated "Reg." and "Usually" and that the difference between these prices and the prices at which the merchandise was offered for sale represented a savings to the purchaser. Respondent has stipulated that the carpets and rugs featured in the advertisements had not been sold by Snellenburgs at the designated higher prices. It contends, however, that the above-quoted language from the advertisements has been taken out of context and that each of the advertisements when read in its entirety clearly reveals that Snellenburgs had never before sold the advertised merchandise. Consequently, respondent maintains that the advertisements could not be construed by the public to mean that Snellenburgs had reduced the prices at which it had previously sold such merchandise.

Respondent claims that the following statements in the advertisements placed the purchaser on notice that the merchandise offered for sale was not merchandise ordinarily carried by Snellenburgs:

MILL AND DISTRIBUTOR PART COMPANY $397,400 STOCK TO SELL FOR $207,400!
FAMOUS MAKERS MUST CLEAR WAREHOUSE STOCKS . . . WE HAVE $346,000 WORTH FOR $137,000!

While there can be no doubt that these statements convey the impression that Snellenburgs made a special purchase of carpets and rugs, such information does not negate, nor is it in any way inconsistent with, the impression created by the words "Reg." and

"Usually," in conjunction with price figures, that Snellenburgs had formerly sold the same merchandise at the higher prices. Since Snellenburgs had not sold carpets and rugs identical to those advertised at the prices designated "Reg." and "Usually," or at any other price, the hearing examiner was correct in holding that the representations were deceptive.

Respondent also contends that no showing has been made that the practice challenged by the complaint was an unfair or deceptive act or practice in commerce within the meaning of the Federal Trade Commission Act. It argues in this connection that the record does not support the finding that Snellenburgs' advertisements were circulated in commerce or the finding that sales of the advertised rugs were made in commerce.

We think the latter finding is amply supported by documentary evidence showing sales of carpets and rugs by respondent to purchasers in New Jersey. Respondent has also admitted that "it arranges through independent contractors for the delivery of rugs to the homes of purchasers, the great majority of whom are in Pennsylvania." It is, of course, implicit in this statement that respondent arranges for the delivery of rugs to the homes of some purchasers located outside the State of Pennsylvania. While several of the aforementioned documents show that respondent itself had delivered the advertised rugs to out-of-state purchasers, it is not important whether respondent delivered the rugs or whether it arranged for their delivery. In either event, it is clear that possession of the merchandise passed to the customer outside of the State of Pennsylvania. The sales, therefore, were not consummated in Pennsylvania, but were in fact transactions in commerce.

With respect to the finding that respondent's advertisements were circulated in commerce, respondent argues first of all that the hearing examiner should not have taken official notice that the newspaper in which respondent's advertisements were placed is circulated in interstate commerce. We find no merit in this contention. Certainly a hearing examiner may take notice of the fact that a well known metropolitan newspaper such as the Philadelphia Inquirer is distributed outside of the state in which it is published. Similar notice was taken with respect to the circulation of the same publication in the matter of *American Broadloom Carpet Co.*, 53 F.T.C. 239 (1956). Moreover, respondent in this case was afforded an opportunity to contest the noticed fact but failed to do so. The argument on this point is rejected.

Respondent next contends that the mere fact that persons out of the state might read the Philadelphia Inquirer is not sufficient

to establish interstate commerce. This argument ignores other evidence of record, however. In addition to the fact that respondent's advertising appeared in a newspaper having interstate circulation, the record discloses that respondent is doing business in a trading area which extends at least into the State of New Jersey. In this connection, Snellenburgs is located in a Pennsylvania city bordering on the State of New Jersey, and has in fact made sales to residents of that State. The record also contains a stipulation to the effect that a survey prepared for local taxing authorities showed that 9.1% of Snellenburgs' sales were made to out-of-state customers. Consequently, Snellenburgs' advertising was not only read by persons who happen to reside outside of the State of Pennsylvania, it was read by persons outside the state who were prospective customers of respondent and placed respondent in business intercourse with such persons. The purpose of the advertising was to secure customers for respondent's merchandise and we have no doubt that in the circumstances shown to exist the advertising disseminated in commerce was likely to secure customers from outside the State of Pennsylvania. It is our opinion, therefore, based on this complaint and this record that the advertising was a trade or business practice in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act. *United States* v. *Canfield Lumber Co.*, 7 Fed. Supp. 695 (1934); *State* v. *Packer Corp.*, 297 P. 1013 (S.Ct. Utah, 1931); *Progress Tailoring Co.* v. *Federal Trade Commission*, 153 F.2d 103 (1946). And compare the opinion accompanying order ruling on interlocutory appeal issued November 18, 1960, *In the Matter of S. Klein Department Stores, Inc.*, Docket No. 7891. The Commission interpreted that complaint as resting jurisdiction solely on "interstate disseminations of advertising for inducing purchases of merchandise" and held that the statute's coverage extends to such disseminations.

Respondent next contends that the order to cease and desist is too broad in that it pertains not only to rugs and carpets but to all other merchandise which it sells. Relying on *Federal Trade Commission* v. *Mandel Brothers, Inc.*, 359 U.S. 385 (1959), and *The Fair* v. *Federal Trade Commission*, 272 F.2d 609 (7th Cir. 1959), respondent argues that while the Commission has the authority to issue an order covering merchandise not mentioned in the complaint, it may exercise this authority only in those cases where numerous violations have been found. Neither of the cases cited by respondent support this argument. The issue in *Mandel* was not whether the order should be limited to certain types of products but whether the Commission could extend the order prohibiting misbranding of fur

products to include a form of the practice as to which there was no evidence of violation. In *The Fair*, the respondent was also charged with unfair practices in connection with the sale and offering for sale of fur products. The order in that case which prohibited future violations of specific provisions of the Fur Products Labeling Act would necessarily apply only to products coming within the purview of that statute.

The Commission's authority to issue orders proscribing an unfair method of competition or an unfair trade practice, rather than merely the acts by which such unfair method or practice has been manifested, is too well established to require further discussion. *Hershey Chocolate Corporation* v. *Federal Trade Commission*, 121 F.2d 968 (1941); *Federal Trade Commission* v. *Ruberoid Company*, 343 U.S. 470 (1952); *Niresk Industries, Inc.* v. *Federal Trade Commission*, 278 F. 2d 337 (7th Cir. 1960).

Respondent's argument that the order should be limited to its operation of Snellenburgs is also rejected. Snellenburgs is not a separate corporation, but is merely an operating division of respondent. Consequently, there can be no question as to the corporation's responsibility for the acts and practices of this division. The cases cited by respondent on this point relate to the individual liability of corporate officers and clearly have no application to the question of a corporation's responsibility for the acts and practices of its officers or employees.

Respondent argues rather ingeniously, however, that if this proceeding is against Bankers Securities Corporation in all of its activities, counsel supporting the complaint has failed to prove his case since there is no evidence that the carpets and rugs advertised by Snellenburgs were not sold at the designated usual and regular prices by other stores directly or indirectly controlled by respondent. Such evidence, however, would not be relevant to any of the issues raised by the charge herein. While the complaint is directed against Bankers Securities Corporation, the unfair trade practice alleged therein relates only to representations made with respect to the usual and regular prices of certain carpets and rugs sold by one of respondent's operating divisions, Snellenburgs. The complaint alleges, therefore, that respondent misrepresented Snellenburgs' prices, not the prices by some other store.

The hearing examiner properly ruled in this connection that the terms "Usually" and "Reg." refer to and mean the prices at which the advertiser, in this case Snellenburgs, has regularly and usually sold the merchandise referred to. Consequently, a showing that the merchandise advertised by Snellenburgs had been sold at the desig-

nated usual or regular prices by other stores, including stores directly or indirectly controlled by respondent, would have no bearing on whether the pricing claims made in Snellenburgs' advertising were misleading or deceptive. The order to cease and desist in the initial decision, however, does not specifically require that the terms "Usually" and "Regularly" refer only to the advertiser's former prices. Since respondent controls or operates stores other than Snellenburgs, the order should prohibit it from using representations concerning the usual or regular prices of merchandise sold by any of these stores unless such prices are in fact the prices at which such merchandise is usually and regularly sold by that particular store. The order to cease and desist will be modified accordingly.

Respondent's appeal is denied and the initial decision, modified to conform with this opinion, will be adopted as the decision of the Commission.

Commissioner Mills did not participate in the decision herein for the reason he did not hear oral argument.

FINAL ORDER

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

It is ordered, That the following order be, and it hereby is, substituted for the order contained in the initial decision:

It is ordered, That respondent, Bankers Securities Corporation, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of carpets, rugs, or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing in any manner that certain amounts are the regular and usual retail prices of merchandise sold by any store operated or controlled by respondent when such amounts are in excess of the prices at which such merchandise has been usually and regularly sold by that store at retail, in the recent regular course of its business.

It is further 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 respondent, Bankers Securities Corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth

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

Commissioner Mills not participating for the reason he did not hear oral argument.

IN THE MATTER OF

GOJER, INC.

