ceeding 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 The Herst-Allen Company, 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 31st day of August 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent The Herst-Allen 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

ASSETS, INC., ET AL.

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

Docket 7874. Complaint, Apr. 28, 1960—Decision, Aug. 31, 1960

Order requiring a concern in Hoboken, N.J., to cease obtaining current information on delinquent debtors by use of the trade name "Trans-American Express Agency" and deceptive "skip-tracing" forms which represented that it was an express agency holding valuable property for debtor recipients and that the information requested was to be used to make delivery—for receipt of which information a pack of chewing gum was sent the debtor.

Mr. Harry E. Middleton, Jr., supporting the complaint.

No appearance for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission on April 28, 1960, issued and thereafter served its complaint in this proceeding charging the respondents hereinabove named with having engaged in unfair and deceptive acts and practices, in commerce, in violation of the Federal Trade Commission Act, by selling certain so-called skip-tracing forms, which are used to obtain information concerning delinquent debtors through subterfuge. Although duly served with said complaint respondents failed to file answer thereto within thirty (30) days, as required by Section 3.7 of the Commission's Rules of Practice for Adjudicative Proceedings and by the Notice served with said complaint.

Thereafter, a hearing was held on July 7, 1960, in Washington, D.C., before the undersigned hearing examiner, theretofore duly designated to hearing this proceeding. No appearance was made at said hearing by the respondents. Counsel supporting the complaint thereupon moved that, in view of the failure of the respondents to appear and show cause, the case be closed for the taking of testimony and that, in accordance with Section 3.7(b) of the Commission's Rules of Practice, the hearing examiner find the facts to be as alleged in the complaint. Counsel submitted a form of proposed order and moved that said order be entered against respondents. The undersigned granted said motion to the extent that findings and conclusions would be made, based upon the allegations of the complaint, and that the proposed order would be taken into consideration in the framing of an appropriate order.

This proceeding having now come on for final consideration on the complaint and the proposed order of counsel supporting the complaint, and it appearing that the order proposed covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding, the undersigned finds that this proceeding is in the interest of the public and, in accordance with Section 3.7 of the Rules of Practice, makes the following findings as to the facts, conclusion and order:

FINDINGS OF FACT

PARAGRAPH 1. Respondent Assets, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Its office is located at 20 Hudson Place, Hoboken, N.J.

The individual respondent Hyman Tenenbaum is an officer of said corporation and formulates, directs and controls the policies and

practices of the corporate respondent. His business address is the same as that of the corporate respondent.

The corporate respondent, in connection with the practices hereinafter set forth, trades and does business as Trans-American Express Agency at the same address.

PAR. 2. Respondents, trading and doing business as Trans-American Express Agency, with an office at 20 Hudson Place, Hoboken, New Jersey, are now, and for some time last past have been, engaged in the business of selling certain printed forms, letters, cards and envelopes which are designed for use, and are used, by the purchasers thereof for the purpose of obtaining information concerning delinqeunt debtors with the aid of the respondents, as hereinafter set forth.

PAR. 3. Respondents cause their said printed forms and other materials, when sold, to be transported from their place of business in the State of New Jersey to the purchasers thereof located in various other states, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said forms and other material, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Persons purchasing said forms and other materials fill in the names of the persons concerning which information is sought on the form, which consists in part of a series of questions, and mail said forms in bulk to respondents. Respondents have the envelopes enclosing the individual forms mailed in Hoboken, N.J., a self-addressed envelope requiring no postage being enclosed with the form, addressed to Trans-American Express Agency at the Hoboken, N.J., address for use in returning the completed forms.

Completed forms, when received by respondents, are mailed to the purchaser who sent them to respondents and respondents send a package of chewing gum to the debtor completing the form.

A copy of the questionnaire form sent to the debtors is attached to this decision as Exhibit A. A copy of the form letter which accompanies the questionnaire is attached hereto marked Exhibit B. A third form which is designed to be sent to third parties who may have information about a debtor is attached hereto marked Exhibit C.

PAR. 5. Respondents, through the use of the name Trans-American Express Agency, and the various depictions and statements set out on the attached exhibits, have represented and have furnished to their purchasers of said forms and material the means and instrumentalities by and through which they may and do represent that:

(a) Respondents are engaged in the business of an express agency.

Exhibit 57 F.T.C.

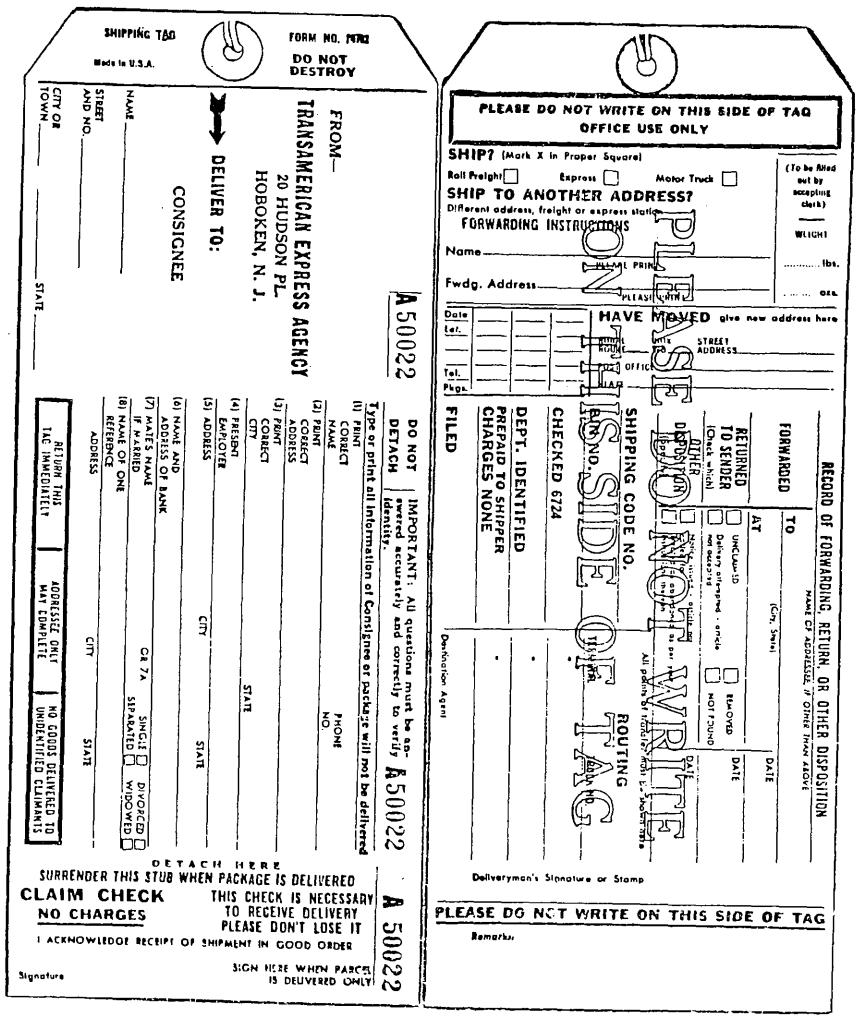


EXHIBIT A

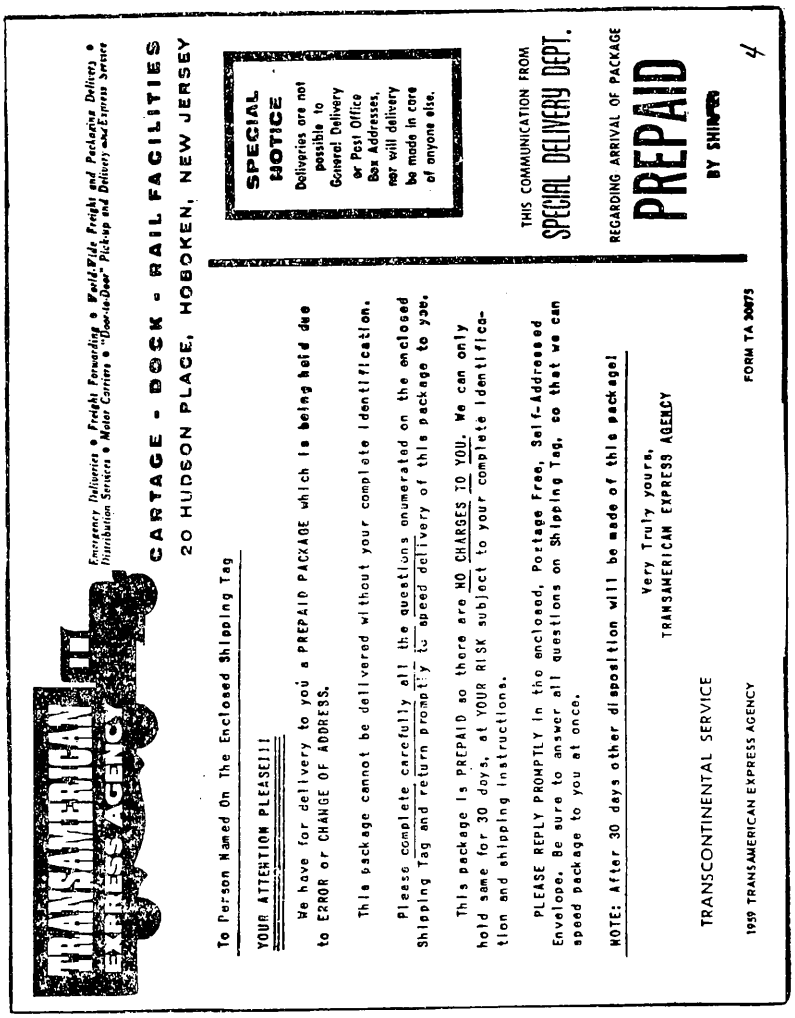
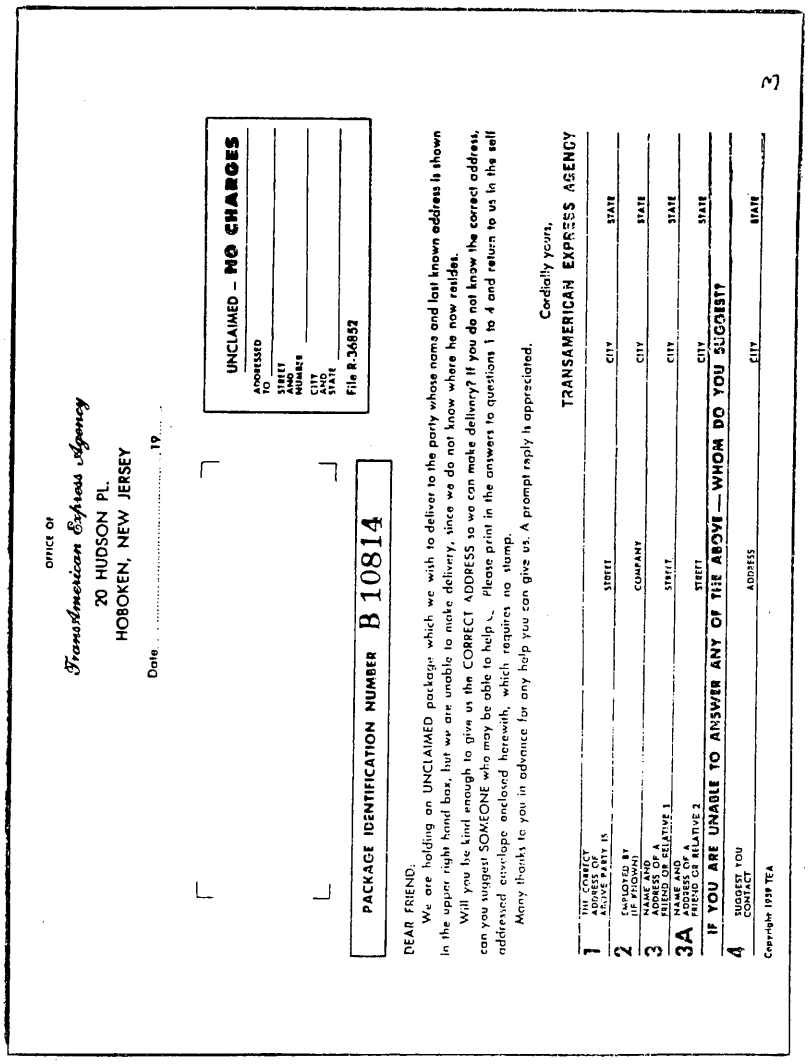

TRANSAMERICAN EXPRESS AGENCY
Emergency Deliveries • Freight Forwarding • World-Wide Freight and Package Delivery •
Distribution Services • Motor Carriers • Door-to-Door Pick-up and Delivery and Express Service
CARTAGE - DOCK - RAIL FACILITIES
20 HUDSON PLACE, HOBOKEN, NEW JERSEY
To Person Named On The Enclosed Shipping Tag
YOUR ATTENTION PLEASE!!!
We have for delivery to you a PREPAID PACKAGE which is being held due to ERROR or CHANGE OF ADDRESS.
This package cannot be delivered without your complete identification.
Please complete carefully all the questions enumerated on the enclosed Shipping Tag and return promptly to speed delivery of this package to you.
This package is PREPAID so there are NO CHARGES TO YOU. We can only hold same for 30 days, at YOUR RISK subject to your complete identification and shipping instructions.
PLEASE REPLY PROMPTLY in the enclosed, Postage Free, Self-Addressed Envelope. Be sure to answer all questions on Shipping Tag, so that we can speed package to you at once.
NOTE: After 30 days other disposition will be made of this package!
Very Truly yours,
TRANSAMERICAN EXPRESS AGENCY
TRANSCONTINENTAL SERVICE
1959 TRANSAMERICAN EXPRESS AGENCY
FORM TA 30075
SPECIAL NOTICE
Deliveries are not possible to General Delivery or Post Office Box Addresses, nor will delivery be made in care of anyone else.
THIS COMMUNICATION FROM
SPECIAL DELIVERY DEPT.
REGARDING ARRIVAL OF PACKAGE
PREPAID
BY SHIP
4

EXHIBIT B



OFFICE OF
TransAmerican Express Agency
20 HUDSON PL.
HOBOKEN, NEW JERSEY

Date ..... 19....

