It is ordered, That the fourth numbered paragraph contained in the second section of the initial decision's order to cease and desist be, and it hereby is, modified to read as follows:

"Entering into, continuing or enforcing, or threatening to enforce, any agreement or understanding which in any manner restricts or limits respondents' terminated distributors or customers from selling products like or similar to respondents' products to any other prospective purchaser or which in any manner restricts said distributors or customers from using or disclosing the names of their own customers for promoting the distribution of products other than respondents' products."

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

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

Commissioner Tait concurring in the result.

IN THE MATTER OF

HIT-RECORD DISTRIBUTING COMPANY OF CINCINNATI ET AL.

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

Docket 7897. Complaint, May 20, 1960—Decision, Sept. 28, 1960

Consent order requiring a distributor of phonograph records in Cincinnati, Ohio, to cease giving concealed payola to disc jockeys or other personnel of radio and television programs to induce frequent playing of their 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 Hit-Record Distributing Company of Cincinnati, a corporation, and Isadore Nathan, 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 Hit-Record Distributing Company of Cincinnati is a corporation organized, existing and doing business

under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 3414 Colerain Avenue, in the city of Cincinnati, State of Ohio.

Respondent Isadore Nathan 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 various retail outlets.

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 distribtuors 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.

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

Mr. Earl J. Goldsmith, Jr., of Cincinnati, Ohio, for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the distribution, offering for sale, and sale of phonograph records to various retail outlets, 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 motive the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

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

The agreement states that respondent Hit-Record Distributing Company of Cincinnati is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 3414 Colerain Avenue, Cincinnati, Ohio; and that respondent Isadore Nathan is an officer of said corporate respondent and formulates, directs and controls the acts and practices of the corporate respondent, his address being the same as that of said corporate respondent.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the

manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

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

The hearing examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

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

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

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

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in considera-

tion 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 28th day of September 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

MERLE SCHNEIDER ET AL. DOING BUSINESS AS S AND S DISTRIBUTING COMPANY

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

Docket 7899. Complaint, May 20, 1960—Decision, Sept. 28, 1960

Consent order requiring distributors of phonograph records in Detroit, Mich., to cease giving concealed payola to disc jockeys or other personnel of radio and television programs to induce frequent playing of their 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 Merle Schneider and John Shepherd, individually and as copartners, trading and doing business as S and S Distributing 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. Individual responding Merle Schneider and John Shepherd are copartners, trading and doing business as S and S Distributing Company, with their office and principal place of busi-

ness located at 3957 Woodward Avenue, in the city of Detroit, State of Michigan.

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 various retail outlets, and jukebox operators.

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 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.

Mr. Everett M. Behrendt, of Detroit, Mich., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

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

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

The agreement states that individual respondents Merle Schneider and John Shepherd are copartners, trading and doing business as S and S Distributing Company, with their office and principal place of business located at 3957 Woodward Avenue, Detroit, Mich.

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 herein-

after included in this decision shall have the same force and effect as if entered after a full hearing.

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

The hearing examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered, That respondents Merle Schneider and John Shepherd, individually and as copartners, trading and doing business as S and S Distributing Company, or under any other name, 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 records 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 28th day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Merle Schneider and John Shepherd, individually and as copartners, trading and doing business as S AND S Distributing Company, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

NOEL C. GENEVAY, JR., TRADING AS CONTACT LENS SPECIALISTS

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

Docket 7957. Complaint, June 16, 1960—Decision, Sept. 28, 1960

Consent order requiring a retail seller of "Air Comfort" contact lenses in New Orleans, La., to cease advertising falsely in newspapers, circulars, etc., that all persons could successfully wear his said contact lenses, and with complete comfort; that the lenses were unbreakable, protected the entire eye, and would correct all defects in vision including all cases requiring bifocals.

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 Noel C. Genevay, Jr., an individual, trading under the name of Contact Lens Specialists, hereinafter referred to as the 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 Noel C. Genevay, Jr. is an individual, trading as Contact Lens Specialists, with an office located at 146 Carondelet Street, in the city of New Orleans, State of Louisiana.

PAR. 2. The respondent is now, and for some time last past has been, engaged in the sale to the public of corneal contact lenses

known as "Air Comfort". 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.