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

Docket 7851. Complaint, Mar. 30, 1960—Decision, Dec. 1, 1960

Consent order requiring the Akron, O., manufacturer of a hand cleaner known as "Go-Jo", other soap and cleaning products and dispensers therefor, to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by such practices as allowing purchasers in its "Jobber" classification who bought 35 to 74 cases a 5% discount off jobber prices and those who bought 75 cases or more a 10% discount; and by allowing "Warehouse Group" buyers a 7½% functional discount off jobber prices on their individual purchases made through the "Group" and a 20% discount on each order of 5,000 lbs. or more made by the "Warehouse Group"; and to cease violating Sec. 2(e) of the Clayton Act by furnishing certain purchasers, but not their competitors, the services of "missionary" personnel to accompany the favored purchaser's salesmen in the field and give them on-the-job training in the sale of respondent's products.

COMPLAINT

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

COUNT I

PARAGRAPH 1. Respondent Gojer, Inc., is a corporation organized, 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 144 Cuyahoga Street, Akron, Ohio.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of a hand cleaner known as "Go-Jo," other soap and cleaning products, and dispensers for such products.

Respondent sells its products of like grade and quality to a large number of customers located throughout the United States for use,

consumption, or resale therein, including warehouse groups, jobbers and users. Respondent's sales of its products are substantial, exceeding $1,000,000.00 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of Ohio to customers located in other States of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, respondent is in substantial competition with other corporations, partnerships, individuals and firms engaged in the manufacture, sale and distribution of hand cleaners, other soap and cleaning products, and dispensers for such products.

Many of respondent's purchasers are likewise in competition with each other in the resale of respondent's products within the same trading areas.

PAR. 5. In the course and conduct of its business in commerce, since January 1, 1957, and continuing to the present, respondent has discriminated and is now discriminating in price between different purchasers of its products by selling said products to some purchasers at substantially higher prices than the prices charged competing purchasers for products of like grade and quality.

PAR. 6. Respondent classifies its customers according to the functions they perform and also according to the quantity of products they purchase. They are classified as "Users," "Class A Warehouses," "Class B Warehouses," "Jobbers," and "Warehouse Groups." It is by means of, and through the use of, these various classifications that respondent has discriminated and is now discriminating in price between different purchasers of its products of like grade and quality.

PAR. 7. For example, customers who sell to retailers and users are classified as "Jobbers." Respondent favors some "Jobbers" by allowing them higher and more favorable purchase price discounts than it allows other "Jobbers." On purchases of 1 to 34 cases of respondent's products, they pay jobber prices. On purchases of 35 to 74 cases, they receive a 5% discount off jobber prices. On purchases of 75 cases or more, they receive a 10% discount off jobber prices. Many of respondent's "Jobbers" receiving higher and more favorable purchase price discounts are in competition with "Jobbers" who are not so favored.

As a further example, a warehouse whose capital stock is owned by various jobbers is classified as a "Warehouse Group." The various jobbers are referred to as "owner-jobbers." On each order of

5,000 pounds or more of respondent's products, a "Warehouse Group" is given a 20% discount off jobber prices. Orders may be placed by individual "owner-jobbers" as well as the "Warehouse Group." Thus, drop shipments are made to the "owner-jobbers." Payment is always made by the "Warehouse Group." "Warehouse Groups" may order less than 5,000 pounds, provided they order $100 or more of respondent's products, in which case the "Warehouse Group" or the "owner-jobber" (whichever places the order) receives the same discount as any ordinary "Jobber" would receive on a similar order. In addition, however, the "Warehouse Group" receives a 7½% "functional" discount. The 7½% "functional" discount is deducted by the "Warehouse Group" when payment is made to the respondent. The "owner-jobbers" are the ultimate recipients of the 7½% "functional" discount. Respondent's recognition of this so-called "group buying" and consequent classification of said group as a "Warehouse Group," results in the granting of higher and more favorable purchase price discounts to "owner-jobbers" as opposed to respondent's regular "Jobbers" who are not members of "Warehouse Groups" and who receive only the purchase price discounts allowed to "Jobbers." Many of these "owner-jobbers" are in competition with respondent's regular "Jobbers."

PAR. 8. The effect of respondent's discrimination in price may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its purchasers are respectively engaged, or to injure, destroy or prevent competition with said respondent, with respondent's favored customers, or with customers of either of them.

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

COUNT II

PAR. 10. Paragraphs 1 through 4 of Count I hereof are hereby set forth by reference and made a part of this Count II as fully and with the same effect as if quoted here verbatim.

PAR. 11. In the course and conduct of its business in commerce, since January 1, 1957, and continuing to the present, respondent has discriminated in favor of certain of its purchasers buying its commodities by contracting to furnish, or furnishing, or by contributing to the furnishing to such favored customers, services or facilities connected with the handling, sale or offering for sale of such commodities so purchased while not according such services or

facilities to other competing purchasers on proportionally equal terms.

PAR. 12. As illustrative of such practices, respondent has furnished certain of its purchasers the services and facilities of special personnel known as "missionary" personnel, while not according such services and facilities to all other competing purchasers on proportionally equal terms. Said "missionary" personnel are furnished by respondent and are fully compensated by respondent. They accompany the salesmen of favored purchasers in the field and give them practical, on-the-job training in the sale of respondent's products.

PAR. 13. The acts and practices of respondent, as alleged herein, are in violation of subsection (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John Perechinsky supporting the complaint.

Riddle, Rosen & Mueller, by *Mr. Bernard I. Rosen*, of Akron, Ohio, for respondent.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on March 30, 1960, charging it with discrimination in price between different purchasers of its products, in violation of § 2(a) of the Clayton Act, as amended, and with the furnishing of services or facilities on disproportionate terms, in violation of § 2(e) of said Act.

On October 13, 1960, there was submitted to the undersigned hearing examiner an agreement between respondent, its counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the terms of the agreement, the respondent admits 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 respondent 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 respondent that it has violated the law as alleged in the complaint.

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

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

priate basis for settlement and disposition of this proceeding, hereby accepts the agreement and orders 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 Gojer, Inc. is a corporation organized, 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 144 Cuyahoga Street, Akron, Ohio.

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

ORDER

It is ordered, That respondent Gojer, Inc., a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of any of its products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality:

1. By selling such products to any purchaser at net prices higher than the net prices charged any other purchaser competing in the resale or distribution of such products;

2. By selling such products to any purchaser at net prices higher than the net prices charged any other purchaser, where respondent, in the sale or distribution of such products, is in competition with any other seller.

It is further ordered, That respondent Gojer, Inc., a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of any of its products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Furnishing, contracting to furnish, or contributing to the furnishing of services or facilities in connection with the handling, processing, sale or offering for sale of respondent's products to any purchaser from respondent of such products bought for resale, when such services or facilities are not accorded on proportionally equal terms to all other purchasers from respondent who resell such products in competition with such purchasers who receive such services or facilities.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The hearing examiner, on October 19, 1960, having filed his initial decision in this proceeding accepting an agreement containing a consent order to cease and desist theretofore executed by respondent and by counsel supporting the complaint, and the respondent, on November 4, 1960, having filed a motion requesting that the effective date of the initial decision be stayed pending solving by the respondent of compliance problems presented by this proceeding; and

The Commission having determined that granting of the request to stay the effective date of the initial decision would not be in the public interest:

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

It is further ordered, That the initial decision of the hearing examiner shall, on December 1, 1960, become the decision of the Commission.

It is further ordered, That respondent Gojer, 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

ANTHONY ROCCA FIORITA ET AL. DOING BUSINESS AS A. R. FIORITA FRUIT CO.

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

Docket 8067. Complaint, Aug. 4, 1960—Decision, Dec. 1, 1960

Consent order requiring commission merchants in St. Louis, Mo., to cease receiving illegal brokerage on their own purchases of citrus fruit from Florida packers, such as a discount of 10¢ per 1⅗ bushel box or equivalent, or a lower price reflecting a commission.

COMPLAINT

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

PARAGRAPH 1. Respondents Anthony Rocca Fiorita, Joseph Rocca Fiorita, and Frank Rocca Fiorita, are individuals and copartners doing business as A. R. Fiorita Fruit Co., under and by virtue of the laws of the State of Missouri, with their offices and principal place of business located at 71 Produce Row, St. Louis, Missouri.

PAR. 2. Respondents, individually and as partners doing business as A. R. Fiorita Co., hereinafter sometimes referred to collectively as respondents, are now, and for the past several years have been, engaged in business primarily as a commission merchant and wholesale distributor buying, selling and distributing citrus fruit and produce, as well as other food products, all of which are hereinafter sometimes referred to as food products. Respondents purchase their food products from a large number of suppliers located in many sections of the United States, particularly in the State of Florida. The annual volume of business done by respondents in the purchase and sale of food products is substantial.

PAR. 3. In the course and conduct of their business for the past several years, but more particularly since January 1, 1959, respondents have purchased and distributed, and are now purchasing and distributing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of Missouri, in which respondents are located. Respondents transport or cause such food products, when purchased, to be transported from the places of business or packing plants of their suppliers located in various other States of the United States to respondents who are located in the State of Missouri, or to respondents' customers located in said State, or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines between respondents and their respective suppliers of such products.