UNCLAIMED – NO CHARGES
ADDRESSED TO
STREET AND NUMBER
CITY AND STATE
File R-36852

PACKAGE IDENTIFICATION NUMBER B 10814

DEAR FRIEND:

We are holding an UNCLAIMED package which we wish to deliver to the party whose name and last known address is shown in the upper right hand box, but we are unable to make delivery, since we do not know where he now resides.

Will you be kind enough to give us the CORRECT ADDRESS so we can make delivery? If you do not know the correct address, can you suggest SOMEONE who may be able to help us. Please print in the answers to questions 1 to 4 and return to us in the self addressed envelope enclosed herewith, which requires no stamp.

Many thanks to you in advance for any help you can give us. A prompt reply is appreciated.

Cordially yours,
TRANSAMERICAN EXPRESS AGENCY

1 THE CORRECT ADDRESS OF ABOVE PARTY IS — STREET — CITY — STATE

2 EMPLOYED BY (IF KNOWN) — COMPANY — CITY — STATE

3 NAME AND ADDRESS OF A FRIEND OR RELATIVE 1 — STREET — CITY — STATE

3A NAME AND ADDRESS OF A FRIEND OR RELATIVE 2 — STREET — CITY — STATE

IF YOU ARE UNABLE TO ANSWER ANY OF THE ABOVE — WHOM DO YOU SUGGEST

4 SUGGEST YOU CONTACT — ADDRESS — CITY — STATE

Copyright 1959 TEA

EXHIBIT C

(b) Respondents have property of value being held for delivery to the addressee.

(c) The information requested as set out on the forms is for use in connection with making delivery of the property represented as being held for delivery.

PAR. 6. Said representations are false, misleading and deceptive. In truth and in fact:

(a) Respondents are not in the business of an express agency.

(b) Respondents do not hold any property of any value for delivery to the addressee.

(c) The information requested on the forms is not for use in connection with making delivery of property represented as being held for delivery to the addressee, but is for the sole purpose of obtaining information concerning delinquent debtors by subterfuge and constitutes a scheme to mislead and deceive the persons receiving said forms as to the true purpose for which the information is sought.

PAR. 7. The use, as hereinabove found, of respondents' forms and other materials by respondents' purchasers has had, and now has, the tendency and capacity to mislead and deceive many persons to whom said forms are sent into the erroneous and mistaken belief that the statements, representations and implications set out therein are true and to induce the recipients thereof to supply information to respondents' purchasers which otherwise would not have been supplied.

CONCLUSION

The acts and practices of the respondents, as hereinabove found, 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.

ORDER

It is ordered, That respondents Assets, Inc., a corporation, and its officers, and Hyman Tenenbaum, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the business of obtaining information concerning delinquent debtors, or the offering for sale, sale or distribution of forms to be used in obtaining information concerning delinquent debtors, or in the collection of, or attempting to collect accounts, in

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

1. Using, or placing in the hands of others for use, any form, questionnaire or other material, printed or written, which does not clearly reveal that the purpose for which the information is requested is that of obtaining information concerning delinquent debtors.

2. Representing, or placing in the hands of others any means whereby they may represent, directly or by implication, that a package or anything of value is being held for delivery pending receipt of the information on questionnaires for delivery to the addressee.

3. Using the name "Trans-American Express Agency" or any other name, word or phrase of similar import, or otherwise representing, directly or by implication, that requests for information concerning delinquent debtors are from bona fide express agencies or other type of business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 31st day of August 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

MIDWEST BISCUIT COMPANY

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

Docket 7868. Complaint, Apr. 19, 1960—Decision, Sept. 3, 1960

Consent order requiring a manufacturer of bakery products, including biscuits and crackers, in Burlington, Iowa, with annual sales exceeding $4,000,000, to cease violating Sec. 2(d) of the Clayton Act by paying certain of its customers but not their competitors for services or facilities, such as payments of $650 for advertising made in each of the years 1958 and 1959 to a retail grocery chain with headquarters in Burlington.

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 Midwest Biscuit Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 3000 Mt. Pleasant Street, Burlington, Iowa.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of bakery products, including biscuits and crackers. Respondent sells its products to wholesalers and retailers, including retail chain store organizations, and to hotels, restaurants, and the institutional trade. Respondent's sales of its products are substantial, exceeding $4,000,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of Iowa 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 years 1958 and 1959, respondent contracted to pay and did pay to Benner Tea Company, a retail grocery chain with headquarters in Burlington, Iowa, the amount of $650.00 in each of said years as compensation or as allowances 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 allowances were 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.

Mr. E. C. Heininger, of *Mayer, Friedlich, Spiess, Tierney, Brown & Platt*, of Chicago, Ill., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on April 19, 1960, issued its complaint herein, charging the above-named respondent with having violated the provisions of subsection (d) of § 2 of the Clayton Act, as amended (U.S.C., Title 15, § 13), and the respondent was duly served with process.

On July 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 counsel, and counsel supporting the complaint, under date of July 11, 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 Midwest Biscuit Company is a corporation existing and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 3000 Mt. Pleasant Street, Burlington, Iowa.

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," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the respondent herein; that the complaint states a legal cause for complaint under the Clayton Act as amended (U.S.C., Title 15, § 13) against the respondent both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That respondent Midwest Biscuit Company, 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 3d day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Midwest Biscuit 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

GEO. E. MALLINSON IMPORTING CO., INC., ET AL.; AND COLONIAL RUG COMPANY, INC., ET AL.

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

Docket 7684. Complaint, Dec. 8, 1959—Decisions, Sept. 7, 1960, and Sept. 22, 1960

Consent orders issued under different dates requiring two distributors of rugs in New York City and Taunton, Mass., respectively, to cease violating the Federal Trade Commission Act by labeling as "MAYFLOWER WOOL BLEND BRAIDED RUG", rugs which contained a substantial quantity of fibers other than wool; by describing as "wool blend", rugs composed largely of "reused" wool; and by failing to disclose that certain rugs which had the appearance and feel of wool were composed in part of rayon.

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 Geo. E. Mallinson Importing Co., Inc., a corporation, and William Brown, W. T. Orr and Marion H. Singer, individually and as officers of said corporation; and Colonial Rug Company, Inc., a corporation, and Walter A. Sroczinski and Harry L. MacCready, Jr., individually and as officers of said corporation, 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. Geo. E. Mallinson Importing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and place of business located at 295 Fifth Avenue, New York, N.Y.

Respondents William Brown, W. T. Orr and Marion H. Singer are officers of the corporate respondent Geo. E. Mallinson Importing Co., Inc., and formulate, direct and control the acts and practices of the above corporate respondent, including the acts and practices hereinafter set forth. The address of the individual respondents above is the same as that of the above corporate respondent.

Colonial Rug Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and place of business at Taunton, Mass.

Respondents Walter A. Sroczinski and Harry L. MacCready, Jr., are officers of the corporate respondent Colonial Rug Company, Inc., and formulate, direct and control the acts and practices of corporate respondent, including the acts and practices hereinafter set forth. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of rugs and floor coverings.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of manufacture in the Commonwealth of Massachusetts to purchasers thereof located in various other States of the United States and the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their rugs, respondents have made certain statements with respect to the fiber content of said rugs by means of labels attached thereto. Typical and among such statements, but not limited thereto, was the following:

MAYFLOWER WOOL BLEND BRAIDED RUG

Through the use of said statement, respondents represented that rugs so labeled were composed entirely of wool.

PAR. 5. The aforesaid statement and representation was false, misleading and deceptive. In truth and in fact, said rugs were not composed entirely of wool but contained a substantial quantity of fibers other than wool.

PAR. 6. The respondents further falsely represented the content of their rugs by reason of the fact that the term "wool blend" was used to describe their rugs, the wool content of which was composed largely of "reused" wool, that is, wool or reprocessed wool which has been spun, woven, knitted or felted into a wool product which, after having been used in any way by the ultimate consumer, subsequently has been made into a fibrous state.

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 hair of the Angora or Cashmere goat, including the so-called specialty fibers from the hair of camel, alpaca, llama and vicuna, as distinguished from "reused wool" which has been reclaimed from a spun, woven, knitted or felted product. Thus, the use of fiber content description as set out above by respondents caused purchasers and prospective purchasers to have the mistaken and erroneous belief that the said products so labeled are composed wholly of fibers falling within the classification "wool" as hereinbefore set out, rather than "reused wool".

PAR. 7. Respondents have for several years last past distributed and sold in commerce rugs which were composed in part of rayon.

Rayon is a chemically manufactured fiber which may be so manufactured as to simulate wool, and it has the appearance and feel of wool. By reason of these qualities, rayon, when manufactured to simulate wool and not clearly designated as rayon, is practically indistinguishable from wool. Respondents' said rugs are composed in part of rayon which simulates both the appearance and feel of wool. Respondents sell and distribute said rugs without disclosing in any manner the rayon content of these rugs, thus making it virtually impossible for the purchasers and ultimate users of said rugs to determine that the rugs contain rayon fibers as opposed to wool fibers.

PAR. 8. 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 products of the same general kind and nature as those sold by respondents.

PAR. 9. 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 substantial quantities of respondents' products 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. 10. 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.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Charles S. Cox for the Commission.

Lewis & Lewis, of Taunton, Mass., by *Mr. Benjamin D. Lewis*, for Colonial Rug Company, Inc., Walter A. Sroczinski and Harry L. MacCready, Jr.

INITIAL DECISION AS TO CERTAIN RESPONDENTS

The complaint in this matter charges the respondents with violating the provisions of the Federal Trade Commission Act, in connection with the sale and distribution of rugs and floor coverings. An agreement for disposition of the proceeding as to respondents Colonial Rug Company, Inc., Walter A. Sroczinski and Harry L. MacCready, Jr., has now been entered into by said respondents and counsel supporting the complaint which provides, among other things, that said respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, said respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by said respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceedings as to said re-

spondents, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Colonial Rug Company, Inc., is a Massachusetts corporation, with its office and place of business located at Taunton, Mass. The individual respondents Walter A. Sroczinski and Harry L. MacCready, Jr., are officers of said corporate respondent and formulate, direct and control the acts and practices of said Colonial Rug Company, Inc. The address of the individual respondents is the same as that of the corporate respondent.

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

ORDER

It is ordered, That Colonial Rug Company, Inc., a corporation, and its officers, and Walter A. Sroczinski and Harry L. MacCready, Jr., 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 rugs or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to clearly set forth the rayon content of products composed in whole or in part of rayon, in a clear and conspicuous manner, on invoices, labels and in the advertising of such products;

2. Using the term "wool" or "all wool" or any other word or term indicative of wool to designate or describe any product or portion thereof which is not composed wholly of wool, the fiber from the fleece of the sheep or lamb, or hair of the Angora or Cashmere goat, or hair of the camel, alpaca, llama, or vicuna, which has never been reclaimed from any woven or felted product; provided, that in the case of products or portions thereof which are composed in part of wool and in part of other fibers or materials, the term "wool" may be used as descriptive of the wool content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a quantity of five percentum or more of the total fiber weight of the product, the percentage thereof shall be stated. Nothing herein shall prohibit the use of the terms "reprocessed wool" or "reused wool" when the

products or those portions thereof referred to are composed of such fibers;

3. Misrepresenting, in any manner, the fiber content of any product.

Provided, however, That nothing herein shall relieve the respondents from their obligation to comply with the requirements of the Textile Fiber Products Identification Act which became effective March 3, 1960, or forbid the respondents thereafter from labeling and otherwise offering products subject to that Act in the manner prescribed thereby and Rules and Regulations promulgated thereunder by the Commission.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision as to certain respondents of the hearing examiner shall, on the 7th day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Colonial Rug Company, Inc., a corporation, and Walter A. Sroczinski and Harry L. MacCready, Jr., 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.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Charles S. Cox for the Commission.

No appearance for respondents.

INITIAL DECISION AS TO RESPONDENTS GEO. E. MALLINSON IMPORTING CO., INC., WILLIAM BROWN, W. T. ORR AND MARION H. SINGER

The complaint in this matter charges the respondents with violating the provisions of the Federal Trade Commission Act, in connection with the sale and distribution of rugs and floor coverings. An agreement for disposition of the proceeding as to respondents Geo. E. Mallinson Importing Co., Inc., William Brown, W. T. Orr and Marion H. Singer has now been entered into by said respondents and counsel supporting the complaint which provides, among other things, that said respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall

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

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

1. Respondent Geo. E. Mallinson Importing Co., Inc., is a New York corporation, with its office and place of business located at 295 Fifth Avenue, New York, N.Y. The individual respondents William Brown, W. T. Orr and Marion H. Singer are officers of said corporate respondent and formulate, direct and control the acts and practices of said Geo. E. Mallinson Importing Co., Inc. The address of the individual respondents is the same as that of the corporate respondent.