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 and by means of circulars and pamphlets, for the purpose of inducing, and which were likely to induce, the purchase of the said devices; and the respondent has also disseminated, and caused the dissemination of, advertisements concerning his said products by various means, including but not restricted to the aforesaid media, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical, but not all inclusive, of the statements contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Through new design, persons whose imperfect vision calls for the frequent wearing of glasses can wear these tiny air comfort ventilated contact lenses easily and comfortably . . .

. . . wear contact lenses with confidence and assurance . . . from the time they get up until retiring, . . . and without discomfort under any and all conditions.

. . . wear contact lenses with complete freedom, comfort, and safety.

Now available in bifocals . . . as well as single vision.

. . . These fluidless lenses actually become a protective covering for the eye.

. . . nor need you fear breakage.

PAR. 4. By and through the statements made in said advertisements, and others of similar impact not specifically set out herein, respondent represents, and has represented, directly and by implication, that:

1. All persons in need of visual correction can successfully wear his contact lenses.

2. His contact lenses will correct all defects of vision.

3. There is no discomfort in wearing his contact lenses.

4. Said contact lenses can be worn all day in complete comfort.

5. Said contact lenses will correct defects in vision in all cases requiring bifocal lenses.

6. Said contact lenses protect the eye.

7. Said contact lenses are unbreakable.

PAR. 5. The advertisements containing the aforesaid statements are misleading in material respects and constitute "false advertise-

ment", as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. A significant number of persons in need of visual correction cannot successfully wear respondent's contact lenses.

2. Respondent's contact lenses will not correct all defects of vision.

3. Practically all persons will experience some discomfort when first wearing respondent's lenses. In a significant number of cases discomfort will be prolonged and in some cases will never be overcome.

4. Many persons cannot wear respondent's contact lenses all day without discomfort and no person can wear said lenses all day in complete comfort until he or she becomes fully adjusted thereto.

5. Said lenses will not correct defects in vision in all cases requiring bifocal lenses.

6. Said lenses protect only the small portion of the eye that is covered by them.

7. Said lenses are breakable.

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

Mr. Frederick McManus for the Commission.

Phelps, Dunbar, Marks, Claverie & Sims, by *Mr. Peter G. Burke*, of New Orleans, La., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on June 16, 1960, charging Respondent with violation of the Federal Trade Commission Act by the dissemination of false advertisements with respect to his corneal contact lenses, known as "Air Comfort".

Thereafter, on August 1, 1960, Respondent, his counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter, on August 10, 1960, submitted to the hearing examiner for consideration.

The agreement identifies Respondent Noel C. Genevay, Jr. as an individual, trading as Contact Lens Specialists, with an office located at 146 Carondelet Street, New Orleans, La.

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

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

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

It is ordered, That the respondent, Noel C. Genevay, Jr., trading under the name of Contact Lens Specialists, or any other name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of 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 or by implication, that:

(a) All persons can successfully wear his contact lenses;

(b) His contact lenses will correct all defects of vision;

(c) There is no discomfort in wearing his contact lenses;

(d) All persons can wear respondent's 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;

(e) Said contact lenses are an adequate substitute for bi-focal eyeglasses for all persons;

(f) Said contact lenses protect the eye unless limited to the small portion of the eye that is covered thereby;

(g) Said contact lenses are unbreakable;

2. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said 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 28th day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Noel C. Genevay, Jr., an individual, trading under the name of Contact Lens Specialists, 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

ARC DISTRIBUTING COMPANY, ET AL.

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

Docket 7959. Complaint, June 17, 1960—Decision, Sept. 28, 1960

Consent order requiring distributors of phonograph records in Detroit, Mich., to cease giving concealed payola to disc jockeys or other personnel of radio and television programs to induce frequent playing of their 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 ARC Distributing Company, a corporation, and Henry Droz and Ralph Jewell, 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 ARC Distributing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 40 Selden Avenue, in the City of Detroit, State of Michigan.

Respondents Henry Droz and Ralph Jewell are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

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 various retail outlets.

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 Michigan to northwestern Ohio, to purchasers thereof, 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 station 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 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.