PAR. 4. In the course and conduct of their business for the past several years, but more particularly since January 1, 1959, respondents have been and are now making substantial purchases of food products for their own account for resale from some, but not all, of their suppliers, and on a large number of these purchases respondents have received and accepted, and are now receiving and accepting, from said suppliers a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

For example, respondents make substantial purchases of citrus fruit for their own account from a number of packers or suppliers located in the State of Florida, and receive, on said purchases, a

brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per 1⅗ bushel box, or equivalent. In many instances respondents receive a lower price from the supplier which reflects said commission or brokerage.

PAR. 5. The acts and practices of respondents in receiving and accepting a brokerage or a commission; or an allowance or discount in lieu thereof, on their own purchases, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. Cecil G. Miles and *Mr. Ernest G. Barnes* for the Commission.

Respondents, for themselves.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 4, 1960, charging them with having violated the Clayton Act (15 U.S.C. § 13), as amended, by receiving or accepting commission or brokerage payments in connection with their buying, selling and distribution of citrus fruit and other produce. Respondents entered into an agreement, dated September 29, 1960, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with § 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner

provided for other orders, and that the complaint may be used in construing the terms of the order.

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

1. Respondents Anthony Rocca Fiorita, Joseph Rocca Fiorita and Frank Rocca Fiorita are copartners trading and doing business as A. R. Fiorita Fruit Co. with their office and principal place of business located at 71 Produce Row, in the City of St. Louis, State of Missouri.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Clayton Act, as amended (15 U.S.C. 13), and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents Anthony Rocca Fiorita, Joseph Rocca Fiorita, and Frank Rocca Fiorita, individually and as copartners doing business as A. R. Fiorita Fruit Co., and their agents, representatives, and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the purchase of citrus fruit or other food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or other food products for respondents' own account, or where respondents are the agents, representatives, or other intermediaries acting for or in behalf, or are subject to the direct or indirect control, of any buyer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 1st day

of December 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

SAXONY WOOL CORPORATION OF NEW YORK ET AL.

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

Docket 8076. Complaint, Aug. 11, 1960—Decision, Dec. 1, 1960

Consent order requiring New York City manufacturers to cease violating the Wool Products Labeling Act by labeling as "95% wool, 5% other fibers", woolen stocks which contained substantial quantities of reprocessed or reused wool; and by failing to label other wool products as required.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Saxony Wool Corporation of New York, a corporation, and Anne Rivlin and Gerald B. Rivlin, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Saxony Wool Corporation of New York, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondents Anne Rivlin and Gerald B. Rivlin are officers of the corporate respondent. Said individual respondents cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent including the acts and practices hereinafter referred to. All respondents have their office and principal place of business at 7 Vestry Street in New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1958 respondents have manufactured for introduction into commerce, introduced into

commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such wool products were woolen stocks labeled or tagged by respondents as "95% wool, 5% other fibers" whereas, in truth and in fact said wool products contained substantial quantities of reprocessed or reused wool.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939.

PAR. 5. Respondents, in the course and conduct of their business, as aforesaid, were and are in substantial competition in commerce with corporations, firms and individuals likewise engaged in the manufacture and sale of woolen stocks.

PAR. 6. The aforesaid acts and practices of the respondents were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the said Act.

PAR. 7. In the course and conduct of their business respondents have described on invoices certain of their woolen stock as "Colored Wool Seamers" and have represented the fiber contents of the stock as "95% wool 5% O.F. (other fibers)". In truth and in fact the said stock was not composed entirely of Colored Wool Seamers and was not 95% Wool within the meaning of the words "Seamers" and "wool" as herein below set out in Paragraph 8, but was composed in whole or in part of woven fabric and fibers reclaimed from such material, thereby containing a substantial quantity of "reprocessed wool" and/or "reused wool".

PAR. 8. The word "Seamers" is a term used in the fiber waste business to describe knitted waste, a by-product from the manufacturing of sweaters and other knitted garments, or the fibers reclaimed from such waste material. The word "wool" is understood by the trade and among the purchasing public to mean the fiber from the fleece of the sheep or lamb, or the hair of the Angora

or Cashmere goat, including the so-called speciality fibers from the hair of the camel, alpaca, llama and vicuna, which has never been reclaimed from any woven or felted product, as distinguished from "reprocessed wool" and/or "reused wool".

PAR. 9. The use by respondents of false, deceptive and misleading statements and representations on invoices and shipping memoranda with respect to said wool products has had and now has the tendency and capacity to cause manufacturers purchasing same and relying on respondents' false statements and representations to misbrand products made from said wool products.

PAR. 10. The acts and practices of the respondents, as set out in Paragraph Seven, Eight and Nine were and are all 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.

Mr. DeWitt T. Puckett for the Commission.

Mr. Nathan F. Grossman, of Brooklyn, 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 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 of 1939, and the Rules and Regulations promulgated thereunder, in connection with the sale and delivery of certain wool products.

On October 13, 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 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 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 Saxony Wool Corporation of New York 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 7 Vestry Street, in the City of New York, State of New York.

Respondents Anne Rivlin and Gerald B. Rivlin are officers of the corporate respondent and as such formulate, control and direct the policies, acts and practices of the corporate respondent, including the acts and practices involved in this proceeding. 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 Saxony Wool Corporation of New York, a corporation, and its officers, and Anne Rivlin and Gerald B. Rivlin, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen stocks or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

A. Misbranding of 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 Saxony Wool Corporation of New York, a corporation, and its officers, and Anne Rivlin and Gerald B. Rivlin, 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 woolen stocks or any other materials in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting the constituent fibers of which their products are composed or the percentages or amounts thereof in sales invoices or in any other manner;

2. Using the word "Seamers" or any other word or term of similar import in connection with woolen stocks which contain woven or felted woolen material or woolen material which has been used by the ultimate consumer, or the fibers reclaimed therefrom.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 1st day of December, 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

THE COLONIAL ACADEMY, INC., ET AL.

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

Docket 8077. Complaint, Aug. 11, 1960—Decision, Dec. 6, 1960

Consent order requiring three affiliated concerns in Rockford, Ill., which sold correspondence courses in Bible, theology, and philosophy for profit, to cease the misleading use of the words "Academy", "Seminary", and "Institute" in their trade names and making a variety of other false claims concerning their schools and courses, as in the order below set forth.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal

Trade Commission, having reason to believe that The Colonial Academy, Inc., a corporation, The Pioneer Theological Seminary, a corporation, National Association of Bible Schools, Inc., a corporation, Robert J. Hansen and Verna L. Hansen, individually and as officers of said corporations, and Carl C. Hansen, individually and as an officer of The Colonial Academy, Inc., hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents The Colonial Academy, Inc., The Pioneer Theological Seminary and National Association of Bible Schools, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Illinois, with their principal office and place of business located at 122 Concord Avenue, Rockford, Illinois.

Individual respondents Robert J. Hansen, Verna L. Hansen and Carl C. Hansen are officers of said corporations as above set forth. They formulate, direct and control the acts and practices of the corporate respondents, of which they are officers, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents. Robert J. Hansen also does business under the names of Standard Research Institute and National Board of Theological Examiners.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution, or assisting and aiding in the sale, of correspondence and home study courses in Bible, theology and philosophy, and diplomas to the purchasing public.

In the course and conduct of their business, respondents cause, and have caused, said correspondence and home study courses, and diplomas, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said courses and diplomas in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, as aforesaid, and in soliciting and aiding the sale of said courses and diplomas in commerce, respondents by the use of certain statements and claims, in letters, circulars, pamphlets, brochures, purported school papers, cards, enclosures and other advertising material circulated

by respondents, and by use of the words "Academy", "Seminary" and "Institute" in their corporate or trade names have represented, directly or by implication, that:

1. Respondents The Colonial Academy, Inc., and The Pioneer Theological Seminary are non-profit residence schools, which offer residence instruction by a staff of faculty members who are trained and competent to teach the courses of a properly accredited and recognized undergraduate and graduate college of Bible, theology and philosophy, and that they offer a curriculum which is accredited by a recognized accrediting agency.

2. Respondents The Colonial Academy, Inc., and The Pioneer Theological Seminary, and the diplomas offered with their courses, are recognized by various institutions, agencies, organizations and persons, and the person upon whom said respondents award and bestow a diploma will be recognized as having completed and shown proficiency in a curriculum which has been approved by a recognized accrediting agency as necessary to earn the diploma awarded or bestowed, and the persons upon whom the diploma is bestowed is entitled to, and will receive, the honors, privileges and rights of persons who have been awarded like or equivalent diplomas from schools accredited by recognized accrediting agencies.

3. The correspondence and home study courses offered by respondents The Colonial Academy, Inc., and The Pioneer Theological Seminary contain all the subject matter, material, study and hours of a curriculum required by a school properly accredited by a recognized accrediting agency to obtain a degree offered in the field of education involving the study of the Bible, theology or philosophy.

4. The honorary diplomas of the respondents are conferred for educational or ministerial achievement and are so recognized, and the persons upon whom respondents bestow their honorary diplomas are entitled to, and will receive, all of the honors, privileges, immunities, recognition and rites that a donee of a like or equivalent diploma from a properly accredited school is entitled to and does receive.