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

ORDER

It is ordered, That Geo. E. Mallinson Importing Co., Inc., a corporation, and its officers, and William Brown, W. T. Orr and Marion H. Singer, 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 rugs or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to clearly set forth the rayon content of products composed in whole or in part of rayon, in a clear and conspicuous manner, on invoices, labels and in the advertising of such products;

2. Using the terms "wool" or "all wool" or any other word or term indicative of wool to designate or describe any product or portion thereof which is not composed wholly of wool, the fiber from the fleece of the sheep or lamb, or hair of the Angora or Cashmere goat, or hair of the camel, alpaca, llama, or vicuna, which has never been reclaimed from any woven or felted product; provided, that in the case of products or portions thereof which are composed in part of wool and in part of other fibers or materials, the term "wool" may be used as descriptive of the wool content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a quantity of five percentum or more of the total fiber weight of the product, the percentage thereof shall be stated. Nothing herein shall prohibit the use of the terms "reprocessed wool" or "reused wool" when the products or those portions thereof referred to are composed of such fibers;

3. Misrepresenting, in any manner, the fiber content of any roducts.

Provided, however, That nothing herein shall relieve the respondents from their obligation to comply with the requirements of the Textile Fiber Products Identification Act, which became effective March 3, 1960, or forbid the respondents thereafter from labeling and otherwise offering products subject to that Act in the manner prescribed thereby and Rules and Regulations promulgated thereunder by the Commission.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision as to certain respondents of the hearing examiner shall, on the 22d day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Geo. E. Mallinson Importing Co., Inc., a corporation, and William Brown, W. T. Orr and Marion H. Singer, 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

PIONEERS, INC., ET AL.

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

Docket 7844. Complaint, Mar. 25, 1960—Decision, Sept. 7, 1960

Consent order requiring Oakland, Calif., manufacturers of a preparation for the treatment of storage batteries designated "BATTERY AD-X2," to cease representing falsely in newspaper and magazine advertising that their said battery additive had been "PROVED Before the FEDERAL TRADE COMMISSION" and was "GOVERNMENT TESTED and PROVED".

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 Pioneers, Inc., a corporation, and Jess M. Ritchie, individually and as an officer of said corporation, 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 Pioneers, Inc., 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 2812 Havenscourt Boulevard, Oakland 5, Calif.

Respondent Jess M. Ritchie is an individual and president of the corporate respondent Pioneers, Inc. This individual formulates, directs and controls the acts and practices of said corporate respondent. Said individual respondent has his office and principal place of business at the same place as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the manufacture, sale and distribution of a product designated Battery AD-X2, a preparation for the treatment of storage batteries.

In the regular and usual course and conduct of their business, respondents now cause, and for several years last past have caused, said product, when sold, to be transported from their place of business in the State of California to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product, in com-

merce, among and between the various States of the United States and the District of Columbia.

PAR. 3. At all times mentioned herein respondents have been, and are now, in direct and substantial competition with other corporations, firms and individuals engaged in the manufacture, sale and distribution, in commerce, of products intended for similar use.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the sale of their product in commerce, respondents have caused, and now cause, the publication and dissemination of certain statements and pictorial presentation in newspapers and periodicals having a general circulation.

Typical, but not all inclusive, of said statements is the following:

BATTERY AD-X2 PROVED
Before the
FEDERAL TRADE COMMISSION
* * *
ONLY AD-X2 IS
GOVERNMENT TESTED and PROVED

Said representation is accompanied by a depiction of a seal, as set forth in Exhibit A attached hereto and made a part hereof.

PAR. 5. By means of the aforesaid statements and pictorial representation respondents have represented, and do represent, that their product has been proved before the Federal Trade Commission or has been tested and approved by this agency and that their product is Government tested and approved.

PAR. 6. The aforesaid statements and representations, as depicted in newspapers and periodicals, are false, misleading and deceptive in that respondents' said product has not been proved before the Federal Trade Commission or tested or approved by the Commission; nor has it been approved after tests by any Federal Agency.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, pracitces and pictorial presentation has had, and now has, the capacity and tendency to, and does, mislead and deceive 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 quantity of respondents' product because of such erroneous and mistaken belief. As a result thereof, substantial trade has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has been, and is being, thereby 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 consti-

tute, 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. John Brookfield, Jr., for the Commission.

Respondents, *pro se*.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated March 25, 1960, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On June 29, 1960, the respondents entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect

as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

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

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

1. Respondent Pioneers, Inc., is a corporation 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 2812 Havenscourt Boulevard, Oakland, Calif.

Respondent Jess M. Ritchie is an individual and president of said corporation, and his business address is the same as that of 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 Pioneers, Inc., a corporation, and its officers, and Jess M. Ritchie, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a battery additive preparation sold under the name of AD–X2, or under any other name or names, or any other preparation of substantially the same composition or possessing substantially similar properties, 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 by implication: That said product has been proved before or tested or approved by the Federal Trade Commission, or that said product has been Government tested and approved.

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 September 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.

Commissioner Kern not participating.

IN THE MATTER OF

CRAFTSMAN LINE-UP TABLE CORPORATION

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

Docket 7847. Complaint, Mar. 28, 1960—Decision, Sept. 7, 1960

Consent order requiring a Waltham, Mass., manufacturer of line-up and register tables, photo-lith layout tables, and litho-offset utility tables used by offset printers and photoengravers, to cease violating Sec. 2(d) of the Clayton Act by such practices as paying $2,700 for advertising to a Philadelphia customer while offering no comparable allowances to the latter's competitors.

COMPLAINT

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

PARAGRAPH 1. Respondent, Craftsman Line-Up Table Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 49–57 River Street, in the City of Waltham, State of Massachusetts.

PAR. 2. Respondent is now and has been engaged in the manufacture and sale of tables known as line-up and register tables, photo-lith layout tables and litho-offset utility tables used in connection with the work of offset printers and photo-engravers. Respondent markets its products throughout the United States through approximately fifty dealers and distributors who resell to the ulti-

mate purchaser. Total sales by respondent are approximately $350,000 per annum.

PAR. 3. In the course and conduct of its business, respondent has engaged, and is now engaging, in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondent causes its products to be transported to the customers of its distributors in various states throughout the United States and the District of Columbia.

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

PAR. 5. For example, during the year 1959, respondent contracted to pay and did pay to Foster Type and Equipment Company, Inc., Philadelphia, Pa., $2,700 as compensation or as an allowance for advertising or other service or facilities furnished by or through Foster Type and Equipment Company, Inc. in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not offered or otherwise made available on proportionally equal terms to all other customers competing with Foster Type and Equipment Company, Inc. in the sale and distribution of respondent's products.

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

Mr. Fredric T. Suss for the Commission.

Gallup & Hadley, by *Mr. Martin W. Cohen*, of Boston, Mass., for respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On March 28, 1960, the Federal Trade Commission issued its complaint against the above-named respondent charging it with violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended, in connection with the manufacture and sale of tables known as line-up and register tables, photo-lith layout tables and litho-offset utility tables used in connection with the work of offset printers and photoengravers. On June 28, 1960, the respondent and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Sec-

tion 3.25(a) of the Rules of Practice and Procedure of the Commission.

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

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

1. Respondent Craftsman Line-Up Table Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 49–57 River Street, in the City of Waltham, State of Massachusetts.

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

ORDER

It is ordered, That respondent Craftsman Line-Up Table Corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in the course of its business in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of any customer, any payment of anything of value as compensation or in

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of September 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

COMMUNITY OPTICIANS ET AL.

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

Docket 7856. Complaint, Apr. 6, 1960—Decision, Sept. 7, 1960

Consent order requiring Boston opticians to cease falsely advertising their contact lenses by such claims as that the lenses could be worn all day in complete comfort, and by all persons, that wearing them never caused irritation or discomfort, and that they were superior to competing lenses.

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 Community Opticians, a corporation, and Charles W. Holden, Emil J. Arnold and Louis Lewis, individually and as officers of said corporation, 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 Community Opticians is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and

principal place of business located at 76 Summer Street, Boston, Mass. Individual respondents Charles W. Holden, Emil J. Arnold and Louis Lewis are officers of said corporation. They formulate, direct and control the policies of the corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. The respondents are now, and for some years last past have been, engaged in the advertising, offering for sale and sale, among other things, of corneal contact lenses. Corneal contact lenses are designed to correct errors and deficiencies in the vision of the wearer, and are devices, as "device" is defined in the Federal Trade Commission Act. Respondents have several branch offices in Massachusetts and maintain a branch office in New Hampshire.

PAR. 3. Respondents cause said contact lenses, when sold, to be transported from their place of business in the Commonwealth of Massachusetts 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 contact lenses in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their aforesaid business, respondents have disseminated, and have caused dissemination of, advertisements concerning their said devices by the United States mails, and by various other means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers of general circulation for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said devices; and respondents have also disseminated, and caused the dissemination of, advertisements concerning their said devices by the aforesaid means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said devices, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in the advertisements disseminated and caused to be disseminated are the following:

. . . See COMMUNITY OPTICIANS NOW for COMMUNITY'S exclusive "all day" contact lenses with the smoother-than-velvet Bev-Vel finish, the kind I'm wearing!!!

* * *

. . . ONLY at Community can you obtain . . . all-day CONTACT LENSES with BEV-VEL finish. . . .

. . . perfected all-day CONTACT LENSES.

* * *

CONTACT LENSES WITH THE EXCLUSIVE BEV-VEL FINISH . . .
NEW Perfect-comfort all day contact lenses, fitted only at Community Opticians.

Never before has there been a contact lens so easy to wear throughout the day.

A brand new process makes this ease and comfort possible. In ten separate operations we slowly micro-polish each all-day contact lens' edge to hitherto unattainable angles . . . This exclusive bev-vel finish lets the eye breathe and tear-flow naturally, prevents any contact of the lens on the eye itself—and now for the first time gives the lens' edge a smooth-as-velvet finish to assure all-day comfort.

PAR. 5. By and through the statements made in said advertisements disseminated and caused to be disseminated, as aforesaid, respondents represented, directly or by implication:

1. All persons can successfully wear respondents' contact lenses.

2. That there is never irritation or discomfort from wearing respondents' contact lenses.

3. Respondents' contact lenses can be worn all day in complete comfort.

4. That respondents' contact lenses are more comfortable to wear than competitive contact lenses.

5. That respondents' contact lenses do not come in contact with the eye of the wearer.

6. That respondents' contact lenses are different than other contact lenses in that respondents' lenses permit air and tears to bathe the cornea of the eye of the wearer.

PAR. 6. The advertisements containing the aforesaid statements and representations were, and are, misleading in material respects and constituted, and now constitute, "false advertisements," as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. A significant number of persons cannot successfully wear respondents' contact lenses.

2. Practically all persons will experience some irritation and discomfort after starting to wear respondents' contact lenses. In a significant number of cases irritation and discomfort will be prolonged and in some cases will never be overcome.

3. Many persons cannot wear contact lenses all day in complete comfort, and no person can wear said lenses all day in complete comfort, until they have become completely adjusted to them.

4. Respondents' contact lenses are not more comfortable to wear than many competitive contact lenses.

5. Respondents' contact lenses come in contact with the eye of the wearer.

6. Contact lenses other than respondents' permit air and tears to bathe the cornea of the eye of the wearer.

PAR. 7. The dissemination by the respondents of the false advertisements, as aforesaid, constituted unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Garland S. Ferguson for the Commission.

Singer, Stoneman & Kurland, by *Mr. Franklin N. Flaschner*, of Boston, Mass., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On April 6, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the advertising, offering for sale and sale of corneal contact lenses. On June 30, 1960, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

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

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

1. Corporate respondent Community Opticians of Boston, Inc., erroneously named in the complaint as Community Opticians, is a corporation existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located at 76 Summer Street, Boston, Mass. Individual respondents Charles W. Holden, Emil J. Arnold and Louis Lewis are officers of said corporation. They formulate, direct and control the practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Community Opticians of Boston, Inc., a corporation, and its officers, and Charles W. Holden, Emil J. Arnold, and Louis Lewis, individually and as officers of said corporation, their representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of their contact lenses, do forthwith cease and desist from, directly or indirectly:

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

(a) All persons can successfully wear respondents' contact lenses.

(b) There is never irritation or discomfort from wearing respondents' contact lenses.

(c) All persons can wear respondents' contact lenses all day without discomfort, or that any person can wear said contact lenses all day without discomfort except after that person has become fully adjusted thereto.

(d) Respondents' contact lenses are more comfortable to wear than competitive lenses.

(e) Respondents' contact lenses do not come in contact with the eye of the wearer.

(f) Respondents' contact lenses are different than other contact lenses in that they permit air and tears to bathe the cornea of the eye of the wearer.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of September 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

BANKERS LOAN COMPANY, INC., ET AL.

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

Docket 7858. Complaint, Apr. 6, 1960—Decision, Sept. 7, 1960

Consent order requiring Fort Worth, Tex., distributors of photographs and related products—selling chiefly through door-to-door salesmen who concentrated on selling photograph albums and used two basic plans: one offering a certain number of portraits to be taken by a local studio participating for advertising purposes, and the other offering a given number of "snap shot enlargements" of various sizes—to cease representing falsely that the albums regularly sold for $47.50 and the enlargements for $5.00 each, that they were offering a free gift in an advertising campaign to specially selected persons, had developed a new photographic process and operated their own processing plant; representing falsely that "Bankers Loan Company, Inc."—actually a corporate device used to intimidate purchasers—was an innocent purchaser of delinquent accounts; and coercing delinquent debtors by forwarding to them a document styled "Notice to Debtor-Collection Proceedings" which represented falsely that the claim had been reduced to a judgment and the notice constituted a court order requiring payment of the amount allegedly owed.

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 Bankers Loan

Company, Inc., a corporation, and Minnic M. Kirton, G. Fred Davis and Sybil Kirton, individually and as officers of said corporation, and as copartners doing business as National Photographers Album 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. Respondent Bankers Loan Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas. Respondents Minnic M. Kirton, G. Fred Davis and Sybil Kirton are individuals and are officers of said corporate respondent and trade and do business as copartners under the name of National Photographers Album Company. These individuals formulate, direct and control the policies, acts and practices of the corporate respondent.