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

Respondents, for themselves.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

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

After the issuance of the complaint, respondents 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 Acting Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent ARC Distributing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 40 Selden Avenue, Detroit, Mich., and that respondents Henry Droz and Ralph Jewell are officers of the corporate respondent and formulate, direct and control the acts and practices of the corporate respondent, their address being the same as that of the corporate respondent.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts

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

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

The hearing examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

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

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

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 28th day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents ARC Distributing Company, a corporation, and Henry Droz and Ralph Jewell, 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

ESTHER DOROTHY, INC., ET AL.

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

Docket 7985. Complaint, June 24, 1960—Decision, Sept. 28, 1960

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by advertising in the Wall Street Journal and otherwise which failed to disclose the names of animals producing the fur in certain fur products or that some products contained artificially colored fur; which represented prices as reduced from fictitious "regular" prices and used "formerly" prices without designating the time when such comparative prices were effective; and by failing to keep adequate records as a basis for such pricing claims.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Esther Dorothy, Inc., a corporation, and

Esther Dorothy Ruben and Sidney Ruben, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Esther Dorothy, 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 principal place of business located at 68 East 56th Street, New York, N.Y.

Esther Dorothy Ruben is president and treasurer of said corporation. Sidney Ruben is vice president of said corporation. These individuals control, direct and formulate the acts, practices and policies of the said corporate respondents. Their office and principal place of business is the same as that of the corporate respondent.

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

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

PAR. 4. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Wall Street Journal, a newspaper published in the city of New York, State of New York and having a wide circulation in said State and various other States of the United States.

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

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

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

(c) Represented prices of fur products as having been reduced from regular or usual prices where the so-called regular or usual prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by respondents in the recent regular course of business in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

(d) Used earlier comparative prices by referring to said prices as "formerly" prices, without designating the time at which said comparative prices were in effect in violation of Rule 44(b) of the aforesaid Rules and Regulations.

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

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

Mr. Charles S. Cox for the Commission.

Mr. Bernard Graber of *Zweibel & Graber*, of New York, N.Y., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act and the Fur Products

Labeling Act in connection with the sale, advertising and distribution in commerce of fur products.

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

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

1. Respondent Esther Dorothy, Inc. 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 68 East 56th Street, in the city of New York, State of New York.

Respondents Esther Dorothy Ruben and Sidney Ruben, are officers of the corporate respondent Esther Dorothy, Inc., and formulate, direct and control the acts and practices of corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

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

ORDER

It is ordered, That Esther Dorothy, Inc., a corporation, and its officers, and Esther Dorothy Ruben and Sidney Ruben, 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, manufacture for introduction, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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

A. Fails to disclose:

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

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

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

C. Bases comparative prices on former or original prices that are not the prevailing prices at the time of the advertisement without stating the times or dates of the compared prices.

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 28th 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

FRED BRONNER CORPORATION, ET AL.

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

Docket 7068. Complaint, Feb. 20, 1958—Order, Sept. 29, 1960

Order dismissing—lacking proof of substantial lessening of competition—complaint charging a toy importer in New York City with violating Sec. 2(a) of the Clayton Act by granting a discount of 3% off list price to some purchasers—members of March of Toys, Inc., a buying corporation for a group of toy jobbers and wholesalers—but not to others competing with them.

Mr. Lewis F. Depro and *Mr. Jerome Garfinkel* for the Commission.
Mr. Harry Katz, of New York, N. Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

The complaint herein was issued by the Commission on February 20, 1958, and charged that the respondents have violated section 2(a) of the Clayton Act, as amended. The complaint alleges that the respondents have been, and are now, discriminating in price between different purchasers of their toys by selling such toys to some purchasers at substantially higher prices than to other purchasers. Specifically, the complaint states that since 1954 a discount of three percent off the list price has been given to some purchasers but not to others, the favored purchasers being members of a corporation known as March of Toys, Inc., who are toy jobbers and wholesalers. The complaint further alleges that the discrimination in price was substantial and may have the effect of substantially lessening competition between respondents and their competitors, as well as between the favored and unfavored purchasers of respondents.