5. The State of Ilinois has approved the respondents' courses of instruction and the issuance of their diplomas.

6. Respondents The Colonial Academy, Inc., and The Pioneer Theological Seminary are old established, reputable schools in the field of Bible, theology and philosophy.

7. Respondent National Association of Bible Schools, Inc., is a recognized accrediting agency for schools in the Bible, theology and philosophy fields.

8. Standard Research Institute and National Board of Theological Examiners are bona fide organizations engaged in the screening, educational testing and certification of candidates for degrees to be awarded by respondents The Colonial Academy, Inc., and The Pioneer Theological Seminary and other advanced schools.

PAR. 4. All of the aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

1. Respondents The Colonial Academy, Inc., and The Pioneer Theological Seminary are profit making organizations, and are not residence schools that offer residence instruction. Said respondents have no faculty members who are trained and competent to teach the courses of an accredited and recognized undergraduate and graduate college of Bible, theology or philosophy; nor do they offer a curriculum in said fields which is accredited by a recognized accrediting agency, and they are not so recognized.

2. The diplomas awarded by respondents The Colonial Academy, Inc., and The Pioneer Theological Seminary are not recognized by any institution, agency person or organization, nor is the person upon whom they bestow a diploma recognized as having completed and shown proficiency in a curriculum, necessary to earn the diploma awarded, which has been approved by a recognized accrediting agency. The persons upon whom the diplomas of the respondents are awarded or bestowed are not entitled to and will not receive all the rights, privileges and honors that persons who are awarded like diplomas from schools accredited by a recognized accrediting agency are entitled to and do receive.

3. The courses offered by respondents The Colonial Academy, Inc., and The Pioneer Theological Seminary do not contain the material, study and hours of a required curriculum given by a school properly accredited by a recognized accrediting agency to obtain the degrees in Bible, theology and philosophy offered by said respondents.

4. The honorary diplomas of the respondents The Colonial Academy, Inc., and The Pioneer Theological Seminary are not conferred for educational or ministerial achievement, nor are they so recognized. The persons upon whom respondents bestow their honorary diplomas are not entitled to nor will they receive the honors, privileges, immunities, recognition and rites that donees of like diplomas from properly accredited schools are entitled to and do receive. The honorary diplomas are bestowed upon those who will pay the pecuniary consideration required.

5. The State of Illinois has not, nor has any other governmental or political subdivision, approved respondents' course of study and the issuance of their diplomas.

6. Respondents The Colonial Academy, Inc., and The Pioneer Theological Seminary are not old established, reputable schools in the field of Bible, theology and philosophy but are comparatively new corporations organized to sell correspondence and home study courses and diplomas, and have assumed and adopted the names of schools that have not been in existence for some time last past.

7. Respondent National Association of Bible Schools, Inc., is not a recognized accrediting agency but a corporation organized by the individual respondents herein to accredit respondents The Colonial Academy, Inc., and The Pioneer Theological Seminary for the purpose of attempting to give them respectability.

8. Standard Research Institute and National Board of Theological Examiners are not bona fide organizations engaged in screening, educational testing and certification of candidiates for degrees of respondents The Colonial Academy, Inc., and The Pioneer Theological Seminary, or any other advance school, but are trade style names adopted by individual respondent Robert J. Hansen to convince donees of the respondents' diplomas of their authenticity.

PAR. 5. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and to induce a substantial number thereof to purchase respondents' said courses of instruction and diplomas as a result of such erroneous and mistaken belief.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. William A. Somers supporting the complaint.

Mr. Jack R. Cook, of Rockford, Ill., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 11, 1960, charging them with unfair and deceptive acts and practices in commerce by the use of false, misleading and deceptive statements and representations, in violation of the Federal Trade Commission Act.

On October 14, 1960, there was submitted to the undersigned hearing examiner an agreement between respondents, their counsel, hearing examiner supporting the complaint providing for the entry of a consent order.

The agreement states that respondent Robert J. Hansen, an individual and officer of the above-named corporate respondents, died July 27, 1960, as evidenced by the death certificate and affidavit filed with the agreement and made a part thereof.

Under the terms of the agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease-and-desist order there set forth may be entered without further notice and 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 respoendents 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 oipnion that they provide an appropriate basis for settlement and disposition of this proceeding, accepts the agreement, and orders that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued:

1. Respondents The Colonial Academy, Inc., The Pioneer Theological Seminary, and National Association of Bible Schools, Inc. are corporations; respondent Verna L. Hansen is an individual and officer of the above-named corporations; and respondent Carl C. Hansen is an individual and officer of the said The Colonial Academy, Inc., all of whom have their office and principal place of business located at 122 Concord Avenue, Rockford, Illinois.

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 The Colonial Academy, Inc., a corporation, The Pioneer Theological Seminary, a corporation, National Association of Bible Schools, Inc., a corporation, and their officers, and Verna L. Hansen, individually and as an officer of said corporations, and Carl C. Hansen, individually and as an officer of The Colonial Academy, Inc., 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 correspondence or home study courses or diplomas in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Academy", "Seminary" or "Institute" or any other word of similar import, in a trade or corporate name;

2. Representing, directly or by implication, that:

(a) Respondents, or any of them, are non-profit residence schools accredited by a recognized accrediting agency or offer a curriculum of study which is accredited by a recognized accrediting agency;

(b) The diplomas offered with their courses are recognized as signifying completion of an academic course, or that the recipients of their diplomas will be recognized as having completed and shown proficiency in a properly accredited curriculum in any educational field;

(c) Recipients of respondents' diplomas will be entitled to and receive the honors, privileges and rights that recipients of equivalent diplomas from schools accredited by a recognized accrediting agency are entitled to and do receive;

(d) Respondents' correspondence or home study courses contain all the subject matter or material, or study or hours of a curriculum of a like or similar course of a school accredited by a recognized accrediting agency;

(e) Respondents' honorary diplomas are awarded for educational or ministerial achievement, or any other reasons other than in return for the pecuniary consideration to be paid for by the recipient, or that the persons upon whom they are bestowed are entitled to or will receive the honors, privileges, recognition, immunities or rights which a recipient of a like or equivalent diploma from a properly accredited school is entitled to or does receive;

(f) The State of Illinois, or any other governmental or political subdivision, has approved the respondents' courses or the issuance of their diplomas;

(g) Respondents The Colonial Academy, Inc., and The Pioneer Theological Seminary are old established or reputable schools in any field of education, or in any other field;

(h) Respondent National Association of Bible Schools, Inc. is a recognized accrediting agency in the field of education;

(i) Standard Research Institute or National Board of Theological Examiners are organizations engaged in screening, educational testing and certification of candidates for degrees or diplomas to be awarded by any educational institution.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Robert J. Hansen.

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 6th day of December 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents The Colonial Academy, Inc., The Pioneer Theological Seminary, and National Association of Bible Schools, Inc., corporations, and Verna L. Hansen, individually and as an officer of said corporations, and Carl C. Hansen, individually and as an officer of The Colonial Academy, Inc., 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

PACIFIC GAMBLE ROBINSON CO.

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

Docket 8078. Complaint, Aug. 11, 1960—Decision, Dec. 7, 1960

Consent order requiring the nation's largest wholesaler of fresh fruits and vegetables, with headquarters in Seattle, Wash., and some 58 shipping centers in various states, to cease discriminating in price among its competing customers in violation of Sec. 2(a) of the Clayton Act, by such practices as giving some retailers in the Yakima, Wash., area a 16% price advantage over others on purchases of lettuce.

COMPLAINT

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

PARAGRAPH 1. Respondent Pacific Gamble Robinson Co. is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at King and Occidental Streets, Seattle, Washington.

PAR. 2. Respondent, among other things, has been engaged, and is presently engaged, in the business of selling and distributing at

wholesale fresh fruits and vegetables, canned goods, and other grocery products. These products are sold and distributed by respondent to retail outlets and wholesale distributors located in various sections of the nation, including the States of Washington and Oregon. Respondent is the nation's largest wholesaler of fresh fruits and vegetables. Its sales in 1958 exceeded $180,000,000.

Respondent owns and operates at least fifty-eight shipping centers located in various states. These centers, on behalf of respondent, make local purchases of fresh fruits and vegetables, and other grocery products. These products are then transported from the shipping centers to branch warehouses owned and operated by respondent. Many of such warehouses are situated in states other than where the shipping centers are located. The fresh fruits and vegetables, and other grocery products, are then resold and redistributed by respondent to retail outlets and wholesale distributors located in various states, including states other than where respondent originally purchases the aforesaid products for resale to the aforesaid purchasers.

PAR. 3. In the course and conduct of its business, respondent has engaged, and is presently engaged, in commerce, as "commerce" is defined in the amended Clayton Act, in that respondent ships its products, or causes them to be shipped, from its place of business to purchasers located in states other than the State of origin of such shipments. There is now, and has been for many years, a constant current of trade in commerce in the aforesaid products between and among the various States of the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent has been, and is now, discriminating in price between purchasers of commodities of like grade and quality. Respondent has been, and is now, selling fresh fruits and vegetables and other grocery products to some retailer-purchasers at prices substantially higher than those charged other retailer-purchasers of these products of like grade and quality who have been, and are now, competing with said unfavored purchasers.