Respondents' office and principal place of business is located at 3605 Dexter Street, in the city of Fort Worth, State of Tex.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of photograph albums, photographs, photograph certificates and photograph enlargements to the ultimate consumer.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Texas to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain and at all times mentioned herein have maintained a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In furtherance of their aforesaid business and in addition to the foregoing products respondents also now cause, and for some time last past have caused, contracts, collection demands to delinquent debtors and various other kinds and types of documents relating to the aforesaid business to be deposited in the United States mails and transmitted to and received from persons located in the various other States of the United States and in the District of Columbia, all of which thereby constituting and being a part of the course of trade in commerce heretofore mentioned.

PAR. 4. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of photograph albums, photographs, photograph certificates and

photograph enlargements of the same general kind and nature as those sold by respondents.

PAR. 5. Respondents' said products are sold chiefly by itinerate door-to-door salesmen. Salesmen are furnished with manuals, contract forms, "canned sales talks," and a sales kit containing photographs and various other materials needed to effect a sale. The contracts with purchasers of said products are entered into in the name of the National Photographers Album Company. Collection of the account and all further contacts with the purchaser subsequent to the sale are maintained by respondents. The terms and the requirements of the contract are determined by respondents. Most salesmen work under and are responsible to a crew chief. Respondents receive a portion of the purchase price of each sale made by its salesmen.

The "canned sales talks" provided by respondents to their salesmen are used either literally or, as expedient, varied to effect a sale of said products. Numerous representations are thereby made by the salesmen respecting the respondents' status, its product, financing of the product, regular selling price of said product and numerous other representations hereinafter more specifically related.

As aforesaid, contracts are taken in the name of the National Photographers Album Company. In the event that an account becomes delinquent, it is handled under the name of the Bankers Loan Company, Inc. The Bankers Loan Company, Inc., holds itself out to the delinquent debtor as a bona fide collection agency doing a general business which has given a valuable consideration for the account.

The National Photographers Album Company, Inc., was incorporated in the State of Texas. Its name was subsequently changed to Bankers Loan Company, Inc.

Respondents' primary effort is to sell the photograph album. As an inducement respondents offer two basic separate plans with variations. One plan offers to the purchaser a specified number of portraits to be taken by a local studio. The local studio usually enters into this arrangement with respondents for advertising purposes. The other plan affords to the purchaser the opportunity of having a specified number of "snap shot enlargements" made for which there is a charge depending upon the size and kind of enlargement desired.

PAR. 6. The "canned sales talks" provided by respondents to its salesmen contain numerous representations respecting free gifts, advertising, photograph processing, respondents' photographic facilities, price of the photograph album, price of the photograph enlargements, special selection of prospective purchaser and other rep-

resentations. Typical and illustrative of the foregoing are the following:

I have a very unusual and valuable surprise for you and your family.

Mrs. Jones, I do the local advertising for National Photographers . . . National Photographers has developed a new process in photographly and to advertise it, . . .

Mrs. Jones, I've been retained to do the advertising locally for the National Photograpers Company . . . National has recently developed a new process in photography . . . To go along with this new process, we have developed a new method of advertising the process. . . . So, I visit 8 mothers each day and out of those, I qualify to assist us in advertising, 4 mothers.

(BRING OUT THE ALBUM . . .) its the most expensive one on the AMERICAN MARKET. It retails through leading retail outlets at $47.50.

Your Book Of Certificates entitles you to 50—$5.00 portraits (multiply it). Making a retail value of $250.00. The album retails for $47.50 because it is Top Grain Cow Hide. (Total up $297.50.) This makes a total retail value of $300.00.

The foregoing representations are repeated, modified or altered in any manner which may be expedient for the salesmen to effect a sale of said products and various other representations are also made.

PAR. 7. Through the foregoing statements and representations made on their sales contract, on the certificates issued to their customers, and by means of other statements made by their sales representatives, respondents have represented and now represent, directly or indirectly:

1. That a free gift is being offered to the persons solicited.

2. That respondents are conducting an advertising campaign.

3. That respondents have developed a new process for making photographs.

4. That respondents own, operate or control a photograph processing plant or facilities.

5. That the photograph album has a regular retail selling price of $47.50 or more.

6. That the photograph enlargements offered for sale and sold by respondents have a regular retail selling price of $5.00 each.

7. That persons solicited have been specially selected.

PAR. 8. The aforesaid representations are false, misleading and deceptive. In truth and in fact:

1. Respondents do not offer or otherwise make available to or present persons solicited with a free gift.

2. Respondents are not conducting an advertising campaign. Respondents' purpose is to sell their said products and services.

3. Respondents have not developed a new process for making or enlarging photographs.

4. Respondents do not own, operate or control a photograph processing plant or facilities for making or enlarging photographs.

5. The photograph album offered for sale and sold by respondents does not have a regular retail selling price of $47.50 or more.

6. The photograph enlargements offered for sale and sold by respondents do not have a regular retail selling price of $5.00 each.

7. Persons solicited by respondents' salesmen have not been specially selected.

PAR. 9. To effect the collection of delinquent accounts, respondents represent and imply that the delinquent account has been purchased by a bona fide collection agency separate from the National Photographers Album Company. Typical and illustrative of such representations is that contained in certain letters mailed to the delinquent debtor on the letterhead of respondent Bankers Loan Company, Inc., which reads in part: "This is to notify you that we, the Bankers Loan Company, Inc., have purchased your contract account from the National Photographers Album Company of Ft. Worth, Texas."

Such representations are false, misleading and deceptive. Respondent Bankers Loan Company, Inc., is simply a corporate device used by the individual respondents to coerce and intimidate purchasers of their said products and services. Through and under said false and fraudulent device, respondents seek to effect the collection of delinquent accounts by representing and implying that the respondent Bankers Loan Company, Inc. is an innocent purchaser of the delinquent account.

PAR. 10. Respondents also forward to the delinquent debtor, among other things, a document styled "Notice to Debtor-Collection Proceedings" which represents that the claim has been reduced to a judgment and that the said notice constitutes an order by a court of competent jurisdiction requiring the delinquent debtor to pay the amount allegedly owed to the respondents.

Said delinquent accounts have not in fact been reduced to a judgment. Said "Notice to Debtor" is wholly spurious and constitutes a false, misleading and deceptive effort on the part of the respondents to coerce and intimidate delinquent debtors.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of a substantial number and amount of the aforesaid photograph albums, photographs, photograph certificates and photograph enlargements by such erroneous and mistaken be-

lief. As a result thereof, trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has been done and is being done to competition in commerce.

Mr. Terral A. Jordan for the Commission.

Mr. Wilbur N. Baughman, of Washington, D.C., and *McGown, Godfrey, Logan & Decker*, of Fort Worth, Tex., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

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

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

1. Respondent Bankers Loan Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Texas. Respondents Minnic M. Kirton, G. Fred Davis, and Sybil Kirton are individuals and are officers of the corporate respondent. They also trade and do business as copartners under the name of National Photographers Album Company. Respondents' office and principal place of business is located at 3605 Dexter Street, Fort Worth, Tex.

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 Bankers Loan Company, Inc., a corporation, and its officers and Minnic M. Kirton, G. Fred Davis and Sybil Kirton, individually and as officers of said corporation, and as copartners trading and doing business under the name of National Photographers Album Company or trading and doing business under any other name or names whether jointly or separately, 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 photograph albums, photograph certificates, photographs or photograph enlargements, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

(a) That a free gift is offered to persons solicited.

(b) That an advertising campaign, an introductory promotional offer, or any other kind of survey, campaign or promotion is being conducted unless such is the fact.

(c) That respondents have developed new or different processes, techniques or methods for making photographs.

(d) That respondents own, operate or control a photograph processing plant or facilities.

(e) That any amount is the regular retail selling price of a specific article of merchandise when it is in excess of the price at which said article of merchandise is usually and customarily offered for sale or sold in the trade area in which offered for sale.

(f) That persons solicited are specially selected.

(g) That Bankers Loan Company, Inc., is an independent or separate organization from the said business enterprise operated under the name of National Photographers Album Company or is a bona fide purchaser for value of the contracts, accounts receivable or promissory notes executed by purchasers of the aforesaid products; or that any collection agency is an independent or separate organization or a bona fide purchaser of contracts, accounts receivable or promissory notes executed by purchasers of the aforesaid products when in fact it is owned, operated or controlled by respondents.

(h) That any amount owed by purchasers of the aforesaid products has been reduced to a judgment; or that any other legal action

has been taken to effect collection of amounts owed by delinquent debtors, unless such action has in fact been taken.

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

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

IN THE MATTER OF

ROBERT FIELD DOING BUSINESS AS PACIFIC RECORD DISTRIBUTORS

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

Docket 7876. Complaint, May 3, 1960—Decision, Sept. 7, 1960

Consent order requiring a Los Angeles distributor of phonograph records to cease giving concealed payola to disc jockeys or other personnel of radio and television programs to induce frequent playing of its records to increase its sales.

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 Robert Field, an individual doing business as Pacific Record Distributors, 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 Robert Field is an individual doing business as Pacific Record Distributors, with his principal office and place of business located at 2663 W. Pico Boulevard, Los Angeles, Calif.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of phonograph records as an independent distributor for several record manufacturers to retail outlets and jukebox operators in various States of the United States.

In the course and conduct of his business, respondent now causes, and for some time last past has caused, the records he distributes, when sold, to be shipped from his place of business in the State of California, to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of his business, at all times mentioned herein, respondent has been, and is now, in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of phonograph records.

PAR. 4. After World War II, when television and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately $400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as six to ten times a day, substantially increase the sales of those records so "exposed". Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and television programs.

"Payola", among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records in which the payer has a direct financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 5. In the course and conduct of his business in commerce during the last several years, the respondent has engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondent alone, or with certain unnamed record manufacturers, negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broad-

casting across State lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs, or to radio stations.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondent, by participating individually or in a joint effort with certain collaborating record manufacturers, has aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts, or to radio stations.

Thus, "payola" is used by the respondent to mislead the public into believing that the records "exposed" were the independent and unbiased selections of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they otherwise might not have purchased and, also, to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 6. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public, and to hinder, restrain and suppress competition in the offering for sale, sale and distribution of phonograph records, and to divert trade unfairly to the respondent from his competitors, and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 7. The aforesaid acts and practices of respondent, as alleged herein, were and are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on May 3, 1960, issued its complaint herein, charging the above-named respondent, who is engaged in the offering for sale, sale and distribution of phonograph records as an

independent distributor for several record manufacturers to retail outlets and jukebox operators in various states of the United States, with violation of the Federal Trade Commission Act, in that respondent, alone or with certain unnamed record manufacturers, has negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondent is financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public. Respondent was duly served with process.

On August 1, 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 respondent and counsel supporting the complaint, under date of July 26, 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 partices have specifically agreed to the following matters:

1. Respondent Robert Field is an individual doing business as Pacific Record Distributors, with his principal office and place of business located at 2663 W. Pico Boulevard, Los Angeles, Calif.

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

It is ordered, That respondent Robert Field, an individual doing business as Pacific Record Distributors, or under any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 7th days of September 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

A. & G. HAT & CAP MFG. CO. INC., ET AL.

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

Docket 7889. Complaint, May 13, 1960—Decision, Sept. 7, 1960

Consent order requiring manufacturers in Scranton, Pa., to cease violating the Wool Products Labeling Act by labeling as "50% wool, 50% reprocessed wool", men's and boys' caps which contained substantially less than 100% woolen fibers, and by failing to label certain of such 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 A. & G. Hat & Cap Mfg. Co. Inc., a corporation, and Louis Miller, Henry Goldberg and Harry Mack, 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 Wool 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. Respondent A. & G. Hat & Cap Mfg. Co. Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located at 315 Pennsylvania Avenue, Scranton, Pa.

Individual respondents, Louis Miller, Henry Goldberg and Harry Mack, are president, vice president and secretary-treasurer, respectively, of said corporate respondent. Said individual respondents formulate, direct and control the acts, practices and policies of the corporate respondent. The office and principal place of business of the individual respondents is the same as the corporate respondent.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 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 the Wool Products Labeling Act of 1939, 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 fiber contained therein.

Among such misbranded products were men's and boys' caps labeled or tagged by respondents as "50% wool, 50% reprocessed wool", whereas, in truth and in fact, said caps contained substantially less than 100% woolen fibers.

PAR. 4. Certain of said wool products were 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, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

PAR. 5. The respondents in the course and conduct of their business, as aforesaid, were and are in substantial competition with other corporations, firms and individuals likewise engaged in the manufacture and sale of wool products, including men's and boys' caps, in commerce.

PAR. 6. The acts and practices of respondents, as set forth herein, were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations thereunder, 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. Terral A. Jordan for the Commission.

Nogi, O'Malley & Harris, by *Mr. Sheldon Rosenberg*, of Scranton, Pa., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with misbranding certain of their wool products, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations thereunder, and of the Federal Trade Commission Act.

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

The agreement states that respondent A. & G. Hat & Cap Mfg. Co. is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania; that respondents Louis Miller, Henry Goldberg and Harry Mack are individuals and officers of said corporate respondent; and that respondents' place of business is located at 315 Pennsylvania Avenue, in the city of Scranton, State of Pennsylvania.

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

Respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or

conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the wool Products Labeling Act of 1939 and the Rules and Regulations thereunder, and of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondents A. & G. Hat & Cap Mfg. Co., Inc., a corporation, and its officers, and Louis Miller, Henry Goldberg and Harry Mack, individually and as officers of said corporation, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act, of men's and boys' caps or other "wool products", as such products are defined in and subject to the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents A. & G. Hat & Cap Mfg. Co. Inc., a corporation, and Louis Miller, Henry Goldberg and Harry Mack, 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

FIESTA RECORD COMPANY, INC., ET AL

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

Docket 7895. Complaint, May 20, 1960—Decision, Sept. 7, 1960

Consent order requiring New York City distributors of phonograph records to cease giving concealed payola to disc jockeys or other personnel of radio and television programs to induce frequent playing of their records to increase their sales.