The respondents in their answer to the complaint admit that for a brief and inconsequential period after 1954, an allowance of three percent was made in some instances, but denied such allowance was

contrary to law. The answer set forth the following affirmative defenses:

1. The discounts in question were so trivial and insignificant that the effect was not such as may substantially lessen competition or tend to create a monopoly in any line of commerce.

2. Respondents voluntarily abandoned and discontinued the granting of the discount prior to the issuance of the complaint and have not resumed, nor do they intend to resume, the granting of such discount at any time in the future.

3. The discount made only due allowance for differences in cost.

4. The discount was granted in good faith and without any intention on the part of the respondents to violate any provision of law.

Hearings were held on April 14, June 15, and August 31, 1959, in New York, N. Y. Stipulations entered into by the counsel of the parties hereto setting forth what four proposed witnesses located at Philadelphia, Pa., three proposed witnesses located at Chicago, Ill., and two proposed witnesses from New York City would have testified to had they been called and used in support of the complaint eliminated the necessity of holding further hearings in New York City and hearings at Philadelphia and Chicago. Thereafter, Proposed Findings of Fact and Conclusions were filed by all counsel. There is little, if any, dispute between the parties as to the facts of the case, the questions are as to the conclusions derived therefrom.

The hearing examiner has given consideration to the proposed findings filed by the parties hereto, and all findings of fact and conclusions not hereinafter specifically found or concluded are herewith rejected.

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

FINDING OF FACTS

1. Fred Bronner Corporation is a corporation organized 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 251 Fourth Avenue, New York, N. Y. Since April 1, 1956, it has been engaged in the importation of toys from abroad and the sale thereof to wholesalers, jobbers and department stores located in various parts of the United States. The respondent Fred Bronner has been the sole owner of the stock, the president of the corporation since its inception, and has controlled the policies thereof during said period. Between April 1954 and April 1, 1956, Fred Bronner, as an indi-

vidual, engaged in the same type of business as the corporate respondent has conducted since April 1, 1956.

At the outset of his business in 1954, Mr. Bronner rented one room in New York City which served as both office and storage space. He had no employees, acted as his own salesman, did all the packaging and shipping, typed all invoices and kept his own records. During his absence from the office, his telephone messages were taken by a telephone answering service. Mr. Bronner hired his first employee, a secretary, in February 1955, and two or three months later he engaged a shipping clerk. Two more employees were added sometime in 1956, one more in November 1957, and two more in February 1959, making a total of seven employees.

At no time did respondents employ salesmen to sell their wares but have used independent sales representatives who are paid the standard commission of five percent. The total of sales made by independent sales representatives in 1954 and the greater part of 1955 was inconsequential. It was not until late in 1955 that Mr. Bronner started to organize an independent sales representative force, and by January 1956 he had five such representatives soliciting orders.

One of the first lines of toys imported by Mr. Bronner was the "Matchbox" series. This is a series of tiny metal miniatures of different kinds of vehicles, such as cars and trucks, which are enclosed in boxes resembling matchboxes. Other domestic concerns also import this line. The "Matchbox" series has represented by far the major part of the respondents' business since 1954. The respondents sold the "Matchbox" series to wholesale customers for $2.55 per dozen. Wholesalers sold these toys to retailers for $3.60 per dozen, which is a mark-up of approximately 40 percent. The toys retail for 49 cents each.

For the year 1954, Mr. Bronner's gross sales amounted to approximately $20,000 which increased to $200,000 in 1955, $350,000 in 1956 and $450,000 in 1957.

In the conduct of their business respondents have been in competition with other corporations, partnerships and individuals in the importation, sale and distribution of toys.

In the course and conduct of their business respondents have engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, having shipped their products from their places of business in the State of New York to purchasers located in other States.