For example, respondent has sold, and now sells, its 2d lettuce in the Yakima, Washington area to some retailer-purchasers at prices approximately 16 percent higher than the prices at which it has sold, and now sells, such letuce to some of its other retailer-purchasers.

PAR. 5. The effect of respondent's discriminations in price, as alleged above, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its retailer-purchasers are respectively engaged; to injure, de-

stroy, or prevent competition between respondent and other sellers of fresh fruits and vegetables, and other grocery products; or to injure, destroy or prevent competition between said favored and unfavored retailer-purchasers of of respondent's products.

PAR. 6. The acts and practices of respondent, as alleged above, violate subsection (a) of Section 2 of the amended Clayton Act.

Mr. Jerome Garfinkel and *Mr. Walter W. Harris* for the Commission.

Ryan, Askren, Mathewson, Carlson & Bush, by *Mr. John E. Ryan, Jr.*, of Seattle, Wash., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated August 11, 1960, the respondent is charged with violating the provisions of subsection (a) of section 2 of the Clayton Act, as amended.

On September 23, 1960, the respondent and its attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondent admits 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 respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recite 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 agreement meets all of the requirements of section 3.25 (b) of the Rules of the Commission.

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

1. Respondent Pacific Gamble Robinson Co. is a corporation existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at King and Occidental Streets, in the City of Seattle, Washington.

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

ORDER

It is ordered, That respondent Pacific Gamble Robinson Co., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale of grocery products, including fresh fruits and vegetables, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating, directly or indirectly, in price by selling such grocery products of like grade and quality to any purchaser at prices higher than those charged any other purchaser:

1. Where such other purchaser competes with the unfavored purchaser in the resale and distribution of such products, or

2. Where respondent in the sale of such products is in competition with any other seller.

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 December, 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

KERR GLASS MANUFACTURING CORPORATION

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

Docket 8096. Complaint, Aug. 25, 1960—Decision, Dec. 7, 1960

Consent order requiring a Sand Springs, Okla., manufacturer of glass containers and closures therefor, with annual sales in excess of $1,000,000, to cease violating Sec. 2(d) of the Clayton Act by paying advertising allowances to some customers which it did not make available on proportionally equal terms to their competitors, such as a preferential payment of $150 to a retail grocery chain with headquarters in Burlington, Iowa.

COMPLAINT

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

PARAGRAPH 1. Respondent Kerr Glass Manufacturing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at Sand Springs, Oklahoma.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of glass containers and closures for said glass containers. Respondent sells and distributes its products to wholesalers and retailers, including retail chain store organizations. Respondent's sales of its products are substantial, exceeding $1,000,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of Oklahoma to customers located in other States of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, and particularly since 1958, 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 respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, in the year 1959, respondent contracted to pay and did pay to Benner Tea Company, a retail grocery chain with headquarters in Burlington, Iowa, the amount of $150.00 as compensation or as an allowance for advertising or other services or facilities furnished by or through Benner Tea Company in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not made available on proportionally equal terms to all other customers competing with Benner Tea Company in the sale and distribution of products of like grade and quality purchased from respondent.

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

Mr. John Perechinsky for the Commission.

Johnson & Ladenberger, by *Mr. Robert G. Johnson*, of Los Angeles, Calif., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on August 25, 1960, issued its complaint herein, charging the respondent Kerr Glass Manufacturing Corporation, a corporation, with having violated the provisions of § 2(d) of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, § 13), and respondent was duly served with process.

On October 12, 1960, there was submitted to the undersigned hearing examiner of the Commission, for his consideration and approval, an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondent, its attorneys, and the attorney supporting the complaint, under date of October 10, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

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

1. Respondent Kerr Glass Manufacturing Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at Sand Springs, Oklahoma.

2. 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.

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

4. Respondent waives:

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

b. The making of findings of fact or conclusions of law; and

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

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

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

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

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

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease and Desist," this agreement is hereby approved, accepted and ordered filed. The hearing examiner finds from the complaint and the aforesaid "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject-matter of this proceeding and of the respondent herein; that the complaint states a legal cause for complaint under the Clayton Act, as amended, against the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

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

IN THE MATTER OF

KEITH M. MERRICK ET AL. DOING BUSINESS AS KEITH M. MERRICK COMPANY

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

Docket 8110. Complaint, Aug. 30, 1960—Decision, Dec. 7, 1960

Consent order requiring Sibley, Iowa, printers of sympathy cards by processes which presented a raised-letter effect but which differed from engraving both as to materials used and results obtained, to cease using the word "engraved" in describing the cards by such terms as "Plateless Engraved" and "Dri-Engraved."

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Keith M. Merrick and Loren Fleming, individually and as copartners doing business as Keith M. Merrick Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Keith M. Merrick and Loren Fleming are copartners doing business under the name of Keith M. Merrick Company with their principal office and place of business in Sibley, Iowa.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the printing, among other things, of sympathy cards and in the sale and distribution thereof in commerce between

and among the various States of the United States. Respondents cause said cards, when sold, to be transported from their said place of business in the State of Iowa to the purchasers thereof, many of whom were and are located in States of the United States other than the State of Iowa. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cards in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business as described above, and for the purpose of inducing the purchase of their sympathy cards, respondents have printed and circulated to prospective customers throughout the several States sample sympathy cards containing, among other things, the statements, "Plateless Engraved" and "Dri-Engraved." The message portion of the sample cards upon which these statements appear is printed with lettering having a raised appearance.

PAR. 4. Respondents, through the use of the terms "Plateless Engraved" and "Dri-Engraved" represent that their sympathy cards are engraved, as that expression is used and understood by the public and the printing trade when applied to stationery products such as respondents' sympathy cards. The word "engraved," when used with, or descriptive of, stationery products, means, and the printing trade and the public understands it to mean, a stationery product which results from the application of the stationery, under pressure, to the surface of an intaglio or other plate into which letters, words or designs have been etched or otherwise cut below the surface of the plate, and where, as a result of the pressure applied, the surface of the stationery is forced into the lines cut into the plate surface causing the ink in such lines to adhere to the paper on which the impression is to be made, producing letters, words or designs which are raised from the general plane of the stationery surface, in relief.

PAR. 5. Said representations are false, misleading and deceptive. Respondents' cards were not engraved but were printed by processes which present a raised-letter effect, but which differ from engraving, both as to materials used and results obtained.

PAR. 6. Respondents are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of cards of the same general nature as those sold by respondents.

PAR. 7. The use by respondents of the terms "Plateless Engraved" and "Dri-Engraved" had and has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said sympathy cards were and are

engraved and because of such erroneous and mistaken belief to purchase respondents' sympathy cards. As a result of said practices as aforesaid, trade in commerce has been, and is being, unfairly diverted to respondents from their competitors, and injury has thereby been done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all 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.

Mr. Thomas A. Sterner for the Commission.

Mr. Donald E. Skiver, of Sibley, Ia., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act in connection with the distribution in commerce of sympathy cards which they have printed.

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

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

1. Respondents Keith M. Merrick and Loren Fleming are individuals and copartners doing business under the name of Keith M. Merrick Company with their office and principal place of business located in the City of Sibley, State of Iowa.

2. The Federal Trade Commission had 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, Keith M. Merrick and Loren Fleming, individually and as copartners, doing business as Keith M. Merrick Company, or any other name, their representatives, agents and employees, directly or indirectly, through any corporate or other device, in connection with the offering for sale, sale and distribution of sympathy cards or other stationery products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "engraved" or any of its variations, either alone or in conjunction with any other word or words, to designate, describe or refer to stationery products unless the respondents produce the stationery products so designated, described, or referred to by a process which consists essentially in the application of the stationery, under pressure, to the surface of an intaglio or other plate into which letters, words or designs have been etched or otherwise cut below the surface of the plate, and where, as a result of the pressure applied, the surface of the stationery is forced into the lines cut into the plate surface causing the ink in such lines to adhere to the paper on which the impression is to be made, producing letters, words or designs which are raised from the general plane of the stationery surface, in relief.

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 December 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.

Decision

IN THE MATTER OF

LEO L. LOWY TRADING AS AMERICAN BALL BEARING COMPANY ET AL.

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

Docket 7565. Complaint, Aug. 7, 1959—Decision, Dec. 8, 1960

Order requiring a Brooklyn manufacturer of a complete line of precision ball and roller bearings under the trade name "ABC", to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by giving some customers greater discounts than others competing with them through its practice of charging individual jobbers 10% more than "distributors" and 20% more than members of buying groups it classified as "warehouse distributors".

Mr. Peter J. Dias and *Mr. Robert G. Cutler*, supporting the complaint.