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 Fiesta Record Company, Inc., a corporation, and Jose Morand, individually and as an officer of said corporation, 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 Fiesta Record Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1619 Broadway, in the City of New York, State of New York.

Respondent Jose Morand is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the distribution, offering for sale, and sale, of phonograph records to distributors.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said records, when sold, to be shipped from one state of the United States to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in competition, in

commerce, with corporations, firms and individuals in the sale of phonograph records.

PAR. 5. After World War II when TV and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately $400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as 6 to 10 times a day, substantially increase the sales of those records so "exposed." Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and TV programs.

"Payola," among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and TV stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication, represent to their listening public that the records "exposed" on their broadcasts have been selected on their general personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 6. In the course and conduct of their business, in commerce, during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone or with certain unnamed record distributors negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents by participating individually or in a joint effort with certain collaborating record distributors have aided and abetted the deception of the public by various disk jockeys by control-

ling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selection of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they might otherwise not have purchased and also to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 7. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the manufacture, sale or distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. Harold A. Kennedy and *Mr. Arthur Wolter, Jr.*, for the Commission.

Respondents for themselves.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondents with violations of the provisions of the Federal Trade Commission Act by the payment of money or other valuable consideration to induce the playing of certain phonograph records over radio and television stations in order to enhance the popularity of such records.

On July 7, 1960, there was submitted to the undersigned hearing examiner an agreement between the above-named respondent and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondents admit all the jurisdictional facts alleged 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 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 the respondents that they have violated the law as alleged in the complaint.

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

1. Respondent Fiesta Record Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1619 Broadway, in the City of New York, State of New York.

Respondent Jose Morand is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is the same as that of said corporate respondent.

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

ORDER

It is ordered, That respondents Fiesta Record Company, Inc., a corporation, and its officers, and Jose Morand, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any per-

son, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of September 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

REO GARMENT, INC., ET AL.

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

Docket 7903. Complaint, May 20, 1960—Decision, Sept. 7, 1960

Consent order requiring New York City manufacturers to cease violating the Wool Products Labeling Act by labeling as "50% wool, 50% reprocessed wool", women's coats which contained a substantial quantity of other than woolen fibers, and by failing in other respects to comply with labeling

provisions; and to cease violating the Fur Products Labeling Act by failing to label fur collars of women's coats as required and to comply with invoicing regulations.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 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 Reo Garment, Inc., a corporation, and Samuel Klein and Marvin Klein, 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 Wool Products Labeling Act and 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. Respondent Reo Garment, 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 place of business located at 15 West 20th Street, New York, N.Y.

Respondents Samuel Klein and Marvin Klein are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the said corporation, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1954, 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 misbranded wool products were women's coats labeled or tagged by respondents as "50% wool, 50% reprocessed wool" whereas, in truth and in fact, said products contained a substantial quantity of fibers other than woolen fibers.

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, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that the required information descriptive of the fiber content contained on the labels attached to the wool products was minimized and rendered inconspicuous, so as likely to be unnoticed by purchasers and the purchaser-consumers, by reason of the use of small, indisinct and crowded type in violation of Rule 11 of the aforesaid Rules and Regulations.

PAR. 6. The respondents in the course and conduct of their business as aforesaid were and are in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the manufacture and sale of wool products including women's coats.

PAR. 7. The acts and practices of respondents, as set forth above, were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder 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.

PAR. 8. 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 sale, advertising and offering for sale in commerce and in the transportation and distribution in commerce, of fur products, and have manufactured for sale 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. 9. Certain of said fur products, namely, fur collars of women's coats 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 that required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

PAR. 10. Certain of said fur products were falsely and deceptively invoiced in that they were not invoiced as required under the

provisions of 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. 11. 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 required item numbers were not set forth on invoices in violation of Rule 40 of said Rules and Regulations.

PAR. 12. The aforesaid acts and practices of the respondents, as alleged in paragraphs 9, 10, and 11, 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.

Mr. DeWitt T. Puckett supporting the complaint.
Respondents, *pro se.*

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 20, 1960, charging them with having violated the Wool Products Labeling Act of 1939 and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, by misbranding certain wool products and fur products and falsely and deceptively invoicing certain fur products. After being served with said complaint, respondents appeared and entered into an agreement containing consent order to cease and desist, dated June 28, 1960, purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents and by counsel supporting the complaint, and approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the aforesaid agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Section 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Reo Garment, 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 West 20th Street, in the city of New York, State of New York.

Individual respondents Samuel Klein and Marvin Klein are officers of the corporate respondent. Their address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Wool Products Labeling Act of 1939, the Fur Products Labeling Act and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents Reo Garment, Inc., a corporation, and its officers, and Samuel Klein and Marvin Klein, 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 women's coats or other "wool products", as such products are defined in and subject to the Wool Products Labeling

Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

3. Setting forth on labels affixed to such products information required under the said Act in a minimized, obscure or inconspicuous manner.

It is further ordered, That respondents, Reo Garment, Inc., a corporation, and its officers, and Samuel Klein and Marvin Klein, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution, in commerce, of any fur product, or in connection with the manufacture, sale, advertising, offering for sale, transportation or distribution of any fur product which is composed wholly 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 set forth on the required labels the item number or mark assigned to a fur product.

2. Falsely or deceptively invoicing fur products by:

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

(b) Failing to set forth on the required invoices the item number or mark assigned to a fur product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of September 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

AUTOMOTIVE SOUTHWEST, INC., ET AL.

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

Docket 7687. Complaint, Dec. 10, 1959—Decision, Sept. 8, 1960

Consent order requiring a corporate buying group and its 15 members, jobbers of automotive products and supplies in the States of Texas, Louisiana, and Oklahoma, to cease violating Sec. 2(f) of the Clayton Act by demanding and receiving from suppliers discriminatory prices on their individual purchases on the basis of their aggregate group purchasing power—in which connection they usually replaced suppliers not acceding to their demands by others who did.

COMPLAINT

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

PARAGRAPH 1. Respondent Automotive Southwest, Inc., hereinafter sometimes referred to as respondent ASI, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2801 Commerce Street, Dallas, Tex.

Respondent ASI, although utilizing corporate form, is a membership organization, organized, maintained, managed, controlled, and operated by and for its members. The membership of respondent ASI is composed of corporations, partnerships, and individuals whose business consists of the jobbing of automotive products and supplies.

Respondent ASI, as constituted and operated, is known and referred to in the trade as a buying group.

PAR. 2. The following respondent corporations and individuals, sometimes hereinafter referred to as respondent jobbers, constitute respondent ASI:

Respondent American Gear & Parts Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2801 Commerce Street, Dallas, Tex.

Respondents Robert L. Sanders, Wesley A. Browder, W. Luther Browder and John W. Farley are copartners doing business under

the firm name and style of Automotive Supply Company, a partnership with their office and principal place of business located at 500 Harrison Street, Amarillo, Tex.

Respondent Howard F. Barrett is a partner doing business under the firm name and style of Barrett's Automotive, a partnership with his office and principal place of business located at 1012 17th Street, Lubbock, Tex.

Respondent Gabbert Auto Supply, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1013 Highway Avenue, McAllen, Tex.

Respondent Kennedy Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 101 Milam Street, Shreveport, La.

Respondent Miller Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1300 Franklin Avenue, Waco, Tex.

Respondent Moore Brothers Electric Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2003 Clay Avenue, Houston 2, Tex.

Respondent J. T. Davis is a partner doing business under the firm name and style of Motor Parts Company, a partnership with his office and principal place of business located at 202 N. Mesquite Street, Corpus Christi, Tex.

Respondents Kindel Paulk and Roger H. Paulk are copartners doing business under the firm name and style of Paulk's, a partnership with their office and principal place of business located at 1111 Lamar Street, Wichita Falls, Tex.

Respondent Mountjoy Parts Company of Houston, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1504 St. Emanuel Street, Houston, Tex.

Respondents Mrs. Otto Davis, Tom Davis and Guy Davis are copartners doing business under the firm name and style of Davis Auto Supply Company, a partnership with their office and principal place of business located at 23d and Washington Streets, Bryan, Tex.

Respondent East Texas Auto Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 213 S. Broadway Street, Tyler, Tex.

Respondent Motor Inn Auto Supply of Pampa, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 416 W. Foster Street, Pampa, Tex.

Respondent Wayne Bull is a sole proprietor doing business under the firm name and style of Wayne Bull Auto Parts, with his office and principal place of business located at 445 Ninth Street, San Antonio, Tex.

Respondent Automotive Parts & Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 2626 E. 11th Street, Tulsa, Okla.

PAR. 3. The respondent jobbers set forth in Paragraph Two have purchased and now purchase in commerce from suppliers engaged in commerce numerous automotive products and supplies for use, consumption, or resale within the United States. Respondent jobbers and said suppliers cause the products and supplies so purchased to be shipped and transported among and between the several States of the United States from the respective State or States of location of said suppliers to the respective different state or states of location of the said respondent jobbers.

PAR. 4. In the purchase and the resale of said automotive products and supplies, respondent jobbers are in active competition with independent jobbers not affiliated with respondent ASI; and the suppliers selling to respondent jobbers and to their independent jobber competitors are in active competition with other suppliers of similar automotive products and supplies.

PAR. 5. Respondent ASI, since its formation in 1946, has been and is now maintained, managed, controlled, and operated by and for the respondent jobbers set forth in Paragraph Two and each said respondent has participated in, approved, furthered, and cooperated with the other respondents in the carrying out of the procedures and activities hereinafter described.

In practice and effect, respondent ASI has been and is now serving as the medium or instrumentality by, through, or in conjunction with, which said respondent jobbers exert the influence of their combined bargaining power on the competitive suppliers hereinbefore described. As a part of their operating procedure said respondent jobbers direct the attention of said suppliers to their aggregate purchasing power as a buying group and, by reason of such, have knowingly demanded and received, upon their individual purchases, discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale. Suppliers not acceding to such de-

mands are usually replaced as sources of supply for the commodities concerned and such market is closed to them in favor of such suppliers as can be and are induced to afford the discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale so demanded.

Respondent jobbers demand that those suppliers who sell their products pursuant to a quantity discount schedule shall consider their several purchases in the aggregate as if made by one purchaser and grant quantity discounts, allowances, or rebates on the resultant combined purchase volume in accordance with said suppliers' schedule. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers whose quantity discounts, allowances, or rebates from such suppliers are based upon only their individual purchase volumes. From other suppliers the respondent jobbers demand the payment or allowance of trade discounts, allowances, or rebates which such suppliers do not ordinarily pay or allow to jobber customers. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers who are not afforded such trade discounts, allowances, or rebates.

When and if a demand is acceded to by a particular supplier, the subsequent purchase transactions between said supplier and the individual jobber respondents have been and are billed to, and paid for through, the aforesaid organizational device of respondent ASI. Said corporate organization thus purports to be the purchaser when in truth and in fact it has been and is now serving only as agent for the several respondent jobbers and as a mere bookkeeping device for facilitating the inducement and receipt by the afore-described respondent jobbers of the price discriminations concerned.

PAR. 6. Respondents have induced or received from their suppliers, in the manner afore-described, favorable prices, discounts, allowances, rebates, terms and conditions of sale which they knew or should have known constituted discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 7. The effect of the knowing inducement or receipt by respondents of the discriminations in price as above alleged has been and may be substantially to lessen, injure, destroy, or prevent competition between suppliers of automotive products and supplies and between respondent jobbers and independent jobbers.

PAR. 8. The foregoing alleged acts and practices of respondents in knowingly inducing or receiving discriminations in price prohib-

ited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, are in violation of subsection (f) of Section 2 of said Act.

Mr. Eldon P. Schrup, *Mr. Lars E. Janson* and *Mr. John Perechinsky*, supporting the complaint.

Howrey, Simon, Baker & Murchison by *Mr. David C. Murchison* of Washington, D.C., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 10, 1959, charging that respondents knowingly induced or received discriminations in net prices of numerous automotive products and supplies purchased from various suppliers in violation of sub-section (f) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

On June 21, 1960, there was submitted to the undersigned hearing examiner agreements between the above-named respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the terms of the agreements, 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 documents include a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreements further recite that they are for settlement purposes only and do not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

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

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

1. Respondent Automotive Southwest, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2801 Commerce Street, Dallas, Tex.

2. Respondent American Gear & Parts Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2801 Commerce Street, Dallas, Tex.

3. Respondents Robert L. Sanders, Wesley A. Browder, W. Luther Browder and John W. Farley are copartners doing business under the firm name and style of Automotive Supply Company, a partnership with their office and principal place of business located at 500 Harrison Street, Amarillo, Tex.

4. Respondent Howard F. Barrett is a partner doing business under the firm name and style of Barrett's Automotive, a partnership with his office and principal place of business located at 1012 17th Street, Lubbock, Tex.

5. Respondent Gabbert Auto Supply, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1013 Highway Avenue, McAllen, Tex.

6. Respondent Kennedy Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 101 Milam Street, Shreveport, La.

7. Respondent Miller Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1300 Franklin Avenue, Waco, Tex.

8. Respondent Moore Brothers Electric Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2003 Clay Avenue, Houston 2, Tex.

9. Respondent J. T. Davis is a partner doing business under the firm name and style of Motor Parts Company, a partnership with his office and principal place of business located at 202 N. Mesquite Street, Corpus Christi, Tex.