In or about December 1954, respondent Fred Bronner entered into an arrangement with an association of toy wholesalers known as March of Toys, Inc., whereby Fred Bronner agreed to grant the members of said association a three percent discount upon all toy purchases made from said individual respondent. March of Toys is a buying organization for a group of wholesalers dealing in toy products, and its principal office is located in New York, N. Y. At the time the arrangement was made for the discount, the following concerns were members of the March of Toys:

	Name of Concern	*Location*
1[1]	Baltimore Products Company	Baltimore, Md.
2	Consolidated Athletic Supply Company	Detroit, Mich.
3	Federal Wholesale Company	Los Angeles, Calif.
4	General Novelty Company	Philadelphia, Pa.
5	Universal Merchandise Co. (now Gotham Industries, Inc.)	New Orleans, La.
6	Greenman Brothers	Mineola, N.Y.
7	Nesson Sales Co.	Norfolk, Va.
8	Rochester Stationery Co.	Rochester, N.Y.
9	Schwarz Paper Co.	Lincoln, Nebr.
10	M. Seller Co.	San Francisco, Calif.
11	Schrager Bros.	Pittsburgh, Pa.
12	Singerman & Wasserman	St. Louis, Mo.
13	Stratton & Terstegge	Louisville, Ky.
14	Thebault Olson Corp.	Chicago, Ill.
15	Thoreson Sales Co.	Dallas, Texas
16	Watson-Triangle Co.	Miami, Fla.
17	Fellows & Co.	Boston, Mass.
18	Harold Hahn Co.	New Haven, Conn.

[1] In tabulation hereinafter set forth, the number listed above to the left of the name of the concern will be used to identify the concern.

Following the aforementioned discount arrangement, Fred Bronner received orders from, and shipped his products to, various members of March of Toys, located in the State of New York and in other States. Upon such sales the respondents allowed a discount of three percent of the wholesale price, irrespective of the size of the order. On each invoice rendered by the respondents to such purchasers the discount was noted thereon. The corporate respondents after it came into existence in April 1956, allowed the three percent discount to four members of March of Toys.

The respondents' gross sales to members of March of Toys during the period when the three percent discount was allowed, the total discounts allowed to such members and the month and year of the last discount given, were as follows:

	1955		Last discount given	1956	
	Gross	3 Percent		Gross	3 Percent
1	$2,279.24	68.40	11/55	$2,113.20	
2				1,482.76	
3					
4	146.40	4.28	4/55		
5	284.40	8.53	2/55		
6	2,626.80	77.01	3/56	797.46	22.03
7	886.50	26.50	10/55	630.90	
8	1,031.49	23.61	10/55		
9	390.60	11.72	4/55		
10	378.80	9.53	2/55	112.20	
11				189.45	
12	574.78	12.98	10/55		
13					
14	5,719.62	171.53	9/56	524.67	11.87
15	492.30	14.77	10/56	1,106.25	27.53
16	4,282.40	127.54	10/56	5,407.58	70.00
17					
18	6,944.60	196.69	11/56	4,201.28	102.14
Total	26,037.93	753.14		16,565.75	233.57

In addition to the members of March of Toys, the respondents granted a three percent discount to Schranz & Bieber Co., a wholesaler located in New York City. The discount granted to Schranz & Bieber Co., amounted to $120.77 in 1955; $85.14 in 1956; $111.73 in 1957; and $40.67 in 1958; a total of $358.31.

All of the purchasers of respondents were allowed a discount of two percent on all invoices paid by the tenth day of the following month (2/10 E.O.M.). Excluding the members of March of Toys and Schranz & Bieber Co., no other purchaser of respondents was allowed the three percent discount or any other discount in lieu thereof. The toy products purchased from respondents by the customers who were allowed the three percent discount are of the same grade and quality as those purchased by other customers of respondents not receiving such allowance. In many instances, the dollar volume of purchases made by wholesalers not granted the three percent discount exceeded those made by members of March of Toys and Schranz & Bieber Co., who were receiving such allowances from respondents on purchases. Those wholesalers not receiving the three percent discount, purchased respondents' top products in the same manner as did those wholesalers who did receive the three percent discount.

Members of March of Toys who were allowed the three percent discount by respondents operated in the same areas and competed with other toy wholesalers who purchased from respondents but were not allowed the three percent discount by respondents. The record contains evidence of specific competition in the metropolitan areas of New York City, Philadelphia, Chicago and Baltimore between the favored and unfavored purchasers of respondents, but

inasmuch as there is no dispute on this point the details will not be related.