Respondent *Leo L. Lowy*, for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the respondents named in the above caption on August 7, 1959, charging violations of § 2(a) of the Clayton Act as amended, by discriminating in price between competing purchasers in the sale of automotive bearings for replacement purposes. On September 23, 1959, respondents filed an answer which denied making unlawful price discriminations. Thereafter hearings were held in New York, New York; Denver, Colorado; and Los Angeles, California. Testimony and other evidence was received from respondents Lowy and Parker, but respondents were not represented by counsel at the hearings. The respondents were represented by respondent Lowy at the New York hearings, but not at Denver or Los Angeles, where purchasers testified. Respondents did offer a document, which was received in evidence after the close of the reception of evidence in support of the complaint; and this document constitutes all the evidence offered by respondents in their defense.

Proposed findings, conclusions and proposed order were submitted by counsel supporting the complaint, but were not submitted by respondents.

The real issue in this matter is whether the sellers' price differentials may have any of the adverse effects proscribed by the statute.

Respondents contend that competition may not be adversely affected unless a price advantage to a buyer is reflected in the buyer's resale price, thus diverting business from non-favored buyers on the

basis of price alone. This contention is not sound. Although there is no evidence in the record of any price-cutting by any of respondents' customers, the Commission and the courts have repeatedly pointed out that a price advantage may be used in many other ways to lessen competition. It is not necessary that it be shown in what way it was done, or that business has actually been diverted, in order for a finding to be made that the statute has been violated.

Respondents also contend that counsel supporting the complaint made the statement:

> In this connection you were further advised that your category of "warehouse distributor" was falsely applied to some customers in that such customers were merely buying groups composed of jobbers who were in fact in competition with others of your customers variously classified as distributors and jobbers,

in the presence of the hearing examiner, and that the statement was prejudicial. Counsel supporting the complaint state that they believe the statement was not made in the hearing examiner's presence, and the hearing examiner does not recall the specific statement, although he is aware that the statement reflects the position taken by counsel supporting the complaint, since much of the evidence relates to buying groups. In any event, making the statement in the presence of the hearing examiner would not be improper, and such statement could not be considered as evidence, but merely as a statement of what counsel supporting the complaint expected the evidence to show.

The proposals of counsel supporting the complaint are, in the main, adopted and incorporated in this initial decision. Those not so incorporated are hereby rejected.

Upon consideration of the entire record herein, the hearing examiner makes the following:

FINDINGS OF FACT

1. Respondent Leo L. Lowy is an individual formerly trading as American Ball Bearing Company, having his principal office and place of business located at Flushing Avenue and Cumberland Street, Brooklyn 5, New York.

2. Respondent American Ball Bearing Corporation, hereinafter sometimes referred to as the corporate respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at Flushing Avenue and Cumberland Street, Brooklyn 5, New York.

3. Respondent Al Parker, an individual, is a sales contractor employed by Leo L. Lowy and the corporate respondent, on a commis-

sion basis, to promote the sale of their products. Said respondent maintains an office in his home at 570 River Drive, Passaic, New Jersey, and has office space at the corporate offices in Brooklyn, New York. There is no evidence that this respondent served in any executive capacity for either of the other respondents.

4. Respondent Lowy founded the American Ball Bearing Company in 1910, and commencing at that time engaged in the manufacture, sale and distribution of a complete line of precision ball and roller bearings under the trade name "ABC". The aforesaid business and business status was continued until December 31, 1957. Thereafter the corporate respondent took over the business of the company and continued the manufacturing and sales policies instituted and carried out by the company during the preceding years.

5. Respondent Lowy's duties, authority and responsibilities were not altered by the change in the company's business status, and he has been at all times primarily responsible for the management and operation of the corporation as he was for the company.

6. Respondents' operation is fully integrated, in that theirs is the only factory in the world which manufactures all types of automotive replacement bearings. Respondents do not produce products of differing grade and quality, and said products are sold as a line.

7. Respondents' products are manufactured in Brooklyn, New York, and from that point shipped to purchasers located in the various states of the United States, and in the District of Columbia, and to fifteen warehouses located in various states of the United States maintained by respondents to facilitate delivery of their products to purchasers.

8. Respondents' bearings are sold for use, consumption or resale within the United States and the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade and commerce in said products among and between the states of the United States and in the District of Columbia.

9. Respondents, in the course and conduct of their business, as aforesaid, are now and have been in active and substantial competition with other corporations, partnerships, firms, and individuals manufacturing, selling and distributing automotive bearings in interstate commerce to purchasers of the same. Many of the aforesaid purchasers of the respondents' bearings are in competition in the resale of those bearings.

10. Among the purchasers of respondents' products are many who are engaged in the resale of respondents' products, as well as other automotive replacement parts, and these are variously classified by respondents as jobbers, distributors and warehouse distributors.

11. Respondents issue jobber and distributor price-lists, both of which list the same bearings, but the prices shown in the distributors' price-list are ten percent (10%) lower than those shown in the jobbers' price-list.

12. Respondents do not issue a separate price-list for warehouse distributors, but instead grant such purchasers a twenty percent (20%) discount off jobber prices.

13. Respondents' pricing practices, in connection with their entire line of bearings, result in jobbers paying approximately 10% and 20% more than distributors and warehouse distributors, respectively, and distributors paying approximately 10% more than warehouse distributors. All purchasers buy products of the same grade and quality.

14. Respondents define the respective classifications of purchasers as follows: *Jobber*: Receives shipments from the factory or respondents' branch warehouses. The jobber sells to service-stations and repair shops and carries a very small stock, which he may replenish by a purchase from the warehouse distributor. *Distributor*: Receives shipments from the factory only. The distributor sells to industrial accounts, export accounts and fleet owners. He carries a larger stock than the jobber and does not need to purchase from the warehouse distributor or from respondents' branch warehouses. *Warehouse Distributor*: Receives his shipments from the factory. Carries a complete stock of ABC Bearings, of which there are over 1,400 sizes of six different types. The warehouse distributor sells to jobbers.

15. Any of the three classifications of purchasers may pick up their requirements at respondents' branch warehouses, but warehouse distributors are not expected to do so frequently. The 20% discount granted warehouse distributors is predicated mainly upon the risk incurred in maintaining a large inventory, and they are expected to warehouse respondents' products in quantity. For this reason, warehouse distributors who obtain products at respondents' warehouses are charged a 5% service charge for such purchases. This 5% is levied after the 20% discount has been deducted from the warehouse distributor's bill.

16. All invoices are issued to purchasers from respondents' home office in Brooklyn, regardless of whether the shipment to or pick-up by, the purchaser originates at the factory in Brooklyn or one of its various branch warehouses.

17. The respondents' classification of some of the purchasers of its products is arbitrary, in that respondents have made no attempt to insure that purchasers classified as distributors and warehouse distributors performed the functions expected of them to qualify

for their respective discounts, and did not compete with each other or with jobbers.

18. Many purchasers, classified by respondents as warehouse distributors and distributors, failed to perform the functions necessary to qualify under respondents' definitions for the respective discounts granted purchasers in those classifications. For example:

A. Respondents have classified as warehouse distributors Southern California Jobbers, Inc., hereinafter sometimes referred to as SCJ, of Los Angeles, California, and Southwestern Warehouse Distributors, Inc., hereinafter sometimes referred to as SWD, of Dallas, Texas. Both of these companies are merely buying offices for automotive-parts jobbers who are members of the respective groups. SCJ has 63 members and SWD more than 40.

Purchases by group members from the respondents are made either by the member phoning or mailing orders directly to the ABC warehouse or through the group office to the factory. Products so ordered are either shipped by respondents from their factory directly to the group member, or the products are picked up at the ABC warehouse by the member or by the group's trucking service. SCJ did not warehouse ABC products, and the same is apparently true of SWD, since all purchases were drop-shipped to members of that group or picked up at ABC warehouses.

Respondents are informed by their branch warehouses of all shipments, including pick-ups, made from or at said warehouses, and all invoices are prepared and are mailed to purchasers from the factory in Brooklyn. All purchases by group members are billed to and paid by the group-buying office at jobber prices less 20%, deducted from the face of the invoice, plus a 5% penalty for ABC warehouse pick-up. The group-buying office in turn bills its members and collects from them.

The 20% warehouse-distributor discounts received by SCJ from the respondents are rebated annually as a dividend to the jobber members of the group who purchased the line. The rebate, after deduction of group office expenses, is paid, pro rata, to each member based upon his volume of purchases.

B. Distributors, as heretofore found, were so classified because they were expected to sell to industrial accounts, export accounts and fleet owners. However, since respondents do not impose such conditions upon distributors, they sell to the same class of customers as do jobbers.

19. SCJ and SWD are in fact buying agents for the jobber members of those respective groups, and the individual jobber members of the respective groups are respondents' purchasers.

20. Many of respondents' purchasers, in each buying category, are competitively engaged in the resale of ABC bearings to the same class of customers in the same trade areas, and in many instances to the same customer.

21. Individual jobbers, in competition with distributors and members of buying groups classified as warehouse distributors, are placed at a competitive disadvantage by having to pay 10% and 20% more for ABC bearings than their competitors, thereby resulting in injury to competition.

22. Among the terms and conditions of sale available to all classifications of purchasers of ABC bearings is a cash discount of 2% allowed for payment of bills by the tenth of the month following the month during which the bill is received. Jobber witnesses stated stated that they took advantage of the cash discount because it is an important factor in the automotive replacement parts business, where profit margins are small.