10. Respondents Kindel Paulk and Roger H. Paulk are copartners doing business under the firm name and style of Paulk's, a partnership with their office and principal place of business located at 1111 Lamar Street, Wichita Falls, Tex.

11. Respondent Mountjoy Parts Company of Houston, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1504 St. Emanuel Street, Houston, Tex.

12. Respondents Tom Davis and Guy Davis are copartners doing business under the firm name and style of Davis Auto Supply Com-

pany, a partnership with their office and principal place of business located at 23d and Washington Streets, Bryan, Tex.

13. Respondent East Texas Auto Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 213 S. Broadway Street, Tyler, Tex.

14. Respondent Motor Inn Auto Supply of Pampa, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 416 W. Foster Street, Pampa, Tex.

15. Respondent Wayne Bull is a sole proprietor doing business under the firm name and style of Wayne Bull Auto Parts, with his office and principal place of business located at 445 Ninth Street, San Antonio, Tex.

16. Respondent Automotive Parts & Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 2626 E. 11th Street, Tulsa, Okla.

17. 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 Automotive Southwest, Inc., a corporation; American Gear & Parts Company, Inc., a corporation; Robert L. Sanders, Wesley A. Browder, W. Luther Browder, and John W. Farley, copartners doing business under the firm name and style of Automotive Supply Company, a partnership; Howard F. Barrett, partner doing business under the firm name and style of Barrett's Automotive, a partnership; Gabbert Auto Supply, Inc., a corporation; Kennedy Supply Company, Inc., a corporation; Miller Company, Inc., a corporation; Moore Brothers Electric Company, Inc., a corporation; J. T. Davis, partner doing business under the firm name and style of Motor Parts Company, a partnership; Kindel Paulk and Roger H. Paulk, copartners doing business under the firm name and style of Paulk's, a partnership; Mountjoy Parts Company of Houston, Inc., a corporation; Tom Davis, and Guy Davis, copartners doing business under the firm name and style of Davis Auto Supply Company, a partnership; East Texas Auto Supply Company, Inc., a corporation; Motor Inn Auto Supply of Pampa, Inc., a corporation; Wayne Bull Auto Parts, a sole proprietorship; and Automotive Parts & Supply Company, Inc., a corporation; and respondents' agents, representatives and employees,

directly or through any corporate or other device, in connection with the offering to purchase or purchase of any automotive products or supplies in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Knowingly inducing or knowingly receiving or accepting any discrimination in the price of such products and supplies, by directly or indirectly inducing, receiving, or accepting from any seller a net price known by respondents to be below the net price at which said products and supplies of like grade and quality are being sold by such seller to other customers, where the seller is competing with any other seller for respondents' business, or where respondents are competing with other customers of the seller.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are effected.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Mrs. Otto Davis, deceased, a former partner in Davis Auto Supply Company, 23d and Washington Streets, Bryan, Tex.

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

It is ordered, That the respondents ordered to cease and desist in the initial decision 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

S. MITCHELL AXELROD TRADING AS S. M. AXELROD & SON

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

Docket 7942. Complaint, June 15, 1960—Decision, Sept. 8, 1960

Consent order requiring Boston distributors to cease violating the Wool Products Labeling Act by labeling as "50% rayon, 30% reprocessed wool, 20%

nylon" and as "55% rayon, 35% reprocessed wool, 10% nylon", woolen fabrics which contained substantially less woolen fibers than so represented, and by failing to label certain 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 S. Mitchell Axelrod, trading as S. M. Axelrod & Son, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool 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. Respondent, S. Mitchell Axelrod, is an individual trading as S. M. Axelrod & Son with his office and principal place of business located at 115 Chauncy Street, Boston, Mass.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1958, respondent has introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in the said Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondent 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 constituent fibers contained therein.

Among such misbranded wool products were woolen fabrics labeled or tagged by respondent as 50% rayon, 30% reprocessed wool, 20% nylon; and 55% rayon, 35% reprocessed wool, 10% nylon, whereas in truth and in fact said fabrics contained substantially less woolen fibers than represented.

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 and in the manner and form prescribed by the regulations promulgated under said Act.

PAR. 5. Respondent in the course and conduct of his business, as aforesaid, was and is in substantial competition in commerce with corporations, firms and individuals in the sale of wool products.

PAR. 6. The acts and practices of the respondent, as set forth above, were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder 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. Harry E. Middleton, Jr., for the Commission.

No appearance for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

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

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

1. The respondent S. Mitchell Axelrod is an individual trading as S. M. Axelrod & Son, with his office and principal place of business located at 115 Chauncy Street, Boston, Mass.

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

ORDER

It is ordered, That respondent, S. Mitchell Axelrod, an individual trading as S. M. Axelrod & Son, or under any other name, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the 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 wool products, as "wool products" are defined in and subject to the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

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

IN THE MATTER OF

KNIGHT OF REST PRODUCTS, INC., ET AL.

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

Docket 7870. Complaint, Apr. 19, 1960—Decision, Sept. 13, 1960

Consent order requiring Newark, N.J., manufacturers of mattresses, upholstered furniture, and Hollywood beds to cease fictitious pricing practices such as attaching to their products labels bearing excessive prices, represented thereby as the usual and customary retail prices in the trade area where the representations were made.

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 Knight of Rest Products, Inc., a corporation, and Robert Bagoon, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appears 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 Knight of Rest Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 615-623 Third Street, Newark, N.J.

Individual respondent Robert Bagoon is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, offer for sale, sale and distribution of mattresses, upholstered furniture and Hollywood beds to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New Jersey to purchasers thereof located in the various other States of the United States and maintain and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of using fictitious prices in connection therewith, by attaching, or causing to be attached, labels to their products upon which a certain amount is printed, thereby representing, directly or by implication, that said amount is the usual and customary retail price of the said products, in the trade area or areas where the representation is made. In truth and in fact, said amount is fictitious and in excess of the usual and customary price of the said products in the trade area or areas where the representations are made.

PAR. 5. By the aforesaid practice, respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the public as to the usual and customary retail price of the said products.

PAR. 6. In the course and 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 mattresses, upholstered furniture and Hollywood beds of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practice 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 substantial quantities of respondents' products 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 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. Anthony J. Kennedy, Jr., for the Commission.

Respondents for themselves.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission issued and subsequently served its complaint in this proceeding against the above-named respondents charging them with violation of the Federal Trade Commission Act in connection with the sale and distribution of mattresses, upholstered furniture and hollywood beds to retailers for resale to the public.

On July 27, 1960 there was submitted to the undersigned hearing examiner an agreement between the respondents 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 com-

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

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

1. Respondent Knight of Rest Products, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 615–623 Third Street, in the city of Newark, State of N.J.

Respondent Robert Bagoon is an officer of the corporate respondent. He formulates, directs and controls the acts of the corporate respondent. His address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents, Knight of Rest Products, Inc., a corporation, its officers, and Robert Bagoon, individually and as an officer of the corporate respondent, 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 mattresses, upholstered furniture, hollywood beds or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, by means of prelabeling, or otherwise, that any amount is the usual and customary retail price of a product when such amount is in excess of the price at which such product is usually and customarily sold at retail in the trade area or areas where the representation is made.

2. Putting any plan into operation through the use of which retailers or others may misrepresent the usual and regular retail price 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 13th day of September 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

APOLLO RECORDS N.Y. CORP., ET AL.

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

Docket 7915. Complaint, June 3, 1960—Decision, Sept. 13, 1960

Consent order requiring a New York City distributor of phonograph records to cease giving concealed payola to disc jockeys and other personnel of radio and television musical programs to induce frequent playing of its records in order to increase sales.

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 Apollo Records N.Y. Corp., a corporation, and Melvin Albert, individually and as an officer of said corporation, 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 Apollo Records N.Y. Corp. 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 1780 Broadway, in the city of New York, State of New York.

Respondent Melvin Albert is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for one year last past have been, engaged in the distribution, offering for sale, and sale, of phonograph records to distributors.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said records, when sold, to be shipped from one state of the United States to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a course of trade in said phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in competition, in commerce, with corporations, firms and individuals in the sale of phonograph records.

PAR. 5. After World War II when TV and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately $400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as 6 to 10 times a day, substantially increase the sales of those records so "exposed." Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and TV programs.

"Payola", among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and TV stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication, represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth

and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 6. In the course and conduct of their business, in commerce, during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone or with certain unnamed record distributors negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents by participating individually or in a joint effort with certain collaborating record distributors have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selection of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they might otherwise not have purchased and also to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 7. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the manufacture, sale or distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors and injury has thereby been done and may continue to be done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in

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

Harold A. Kennedy, Esq., and *Arthur Wolter, Jr.*, Esq., for the Commission;

Johnson & Zimbalist, by *Samuel A. Zimbalist*, Esq., of New York, N.Y., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission on June 3, 1960, issued its complaint against the above-named respondents, who are engaged in the offering for sale, sale and distribution of phonograph records to independent distributors for resale to retail outlets and jukebox operators in various States of the United States, charging them with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record distributors, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

Respondents appeared and entered into an agreement dated July 7, 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 Director, Associate Director, and Assistant Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with § 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 com-

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

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

1. Respondent Apollo Records N.Y. Corp., 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 1780 Broadway, in the city of New York, State of New York.

Respondent Melvin Albert is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent.

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

It is ordered, That respondents Apollo Records N.Y. Corp., a corporation, and its officers, and Melvin Albert, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any

person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature;

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

THE UNIVERSAL CARPET DISTRIBUTING CO., INC., ET AL.

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

Docket 7645. Complaint, Nov. 2, 1959—Decision, Sept. 14, 1960

Order dismissing complaint charging Baltimore dealers—now out of business—with using bait advertising, fictitious pricing, deceptive guarantee claims, and other misrepresentations to sell floor carpeting.

640968—63——40

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

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

This matter is before the hearing examiner upon a motion of Commission counsel to dismiss the complaint. The complaint was issued on November 2, 1959. No answer has been filed by any of the respondents, nor has any appearance been entered for any respondent by counsel.

It appears that on July 20, 1959, the corporate respondent executed a deed of trust for the benefit of creditors, and that on July 23, 1959, the trustee named in the deed of trust petitioned the court for authority to sell the corporation's assets. This petition was granted and subsequently the corporate assets were sold at public auction. The corporation is no longer in business, and it seems reasonable to assume that none of the individual respondents are any longer engaged in the business operations which formed the subject of the Commission's complaint.

It also appears that none of the respondents has ever been served with a copy of the complaint. All mail addressed to the respondents at their former place of business, including copies of the complaint, has been delivered only to the trustee referred to above.

In the circumstances it appears that the view of Commission counsel that no useful purpose would be served by proceeding further in the case is well taken. The dismissal of the complaint should, however, in the hearing examiner's opinion, be without prejudice to the right of the Commission to take further action in the matter in the future should that course appear to be necessary.

ORDER

It is therefore ordered, That the complaint be, and it hereby is, dismissed, without prejudice to the right of the Commission to take any further action in the matter in the future which may be warranted by the then existing circumstances.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of September 1960, become the decision of the Commission.

Complaint

IN THE MATTER OF

SOUTHWESTERN WAREHOUSE DISTRIBUTORS, INC. ET AL.

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

Docket 7686. Complaint, Dec. 9, 1959—Decision, Sept. 14, 1960

Consent order requiring a corporate buying group and its 33 members, jobbers Kansas, Louisiana, New Mexico, Oklahoma, and Texas, to cease violating Sec. 2(f) of the Clayton Act by demanding and receiving from suppliers of automotive products and supplies in the States of Arkansas, Colorado, discriminatory prices on their individual purchases on the basis of their aggregate group purchasing power—in which connection they usually replaced suppliers not acceding to their demands by others who did.

COMPLAINT [1]

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

PARAGRAPH 1. Respondent Southwestern Warehouse Distributors, Inc,, hereinafter sometimes referred to as respondent SWDI, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 9008 Sovereign Row, Dallas, Tex.

Respondent SWDI, although utilizing corporate form, is a membership organization, organized, maintained, managed, controlled, and operated by and for its members. The membership of respondent SWDI is composed of corporations, partnerships, and individuals whose business consists of the jobbing of automotive products and supplies.

Respondent SWDI, as constituted and operated, is known and referred to in the trade as a buying group.

PAR. 2. The following respondent corporations and individuals, sometimes hereinafter referred to as respondent jobbers, constitute respondent SWDI:

Respondent Aicklen Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the

[1] Complaint was dismissed against Beaumont Auto Parts, Inc., on May 26, 1960.

laws of the State of Louisiana, with its office and principal place of business located at 748 Baronne Street, New Orleans, La.

Respondent Paul Dickinson is a sole proprietor doing business under the firm name and style of Auto Electric Sales & Service Company, with his office and principal place of business located at 521 West Main Street, Ardmore, Okla.

Respondents James N. Fomby, Sr., James N. Fomby, Jr., and Ray S. Fomby are copartners doing business under the firm name and style of Automotive Supply Company, a partnership with their office and principal place of business located at 219 Tenth Street, Alexandria, La.

Respondents D. L. Naylor and Mrs. A. D. Tennyson are copartners doing business under the firm name and style of Auto Spring & Supply Company, a partnership with their office and principal place of business located at 500 Ohio Avenue, Wichita Falls, Tex.

Respondent Beaumont Auto Parts, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 945 Park Street, Beaumont, Tex.

Respondent Kirby K. Kennedy is a sole proprietor doing business under the firm name and style of Capital Auto Supply Company, with his office and principal place of business located at 333 Hancock Street, Santa Fe, N. Mex.

Respondent Car Parts Depot, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 211 N. Cotton Street, El Paso, Tex.

Respondent Chester A. Latcham, Jr. is a sole proprietor doing business under the firm name and style of Colorado Jobbers Supply Company, with his office and principal place of business located at 875 Broadway Street, Denver, Colo.

Respondent Combs Automotive Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 104 Military Street, Dodge City, Kans.

Respondent Guinn C. Cross is a sole proprietor doing business under the firm name and style of Cross-Allen Company, with his office and principal place of business located at 310 E. 4th Street, Austin, Tex.

Respondent Five-Fifty-Five, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 711 W. 8th Street, Little Rock, Ark.

Respondent Hanna-Gray Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 55 South 9th Street, Fort Smith, Ark.

Respondents Mrs. Blanche Jarvis, Jack B. Jarvis, Robert H. Jarvis and Lawrence F. Jarvis are copartners doing business under the firm name and style of Jarvis Auto Supply, a partnership with their office and principal place of business located at 701 Main Street, Winfield, Kans.

Respondent Johnson Bros. Auto Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 117 S. St. Francis Street, Witchita, Kans.

Respondent Lake Auto Parts, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 1103 Ryan Street, Lake Charles, La.

Respondents J. C. Landers, Sr., J. C. Landers, Jr., and Jack M. Landers are copartners doing business under the firm name and style of Landers, a partnership with their office and principal place of business located at 63 N. Chadbourne Street, San Angelo, Tex.

Respondent Harry Lane Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 322 N. Ash Street, McPherson, Kans.

Respondent Joseph F. Meyer Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 802 Franklin Street, Houston, Tex.

Respondent Motor Equipment, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Mexico, with its office and principal place of business located at 100 Marquette Avenue NE., Albuquerque, N. Mex.

Respondent Mountjoy Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 512 Fifth Street, San Antonio, Tex.

Respondent The Jno. Muller Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 301 Taylor Street, Fort Worth, Tex.

Respondent Nash & Cotton, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the

State of Texas, with its office and principal place of business located at 1818 Avenue C, Galveston, Tex.

Respondent Neumeyer Motor Parts, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1602 Milam Street, Houston, Tex.

Respondent Joe Owens is a sole proprietor doing business under the firm name and style of Owens Supply Company, with his office and principal place of business located at 701 N. Independence Street, Enid, Okla.

Respondent Arthur J. Reynolds is a sole proprietor doing business under the firm name and style of Reynolds Automotive Supply, with his office and principal place of business located at 516 W. 6th Street, Texarkana, Tex.

Respondent Rigney Auto Parts, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1402 Texas Avenue, Lubbock, Tex.

Respondent Robertson & King Motor Supply, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1845 Levee Street, Dallas, Tex.

Respondent 688 Parts Service, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 1440 Government Street, Baton Rouge, La.

Respondent Smyth Auto Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 206 Taylor Street, Amarillo, Tex.

Respondent Carl Fred Winston is a sole proprietor doing business under the firm name and style of Standard Auto Parts, with his office and principal place of business located at 209 E. First Street, Alice, Tex.

Respondent Standard Motor Supply, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 1021 S. Cincinnati Street, Tulsa, Okla.

Respondents John R. Terry, Floyd H. Terry and John Kenneth Terry are copartners doing business under the firm name and style of Terry Automotive Supply, a partnership with their office and principal place of business located at 101 N. Marsalis Street, Dallas, Tex.

Respondent H. J. Van Hook, Sr. is a sole proprietor doing business under the firm name and style of Van's Auto Supply, with his office and principal place of business located at 212 S.W. 29th Street, Oklahoma City, Okla.

Respondents Mrs. Camille Webb Ward, Joe L. Ward, Jr., and Sam Webb Ward are copartners doing business under the firm name and style of Joe L. Ward Company, Ltd., a partnership with their office and principal place of business located at 313 Washington Street, Waco, Tex.

PAR. 3. The respondent jobbers set forth in Paragraph Two have purchased and now purchase in commerce from suppliers engaged in commerce numerous automotive products and supplies for use, consumption, or resale within the United States. Respondent jobbers and said suppliers cause the products and supplies so purchased to be shipped and transported among and between the several States of the United States from the respective State or States of location of said suppliers to the respective different State or States of location of the said respondent jobbers.

PAR. 4. In the purchase and the resale of said automotive products and supplies, respondent jobbers are in active competition with independent jobbers not affiliated with respondent SWDI; and the suppliers selling to respondent jobbers and to their independent jobber competitors are in active competition with other suppliers of similar automotive products and supplies.

PAR. 5. Respondent SWDI, since its formation in 1947, has been and is now maintained, managed, controlled, and operated by and for the respondent jobbers set forth in paragraph 2 and each said respondent has participated in, approved, furthered, and cooperated with the other respondents in the carrying out of the procedures and activities hereinafter described.

In practice and effect, respondent SWDI has been and is now serving as the medium or instrumentality by, through, or in conjunction with, which said respondent jobbers exert the influence of their combined bargaining power on the competitive suppliers hereinbefore described. As a part of their operating procedure, said respondent jobbers direct the attention of said suppliers to their aggregate purchasing power as a buying group and, by reason of such have knowingly demanded and received, upon their individual purchases, discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale. Suppliers not acceding to such demands are usually replaced as sources of supply for the commodities concerned and such market is closed to them in favor of such suppliers as can

be and are induced to afford the discriminatory prices, discounts, allowances rebates, and terms and conditions of sale so demanded.

Respondent jobbers demand that those suppliers who sell their products pursuant to a quantity discount schedule shall consider their several purchases in the aggregate as if made by one purchaser and grant quantity discounts, allowances, or rebates on the resultant combined purchase volume in accordance with said suppliers' schedule. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers whose quantity discounts, allowances, or rebates from such suppliers are based upon only their individual purchase volumes. From other suppliers the respondent jobbers demand the payment or allowance of trade discounts, allowances, or rebates which such suppliers do not ordinarily pay or allow to jobber customers. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing discounts, allowances, or rebates.

When and if a demand is acceded to by a particular supplier, the subsequent purchase transactions between said supplier and the individual jobber respondents have been and are billed to, and paid for through, the aforesaid organizational device of respondent SWDI. Said corporate organization thus purports to be the purchaser when in truth and in fact it has been and is now serving only as agent for the several respondent jobbers and as a mere bookkeeping device for facilitating the inducement and receipt by the afore-described respondent jobbers of the price discriminations concerned.

PAR. 6. Respondents have induced or received from their suppliers, in the manner afore-described, favorable prices, discounts, allowances, rebates, terms and conditions of sale which they knew or should have known constituted discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 7. The effect of the knowing inducement or receipt by respondents of the discriminations in price as above alleged has been and may be substantially to lessen, injure, destroy, or prevent competition between suppliers of automotive products and supplies and between respondent jobbers and independent jobbers.

PAR. 8. The foregoing alleged acts and practices of respondents in knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, are in violation of subsection (f) of Section 2 of said Act.

Mr. Eldon P. Schrup, *Mr. Lars E. Janson* and *Mr. John Perechinsky*, supporting the complaint.

Howrey, Simon, Baker & Murchison by *Mr. David C. Murchison* of Washington, D. C., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 9, 1959, charging that respondents knowingly induced or received discriminations in net prices of numerous automative products and supplies purchased from various suppliers in violation of subsection (f) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

On June 21, 1960, there was submitted to the undersigned hearing examiner agreements between the above-named respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the terms of the agreements, 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 documents include a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreements further recite that they are for settlement purposes only and do not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

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

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

1. Respondent Southwestern Warehouse Distributors, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 9008 Sovereign Row, Dallas, Tex.

2. Respondent Aicklen Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of Louisiana, with its office and principal place of business located at 748 Baronne Street, New Orleans, La.

3. Respondent Paul Dickinson is a sole proprietor doing business under the firm name and style of Auto Electric Sales & Service Company, with his office and principal place of business located at 521 West Main Street, Ardmore, Okla.

4. Respondents James N. Fomby, Sr., James N. Fomby, Jr., and Ray S. Fomby are copartners doing business under the firm name and style of Automotive Supply Company, a partnership with their office and principal place of business located at 219 Tenth Street, Alexandria, La.

5. Respondents D. L. Naylor and Mrs. A. D. Tennyson are copartners doing business under the firm name and style of Auto Spring & Supply Company, a partnership with their office and principal place of business located at 500 Ohio Avenue, Wichita Falls, Tex.

6. Respondent Kirby K. Kennedy is a sole proprietor doing business under the firm name and style of Capital Auto Supply Company, with his office and principal place of business located at 333 Hancock Street, Santa Fe, N. Mex.

7. Respondent Car Parts Depot, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 211 N. Cotton Street, El Paso, Tex.

8. Respondent Chester A. Latcham, Jr. is a sole proprietor doing business under the firm name and style of Colorado Jobbers Supply Company, with his office and principal place of business located at 875 Broadway Street, Denver, Colo.

9. Respondent Combs Automotive Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 104 Military Street, Dodge City, Kans.

10. Respondent Guinn C. Cross is a sole proprietor doing business under the firm name and style of Cross-Allen Company, with his office and principal place of business located at 310 E. 4th Street, Austin, Tex.

11. Respondent Five-Fifty-Five, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 711 W. 8th Street, Little Rock, Ark.

12. Respondent Hanna-Gray Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 55 South 9th Street, Fort Smith, Ark.

13. Respondents Mrs. Blanche Jarvis, Jack B. Jarvis, Robert H. Jarvis and Lawrence F. Jarvis are copartners doing business under the firm name and style of Jarvis Auto Supply, a partnership with their office and principal place of business located at 701 Main Street, Winfield, Kans.

14. Respondent Johnson Bros. Auto Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 117 S. St. Francis Street, Wichita, Kans.

15. Respondent Lake Auto Parts, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 1103 Ryan Street, Lake Charles, La.

16. Respondents J. C. Landers, Sr., J. C. Landers, Jr., and Jack M. Landers are copartners doing business under the firm name and style of Landers, a partnership with their office and principal place of business located at 63 N. Chadbourne Street, San Angelo, Tex.

17. Respondent Harry Lane Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 322 N. Ash Street, McPherson, Kans.

18. Respondent Joseph F. Meyer Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 802 Franklin Street, Houston, Tex.

19. Respondent Motor Equipment, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Mexico, with its office and principal place of business located at 100 Marquette Avenue N. E., Albuquerque, N. Mex.

20. Respondent Mountjoy Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 512 Fifth Street, San Antonio, Tex.

21. Respondent The Jno. Muller Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 301 Taylor Street, Fort Worth, Tex.

22. Respondent Nash & Cotton, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1818 Avenue C, Galveston, Tex.

23. Respondent Neumeyer Motor Parts, Inc., is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of Texas, with its office and principal place of business located at 1602 Milam Street, Houston, Tex.

24. Respondent Joe Owens is a sole proprietor doing business under the firm name and style of Owens Supply Company, with his office and principal place of business located at 701 N. Independence Street, Enid, Okla.

25. Respondent Arthur J. Reynolds is a sole proprietor doing business under the firm name and style of Reynolds Automotive Supply, with his office and principal place of business located at 516 W. 6th Street, Texarkana, Tex.

26. Respondent Rigney Auto Parts, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1402 Texas Avenue, Lubbock, Tex.

27. Respondent Robertson & King Motor Supply, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1845 Levee Street, Dallas, Tex.

28. Respondent 688 Parts Service, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 1440 Government Street, Baton Rouge, La.

29. Respondent Smyth Auto Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 206 Taylor Street, Amarillo, Tex.

30. Respondent Carl Fred Winston is a sole proprietor doing business under the firm name and style of Standard Auto Parts, with his office and principal place of business located at 209 E. First Street, Alice, Tex.

31. Respondent Standard Motor Supply, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business loacted at 1021 S. Cincinnati Street, Tulsa, Okla.

32. Respondents John R. Terry, Floyd H. Terry and John Kenneth Terry are copartners doing business under the firm name and style of Terry Automotive Supply, a partnership, with their office and principle place of business located at 101 N. Marsalis Street, Dallas, Tex.

33. Respondent H. J. Van Hook, Sr., is a sole proprietor doing business under the firm name and style of Van's Auto Supply, with

his office and principal place of business located at 212 S. W. 29th Street, Oklahoma City, Okla.

34. Respondents Mrs. Camille Webb Ward, Joe L. Ward, Jr. and Sam Webb Ward are copartners doing business under the firm name and style of Joe L. Ward Company, Ltd., a partnership with their office and principal place of business located at 313 Washington Street, Waco, Tex.

The complaint against respondent Beaumont Auto Parts, Inc., a corporation, was dismissed by the hearing examiner's order of May 26, 1960.