23. It follows that since a cash discount of 2% is important to the automotive jobber, any differential greater than that will place the non-favored purchaser at a competitive disadvantage. Many testified that any price differential would place them at a disadvantage.

24. ABC purchasers classified as distributors are competitively injured by having to pay 10% more for bearings than members of buying groups with whom they compete.

25. The following computations, taken from Commission's Exhibits 1 through 5 and their subparts, portray the dollar advantage gained by the members of the buying groups:

	No. of sales	Gross amount	After 20% deduction	Saving to group
SWD—Dallas area 1958 (CX 1 A-O)	596	$142,961.81	$114,369.45	$28,592.36
SWD—Dallas area Jan.-Aug., 1959 (CX 2 A-J)	378	104,718.74	83,774.99	20,943.75
SWD—Denver area 1958-Aug., 1959 (CX 3 A-L)	327	20,173.33	16,138.66	4,034.77
SCJ—1958 (CX 4 A-O)	604	14,858.49	11,886.79	3,071.70
SCJ—Jan.-Oct., 1959 (CX 5 A-J)	398	11,346.06	9,076.85	2,269.21

CONCLUSIONS

In the course of their business in interstate commerce, respondents have discriminated in price in sales of their products of like grade and quality between different purchasers who compete in the resale of such products. The effect of these discriminations may be substantially to lessen competition in the line of commerce in which the purchasers are engaged, or to injure, destroy or prevent competition with the favored purchasers.

The aforesaid discriminations in price by respondents, as herein found, constitute violations of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

ORDER

It is ordered, That respondent Leo L. Lowy, individually and trading as American Ball Bearing Company, and as General Manager of American Ball Bearing Corporation, and respondent American Ball Bearing Corporation, their officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale, for replacement purposes, of automotive bearings in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating directly or indirectly, in the price of such bearings, by selling to any purchaser at net prices higher than the net prices charged any other purchaser who competes in the resale or distribution of respondents' products with the purchaser paying the higher price.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Al Parker, an individual.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

It is ordered, That respondents Leo L. Lowy, individually and trading as American Ball Bearing Company, and American Ball Bearing Corporation, a 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

LIFETIME CUTLERY CORP. ET AL.

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

Docket 7292. Complaint, Nov. 5, 1958—Decision, Dec. 13, 1960

Order requiring Brooklyn suppliers of cutlery to distributors and jobbers to affirmatively disclose the foreign source of carving fork heads, the word "Japan" on the shanks of which was concealed in the process of assembling

with domestic handles; to cease attaching tags bearing fictitious prices to their merchandise and placing such prices on the packaging cartons, thereby representing the exaggerated figures to be the regular retail prices; and to cease representing falsely that merchandise having an electrolytic application of gold alloy was "24 karat gold plated", and that they manufactured certain of their merchandise in their plant in Sheffield, England.

Mr. Ames W. Williams for the Commission.

Reiman & Reiman, by *Mr. Irving R. Reiman*, of New York, N.Y., for respondents.

AMENDED INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On October 30, 1959, the Commission issued its opinion in this proceeding, denying the appeal of counsel supporting the complaint, but remanding the case to the Hearing Examiner with the direction that he receive such evidence as might be offered relative to the charge in the complaint that Respondents have misrepresented their products as being "24-carat gold-plated". In addition, the Commission stated in its opinion that in one respect the initial decision issued on June 18, 1959, was incomplete in that it failed to recite that on February 19, 1959, the Hearing Examiner had taken official notice of the fact that a substantial portion of the purchasing public maintains a preference for products of domestic manufacture rather than Japanese manufacture, and that paragraph 3 of the findings should be amended accordingly. The Commission then directed that after the reception of additional evidence, the Hearing Examiner should indicate any changes which he might wish to make in his initial decision.

PROCEEDINGS SUBSEQUENT TO REMAND

In compliance with the Commission's order, a hearing was held in Providence, Rhode Island, on May 25, 1960, at which expert testimony was received relative to the charge that Respondents' product was not "24-carat gold-plated".

After considering that evidence in its relation to the entire record, the Hearing Examiner has rewritten paragraph 5 of his initial decision, and, in consonance therewith, has added a fifth provision to the order to cease and desist. He has also amended paragraph 3 of his initial decision to conform to the Commission's opinion concerning that paragraph.

1. The Complaint and Answer

On November 5, 1958, the Commission issued its complaint in the above-entitled proceeding, charging the Respondents named above with the violation of the Federal Trade Commission Act by selling and distributing in commerce cutlery in which fork heads imported from Japan are so assembled that the country of origin is not revealed in the finished product; by attaching or causing to be attached to their merchandise tickets or tags on which prices are printed representing as the regular and usual retail price for said merchandise prices which are in fact fictitious and are greatly exaggerated over the prices at which such products are usually and customarily sold; by representing that certain parts of their merchandise are "24-carat gold-plated", when such parts do not have a substantial surface plating of gold alloy applied by a mechanical process, but the surface plating thereon is applied by electrolytic means; and by representing on their invoices that they own plants in Sheffield, England, when such is not the fact.

In connection with this latter charge, the complaint alleges that there is a preference on the part of a substantial number of the purchasing public for dealing with manufacturers of products, in the belief that there are certain advantages in doing so, including but not limited to cheaper prices. The complaint further alleges that as a result of the above-described practices, trade has been unfairly diverted to Respondents and substantial injury has thereby been done to competition in commerce, to the prejudice and injury of the public.

On January 15, 1959, Respondents submitted an answer to the complaint herein, admitting their identity and substantial engagement in business in interstate commerce, but denying the principal charges of the complaint.

2. Hearings and Proposed Findings

Subsequent thereto, hearings were held, at which evidence was presented in support of the allegations of the complaint. Upon completion of the presentation of such evidence, prior to the remand, the Respondents, by their counsel, declined to present evidence on their behalf, but moved to dismiss this proceeding on the ground that counsel supporting the complaint had failed to sustain his burden of proof with respect thereto. Proposed findings as to the facts and proposed conclusions were thereafter submitted by both counsel supporting the complaint and counsel for the Respondents. Subsequent to the remand and the reception of additional evidence, counsel supporting the complaint submitted pro-

posed findings as to the facts and conclusions, but counsel for Respondents submitted no proposals. Each of the proposals submitted, both before and after the remand, has been separately considered by the Hearing Examiner, and those not adopted and embodied in substance herein are hereby rejected.

The Hearing Examiner, having now reconsidered the entire record herein, finds the facts to be as follows:

FINDINGS AS TO THE FACTS

1. Identity of Respondents

Respondents, in their answer to the complaint herein, admit that Respondent Lifetime Cutlery Corp. is a New York corporation, with its principal place of business located at 54 Knickerbocker Avenue, Brooklyn, New York, New York, and that Respondents Benjamin R. Berlin and Muriel Berlin are officers of the corporate Respondent and formulate, direct and control the acts and practices thereof, and that their address is the same as that of the corporate Respondent.

2. Activities in Commerce

Respondents, in their answer, admit that they are now and for some time past have been engaged in the advertising, offering for sale, sale and distribution of cutlery in interstate commerce to distributors and jobbers, and that they have caused their products, when sold, to be shipped from their place of business in the State of New York to purchasers located in various other states of the United States, and have maintained a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. Concealment of Country of Origin of Product

The evidence shows that Respondents assemble certain items of their cutlery, using carving-fork heads manufactured in and imported from Japan and handles of domestic fabrication. The carving-fork heads are stamped on the shank with the word "Japan", but such legend is concealed by the handle in the assembling process, and the fact that such fork heads are made in and imported from Japan is not revealed in the finished product to any purchaser thereof. The forks, with heads of Japanese manufacture, are packed for sale in boxes which also contain carving knives, the blades of which are made in and imported from England, and visibly so marked. These blades, like the Japanese fork-heads, are attached to handles of domestic manufacture, which are not so marked.

In the course of this proceeding the Hearing Examiner, in an order issued on February 9, 1959, took official notice that:

1. A substantial portion of the purchasing public maintains a decided preference for products of domestic manufacture rather than of Japanese manufacture, and when the country of origin of merchandise is not marked, or if the markings are concealed, the purchasing public understands and believes such products to be wholly of domestic origin; and

2. There is a preference on the part of a substantial number of the purchasing public to deal with manufacturers of products in the belief that there are certain advantages in doing so, including but not limited to cheaper prices.

No evidence was offered to show the contrary, and no request was made to present any such evidence. Accordingly, the facts so noticed are now established as true.

Not only have Respondents failed to disclose the Japanese origin of their fork-heads, but, in the process of fitting handles thereto, they have concealed the word "Japan" on the shank of the fork-head, which, if left uncovered, would have revealed the foreign origin thereof. Because of the above-mentioned prevailing belief, we must conclude that the Respondents, by their failure to disclose that the carving-fork heads are imported from Japan, have represented that their cutlery, except for the English knife-blades, is made in the United States.