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 Southwestern Warehouse Distributors, Inc., a corporation; Aickley Supply Company, Inc., a corporation; Paul Dickinson, doing business under the firm name and style of Auto Electric Sales & Service Company, a sole proprietorship; James N. Fomby, Sr., James N. Fomby, Jr., and Ray S. Fomby, copartners doing business under the firm name and style of Automotive Supply Company; D. L. Naylor and Mrs. A. D. Tennyson, copartners doing business under the firm name and style of Auto Spring & Supply Company; Kirby K. Kennedy doing business under the firm name and style of Capital Auto Supply Company, a sole proprietorship; Car Parts Depot, Inc., a corporation; Chester A. Latcham, Jr., doing business under the firm name and style of Colorado Jobbers Supply Company, a sole proprietorship; Combs Automotive Co., Inc., a corporation; Guinn C. Cross, doing business under the firm name and style of Cross-Allen Company, a sole proprietorship; Five-Fifty-Five, Inc., a corporation; Hanna-Gray Company, Inc., a corporation; Mrs. Blanche Jarvis, Jack B. Jarvis, Robert H. Jarvis, and Lawrence F. Jarvis, copartners doing business under the firm name and style of Jarvis Auto Supply; Johnson Bros. Auto Supply Company, Inc., a corporation; Lake Auto Parts, Inc., a corporation; J. C. Landers, Sr., J. C. Landers, Jr., and Jack M. Landers, copartners doing business under the firm name and style of Landers; Harry Lane Supply Company, Inc., a corporation; Joseph F. Meyer Company, Inc., a corporation; Mountjoy Company, Inc., a corporation; The Jno. Muller Company, a corporation; Nash & Cotton, Inc., a corporation; Neumeyer Motor Parts, Inc., a corporation; Joe Owens, doing business under the firm name and style of

Owens Supply Company, a sole proprietorship; Arthur J. Reynolds, doing business under the firm name and style of Reynolds Automotive Supply, a sole proprietorship; Rigney Auto Parts, Inc., a corporation; Robertson & King Motor Supply, Inc., a corporation; 688 Parts Service, Inc., a corporation; Smyth Auto Supply Company, Inc., a corporation; Carl Fred Winston, doing business under the firm name and style of Standard Auto Parts, a sole proprietorship; Standard Motor Supply, Inc., a corporation; John R. Terry, Floyd H. Terry, and John Kenneth Terry, copartners doing business under the firm name and style of Terry Automotive Supply; H. J. Van Hook, Sr., doing business under the firm name and style of Van's Auto Supply, a sole proprietorship; and Mrs. Camille Webb Ward, Joe L. Ward, Jr., and Sam Webb Ward, copartners doing business under the firm name and style of Joe L. Ward Company, Ltd.; and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering to purchase or purchase of any automotive products or supplies in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Knowingly inducing or knowingly receiving or accepting any discrimination in the price of such products and supplies, by directly or ndirectly inducing, receiving, or accepting from any seller a net price known by respondents to be below the net price at which said products and supplies of like grade and quality are being sold by such seller to other customers, where the seller is competing with any other seller for respondents' business, or where respondents are competing with other customers of the seller.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are affected.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of September, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents ordered to cease and desist in the initial decision 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 compiled with the order to cease and desist.

Complaint

IN THE MATTER OF

SUE RECORDS, INC., ET AL.

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

Docket 7894. Complaint, May 20, 1960—Decision, Sept. 14, 1960

Consent order requiring a New York City manufacturer of phonograph records to cease giving concealed payola to disc jockeys and other personnel of radio and television musical programs to induce frequent playing of its records in order to increase sales.

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 Sue Records, Inc., a corporation, and Henry Murray, Jr., individually and as an officer of said corporation, 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 Sue Records, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 725 Riverside Drive, in the city of New York, State of New York.

Respondent Henry Murray, Jr. is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture and distribution, offering for sale, and sale, of phonograph records to distributors.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said records, when sold, to be shipped from one state of the United States to purchasers thereof located in various other States to the United States, and maintain, and at all times mentioned herein have maintained, a course of trade in said phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in competition, in

commerce, with corporations, firms and individuals in the sale of phonograph records.

PAR. 5. After World War II when TV and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately $400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as 6 to 10 times a day, substantially increase the sales of those records so "exposed." Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and TV programs.

"Payola," among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and TV stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication, represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 6. In the course and conduct of their business, in commerce, during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone or with certain unnamed record distributors negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents by participating individually or in a joint effort with certain collaborating record distributors have aided and abet-

ted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selection of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they might otherwise not have purchased and also to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 7. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the manufacture, sale or distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. Harold Kennedy and *Mr. Arthur Wolter, Jr.*, supporting the complaint.

Mr. M. Warren Troob, of New York, N.Y., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

The complaint in this proceeding was issued by the Federal Trade Commission on May 20, 1960, charging the respondents with engaging in unfair and deceptive acts and practices, and unfair methods of competition in violation of the Federal Trade Commission Act, by negotiating for and disbursing "payola" to disk jockeys broadcasting musical programs over radio and television stations across State lines, or to personnel who influence the selection of the records "exposed" by the disk jockeys on such programs, without disclosing such facts; by participating individually or in a joint effort with certain collaborating record distributors so as to aid and

abet the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel who select or participate in the selection of the records used on such broadcasts. A true and correct copy of the original complaint was duly served upon the respondents and each and all of them as required by law. Thereafter respondents appeared by counsel and entered into an agreement to dispose of this proceeding without a formal hearing. The agreement dated July 15, 1960, contains, inter alia, a consent order to cease and desist, and it has been represented to the undersigned hearing examiner that the agreement is dispositive of all of the issues raised by the original complaint.

The aforementioned agreement containing consent order to cease and desist dated July 15, 1960, was received by the hearing examiner on July 22, 1960. It has been signed by the respondents, and their counsel, and by counsel supporting the complaint. The agreement has also been approved by the Assistant Director, the Associate Director, and the Director of the Bureau of Litigation of the Federal Trade Commission. The agreement has been submitted to the hearing examiner in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents pursuant to the aforesaid agreement have admitted all the jurisdictional facts alleged in the complaint and have agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. The agreement provides that it disposes of all of this proceeding as to all parties. In the agreement respondents waive: (a) any further procedural steps before the hearing examiner and the Commission: (b) the making of findings of fact or conclusions of law: and (c) all of the rights that they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. When entered such order would have the same force and effect as if entered after a full hearing. The agreement provides that such 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 shall not become part of the official record unless and until it becomes part of the decision of the Commission; 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; and that the 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 aforesaid agreement of July 15, 1960, containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint, and provides for an appropriate disposition of this proceeding as to all parties, the agreement of July 15, 1960, is hereby accepted and ordered filed at the same time this decision becomes the decision of the Federal Trade Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. 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 Sue Records, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 725 Riverside Drive, in the city of New York, State of New York.

3. Respondent Henry Murray, Jr., is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent.

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

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

It is ordered, That respondents Sue Records, Inc., a corporation, and its officers, and Henry Murray, Jr., individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly, or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such

records in which respondents, or either of them have a financial interest of any nature.

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of September 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

MURRAY B. LEPIE DOING BUSINESS AS KENMORE OPTICAL COMPANY

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

Docket 7952. Complaint, June 16, 1960—Decision, Sept. 14, 1960

Consent order requiring a Boston, Mass., manufacturer of corneal contact lenses to cease representing falsely in advertising that all persons could successfully wear his "Circle-Aire" contact lenses, that the lenses would correct all defects in vision, and that eyeglasses could be discarded upon purchase thereof.

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 Murray B. Lepie, individually and trading and doing business as Kenmore Optical Company, has violated the provisions of the 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. Murray B. Lepie is an individual trading and doing business under the name of Kenmore Optical Company with his principal place of business located at 491 Commonwealth Avenue, Boston, Mass.

PAR. 2. Respondent is now and for some years last past has been engaged in the manufacture and sale of corneal contact lenses, certain of said corneal contact lenses being sold under the name of "Circle-Aire" contact lenses. Corneal contact lenses are devices designed to correct errors and deficiencies in the vision of the wearer, and are devices as "device" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of his aforesaid business respondent has disseminated, and has caused the dissemination of, advertisements concerning his said device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements inserted in newspapers of general circulation, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said devices; and respondent has also disseminated, and caused dissemination of, advertisements concerning his said devices by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of his said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

You can wear "Circle-Aire" Contact Lenses . . . yes, no matter what your present vision problems.

* * *

A brighter outlook when you change to CIRCLE-AIRE CONTACT LENSES . . . A whole brighter outlook, new living, new freedom from eyeglasses.

PAR. 4. By and through the statements made in said advertisements disseminated and caused to be disseminated, as aforesaid, respondent represented directly or by implication that:

1. All persons in need of visual correction can successfully wear respondent's contact lenses;

2. Said lenses will correct all defects in vision;

3. Eyeglasses can be discarded upon the purchase of respondent's contact lenses.

PAR. 5. The advertisements containing the aforesaid statements and representations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. A significant number of persons cannot successfully wear respondent's contact lenses;

2. Said lenses will not correct all defects in vision;

3. Eyeglasses cannot always be discarded upon the purchase of respondent's contact lenses.

PAR. 6. The dissemination by the respondent, as aforesaid, of said false advertisements constitutes unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Garland S. Ferguson supporting the complaint.

Respondent, *pro se.*

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on June 16, 1960, charging him with the use of unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act, by falsely advertising certain contact lenses manufactured and sold by him. After being served with said complaint, respondent appeared and entered into an agreement dated July 15, 1960, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by respondent and by counsel supporting the complaint, and approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been

duly made in accordance with such allegations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Section 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Murray B. Lepie is an individual trading and doing business as Kenmore Optical Company, with his principal place of business located at 491 Commonwealth Avenue, Boston, Mass.

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

ORDER

It is ordered, That respondent Murray B. Lepie, individually and trading and doing business as Kenmore Optical Company, or trading under any other name, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale of contact lenses known as "Circle-Aire" or any other contact lens of substantially the same construction, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce,

as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

(a) That all persons in need of visual correction can successfully wear their contact lenses.

(b) That said contact lenses will correct all defects in vision.

(c) That eyeglasses can be discarded upon the purchase of said lenses.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of September 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

SHAMROCK FOODS, INC., ET AL.

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

Docket 7576. Complaint, Sept. 1, 1959—Decision, Sept. 16, 1960

Consent order requiring a large wholesale distributor of canned and packaged food and a brokerage firm, with their common president and owner, to cease violating Sec. 2(c) of the Clayton Act by receiving and accepting from various suppliers illegal brokerage, consisting of a percentage of the net sales price, on substantial purchases for their own account.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated 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. Respondent Shamrock Foods, Inc., hereinafter sometimes referred to as the buyer respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1611 Chicago Avenue, Evanston, Ill. Said buyer respondent has been for the past several years, and is now, engaged in business as a wholesale distributor of canned and packaged food products, purchasing from a number of suppliers located in various other States of the United States and reselling said food products under its own brands to customers, many of whom are likewise located in other states. Respondent is a substantial factor in the canned and packaged food field, with a sales volume in excess of $1,000,000 annually.

PAR. 2. Respondent Food Guild Corporation, hereinafter sometimes referred to as the broker respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1611 Chicago Avenue, Evanston, Ill. Said broker respondent is a brokerage firm utilized primarily by the buyer respondent as an intermediary through which said buyer respondent purchases for resale a substantial quantity of its food products from its suppliers located in various other states.

PAR. 3. Respondent Robert M. Buchanan is an individual and is president and sole stockholder of both the buyer and the broker respondents named herein, with his principal office and place of business the same as that of the buyer and broker respondents. As president and sole stockholder of both the buyer and broker respondents, he exercises authority and control over all of the buyer and the broker respondents' business operations, including their purchase, sales and distribution policies.

PAR. 4. In the course and conduct of their business for the past several years respondents, both corporate and individual, have purchased, and are now purchasing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act from sellers located in several States of the United States other than the State in which respondents are located, and have resold substantial quantities of said food products to customers likewise located in states other than the State in which respondents are located. Said respondents transport or cause such food products, when purchased or resold, to be transported from the places of business of their re-

spective suppliers, or sellers, to their own place of business, or to the places of business of respondents' customers located in various other States of the United States. Thus, there has been at all times mentioned herein a continuous course of trade in commerce, in said food products, across state lines between respondents and their suppliers or sellers, and also between respondents and their customers or buyers of said food products.

PAR. 5. In the course and conduct of their business in commerce, as aforesaid, the buyer respondent has made, and is now making, substantial purchases of food products for its own account through the said broker respondent from various suppliers or sellers on which purchases the respondents, both corporate and individual, have received and accepted, and are now receiving and accepting, directly or indirectly, something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, from said sellers or suppliers. These rates of commissions, brokerage fees, or allowances or discounts in lieu thereof, received by respondents as hereinabove alleged and described, were a certain percentage of the net sales price of the food products as agreed upon between the respondents, and each of them, and the sellers of said food products.

PAR. 6. The acts and practices of the buyer respondent and the individual respondent in making substantial purchases through the broker respondent where both the buyer and the broker respondents were and are owned and controlled by the individual respondent, as hereinabove alleged and described, and the receipt of commissions, brokerage fees, or allowances or discounts in lieu thereof, by respondents, both corporate and individual, on said purchases, as alleged herein, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. Martin F. Connor supporting the complaint.

Whyte, Hirschboeck, Minahan, Harding & Harland by *Mr. Robert P. Harland* of Milwaukee, Wis., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on September 1, 1959 charging them with receipt of commissions, brokerage fees, or allowances or discounts in lieu thereof, in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

On July 5, 1960 there was submitted to the undersigned hearing examiner an agreement between respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

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

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

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

1. Respondent Shamrock Foods, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1611 Chicago Avenue, Evanston, Ill.

2. Respondent Food Guild Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1611 Chicago Avenue, Evanston, Ill.

3. Respondent Robert M. Buchanan is an individual and is president of Shamrock Foods, Inc., and Food Guild Corporation and his address is 1611 Chicago Avenue, Evanston, Ill.

4. 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, Shamrock Foods, Inc., a corporation, and its officers, and Robert M. Buchanan, individually and

as an officer of respondent Shamrock Foods, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of food products or other commodities in commerce, as "commerce" is defined in the 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 the purchase of food products or other commodities for the account of Shamrock Foods, Inc., or Robert M. Buchanan.

It is further ordered, That respondents, Food Guild Corporation, a corporation, and its officers, and Robert M. Buchanan, individually and as an officer of respondent Food Guild Corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of food products or other commodities in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. 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 the purchase of food products or other commodities for the account of Food Guild Corporation, Shamrock Foods, Inc., or Robert M. Buchanan;

2. 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 the purchase of food products or other commodities by or for the account of any buyer, where said respondents, or either of them, are acting for or in behalf of such buyer as intermediaries, agents, or representatives, or are subject to the direct or indirect control of such 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 16th day of September 1960, become the decision of the Commission; and, accordingly:

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