4. Preticketing

The evidence shows that the Respondents attach or cause to be attached to their merchandise tickets or tags upon which prices are printed. The evidence also shows that such prices appear upon the cartons in which the merchandise is packed. These price tags represent that such prices are the regular and usual retail prices for such merchandise. The testimony of a number of witnesses clearly shows, however, that the prices appearing on these price tags are not the regular and usual retail prices of the articles so marked, but are fictitious in that they greatly exaggerate the true usual and customary prices.

The logical conclusion to be drawn from these facts is that the Respondents, by attaching to their products tags showing fictitious and exaggerated prices, have supplied to the wholesalers, jobbers and other distributors of such products a means and instrumentality through and by which their retail customers are enabled to mislead the purchasing public as to the regular, usual and customary prices of such merchandise.

5. Misrepresentation as to "24-Karat Gold-Plated" Merchandise

The evidence shows that certain parts of the Respondents' products are described by the Respondents as "24-Karat Gold-Plated".

The evidence also shows that such gold plating is applied by electrolysis.

Mr. Granville E. Robbins, Chief Chemist and Assayer, Metals and Controls Division, Texas Instruments Corporation, Attleboro, Massachusetts, who had conducted over a quarter of a million assays upon precious metals over a period of thirty years, testified as an expert witness in that field. He testified specifically that he conducted tests upon Commission's Exhibit No. 18, which consists of several pieces of Respondents' cutlery ware, and that the electroplated gold deposit thereon assayed less than the represented 24-carat fineness, approximately 21 carat. He testified further that the thickness was approximately 2.4 millionths, or .0000024 inches, maximum.

Mr. Robbins further testified that the gold deposit on Commission's Exhibit No. 18 had very little intrinsic or utility value. Mr. Robbins testified that all the gold deposited upon Commission's Exhibit No. 18 was worth less than one dollar. He further stated that the electrolytic deposit thereon has slight resistance to wear and corrosion.

Mr. Robbins testified that 24-carat gold is gold that is 99.95% pure gold, and that "24-carat gold-plated" means 99.95% pure gold mechanically bonded to a supporting metal of predetermined thickness. He explained that mechanically-bonded gold has good utility, resistance to corrosion, intrinsic value and color permanence. Electroplated gold, on the contrary, in conventional use, has slight utility or intrinsic value and the deposit is so thin that it may be characterized as a coloring operation.

Likewise, Mr. Robbins testified that the use of a carat designation, when applied to conventional electroplating, is improper because the electrolytic bath does not plate out pure gold, and it is impossible to designate correctly a specific carat fineness as deposited thereon.

When asked about the durability of the two methods of applying gold, Witness Robbins testified that mechanically-applied gold might wear from twenty to forty years, and electroplated gold of the thickness of that on Commission's Exhibit No. 18 might not wear for two days.

The testimony of Mr. Robbins on the subject of gold-plating is so clear and forceful, in contrast to the prior brief testimony on that subject, and so free from any indication of falsehood or error through ignorance, that we must accept it as true. Accordingly, we must conclude that Respondents' products are not, in fact, 24-carat gold-plated as represented, but are only colored by an inconsequen-

tial electrolytic application of gold of less than 22-carat fineness; and that "24-carat gold-plated" means a product which has a substantial plating of pure gold (23.95 carats fine) bonded to a base metal by a mechanical process.

6. Ownership of Plants or Factories

The evidence shows that Respondents have printed upon invoices used by them the words "Plants: New York . New Jersey . Ohio . Sheffield, England". We find that such use of the word "plants" constitutes a representation that the Respondents own or control plants or factories located in Sheffield, England, as well as in the other various places named on their invoices. The evidence shows that in truth and in fact the Respondents do not own or control any factories in Sheffield, England, or elsewhere. The belief thus engendered that Respondents have a factory in Sheffield, England, induces prospective purchasers to believe that the Respondents are manufacturers, and therefore that when they purchase merchandise from Respondents, they are buying directly from a manufacturer. In the Hearing Examiner's order of February 19, 1959, hereinbefore referred to, taking official notice of certain facts, notice was also taken of the following:

> There is a preference on the part of a substantial portion of the purchasing public to deal with manufacturers of products in the belief that there are certain advantages in doing so, including but not limited to cheaper prices.

We find that this preference is general, and have no reason to believe that wholesalers, distributors and jobbers, as a class, are an exception thereto. Accordingly, we must conclude that wholesalers, distributors and jobbers, as well as the general public, partake of this preference. Therefore, because of this preference, Respondents, by the representation that they are manufacturers, have unfairly diverted trade to themselves from their competitors.

CONCLUSIONS

Consideration of all the evidence of record, in the light of the applicable principles of law, warrants the following conclusions:

1. The acts and practices of Respondents, as herein found, are all to the prejudice and injury of the public 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;

2. The Commission has jurisdiction over the Respondents and over their acts and practices as herein found; and

3. This proceeding is in the public interest. Accordingly,

It is ordered, That the Respondent Lifetime Cutlery Corp., a corporation, its officers, and the Respondents Benjamin R. Berlin and Muriel Berlin, individually and as officers of said corporation, and Respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of cutlery or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Offering for sale or selling cutlery or any other product made or containing parts made in Japan or in any other foreign country, without clearly disclosing thereon the country of origin thereof;

2. Representing, by preticketing, or in any other manner, that a certain amount is the retail price of merchandise, when said amount is in excess of the usual and customary price at which said merchandise is sold at retail;

3. Furnishing to others any means or instrumentality by or through which the public may be misled as to the usual and customary prices of Respondents' products;

4. Representing, directly or by implication, that the Respondents, or any of them, own a plant or factory in Sheffield, England, or any other place, when such is not the fact; and

5. Representing that merchandise which has a surface coating of gold or gold alloy applied by an electrolytic process is gold-plated, or gold-plated with any carat designation.

OPINION OF THE COMMISSION

By the COMMISSION:

After considering an appeal from the hearing examiner's initial decision of June 18, 1959, the Commission remanded this case to the hearing examiner for the reception of such additional evidence as might be offered in support of and in opposition to the complaint's charges that the respondents had falsely represented their cutlery as "24 karat gold plated."

The evidence received following such remand consisted primarily of the oral testimony of a well qualified assayer who conducted tests of certain of the respondents' products received in evidence. He testified in substance that the gold surfacing on those articles was electrolytically applied rather than mechanically bonded, was a maximum of 2.4 millionths of an inch in thickness (.0000024), and that the gold assayed as less than 22 carat fineness. In the amended initial decision subsequently filed by him on August 10, 1960, the hearing examiner correctly found, among other things, that the

respondents in designating and referring to their merchandise as gold-plated thereby represented that such articles had a substantial coating or surfacing of gold bonded to base metal by a mechanical process, whereas such merchandise was only colored by an inconsequential electrolytic application of gold.

On September 12, 1960, the hearing examiner filed an order proposing correction of an asserted clerical error in the particular paragraph of the initial decision's order to cease and desist directed against future misrepresentations of gold content. That revised provision would prohibit the respondents from representing that merchandise having a surface coating of gold or gold alloy applied by an electrolytic process is gold-plated or gold-plated with any carat designation. Although this provision appropriately prohibits continued passing off of respondents' electrolytically processed products as mechanically gold-plated, we think the order issuing here also should contain recognition that use of the terms gold electroplate or gold electroplated to describe articles having a substantial coating of gold, and not inconsequentially flashed or colored with that metal, would not violate the order. Revision of the order is likewise warranted to more directly relate the order's prohibitions to respondents' past misstatements respecting the carat fineness of their merchandise.

The amended initial decision of the hearing examiner as above modified is being adopted as the decision of the Commission.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the hearing examiner's amended initial decision; and

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

It is ordered. That the order contained in the amended initial decision be, and it hereby is, modified (1) by striking paragraph 5 thereof in its original form and as proposed to be corrected in the hearing examiner's order of September 12, 1960, and (2) by substituting the following paragraphs, the same to be designated as paragraphs 5 and 6 thereof:

5. Using the term "gold-plated", or any other word or words of similar import or meaning, to designate, describe or refer to an article which does not have a surface plating of gold or gold alloy applied by a mechanical process, provided, however, that any product, or part thereof, on which a substantial coating of gold or gold

alloy has been affixed by an electrolytic process may be marked or described as gold electroplate or gold electroplated.

(6) Misrepresenting the carat fineness of the gold coating or surfacing of respondents' merchandise.

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

It is further ordered, That the respondents, Lifetime Cutlery Corp., Benjamin R. Berlin and Muriel Berlin, 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.

Commissioner Mills not participating.

IN THE MATTER OF

PILLSBURY MILLS, INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT

Docket 6000. Complaint, June 16, 1952 [1]*—Decision, Dec. 16, 1960*

Order requiring the nation's second largest flour milling company to divest itself absolutely of two competitors it acquired: Ballard & Ballard, Louisville, Ky., purchased June 12, 1951, acquisition of which removed an important producer of family flour, flour-base home mix, and wheat flour milling products from the southeastern market and gave Pillsbury first place in that market in the sale of family flour; and Duff's Baking Mix Division of American Home Foods, Inc., Hamilton, O., selling its home mixes throughout the country, purchased in March of 1952.

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[1] Amended and Supplemental Complaint, June 30, 1954.