When the arrangement was made for the allowance of a three percent discount to March of Toys members, Fred Bronner did not know of the existence of a price discrimination statute and was unaware that the granting of the discount might involve a claim of violation of the statute. He did not become aware of the existence of a price discrimination statute until April 1956, when he was visited by an investigator representing the Commission. There is no merit to the asserted defense that the discount was granted in good faith and without any intention to violate any provision of the law. Ignorance of the law will not relieve one from, nor excuse him of, the consequences of his wrongful acts.

Although the respondents pleaded that the discount made only due allowance for difference in cost and there was some evidence that respondents did not have to pay the usual five percent commission in some instances on sales to the favored purchasers, no serious effort was made to assert this defense. Respondents did not keep any cost accounting records to determine specific or detailed operating costs.

To find a violation of section 2(a) of the Clayton Act, as amended, it must be established that the price discrimination by the respondents has the probable harmful effects, reading from the statute, "where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition." A price discrimination is not alone sufficient to constitute a violation of the act. The evil results at which the statute is directed are the possibility of a substantial lessening of competition, the tendency to create a monopoly, or the injury, destruction or prevention of competition. Therefore, the acts of the respondents, must not only amount to a price discrimination, but the price discrimination must be sufficient to constitute the evil which the law seeks to prevent.

There is no evidence in the record to establish that there has been an actual, substantial lessening of competition, injury, or that a degree of monopoly has been created by the acts of the respondents.

It is therefore necessary to make a determination from the evidence whether, or not, the price discrimination by the respondents has the probable harmful effect, "may substantially lessen competition." The word "substantially" does indicate that a reasonable possibility of lessening competition must exist. It must not be imaginary or illusive, but it must constitute a reasonable possibility that competition may be lessened. To make such a determination

some of the factors to consider are the amount of the discrimination, the size of respondents, their economic power and their position in the toy industry.

In *Whitaker Cable Corp.* v. *Federal Trade Commission*, 239 F. 2d 253 (7th Cir. 1956), certiorari denied 353 U.S. 938 (1957) the Court stated (at p. 256):

> Petitioner's relative position in the industry standing alone is, of course, of no particular significance, but in so far as it reflects relative size, this is a material factor which the Commission should consider. Congress has not outlawed price differentials *per se*, unjustified though they may be. The Act was not intended to reach every remote, adverse effect on competition. The effect must be substantial. See *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U.S. 346, 357, 42 S. Ct. 360, 66 L. Ed. 653; *Standard Oil Co. of Cal. & Standard Stations* v. *United States*, 337 U.S. 293, 69 S. Ct. 1051, 93 L. Ed. 1371; *Minneapolis-Honeywell Regulator Co.* v. *Federal Trade Commission*, 7 Cir. 191 F. 2d 786, at page 790, certiorari dismissed 344 U.S. 206, 73 S. Ct. 245, 97 L. Ed. 245, "And we construe the Act to require substantial, not trivial or sporadic, interference with competition to establish violation of its mandate." If the discrimination complained of does not, cannot and will not have the defined effect of injury to or substantial lessening of competition, or tendency to create a monopoly, the Act has not been violated and the Commission is without authority to prohibit such discrimination. *Anchor Serum Co.* v. *Federal Trade Commission*, 7 Cir., 217 F. 2d 867. This is implicit in the very language employed by the Act. Any other construction would turn the Act into price control law contrary to its manifest purpose. We do not mean to suggest that the Act may be violated a little without fear of its sanctions but rather that insignificant "violations" are not, in fact or in law, violations as defined by the Act. *If the amount of the discrimination is inconsequential or if the size of the discriminator is such that it strains credulity to find the requisite adverse effect on competition, the Commission is powerless under the Act to prohibit such discriminations whether first line or second line competition be involved.* [Emphasis added.]

In 1954, his first year in business, the gross sales of Fred Bronner totalled approximately $20,000 and during that period no special discount was allowed. In 1955 the gross sales totalled $200,000. During said year 11 of the 18 members of March of Toys made purchases totalling $26,037.93 and each member was allowed the three percent discount totalling $753.14. In 1956 the gross sales totalled $350,000. During that year ten members made purchases totalling $16,565.75 and five members were allowed discounts totalling $233.57.

Other than what has been related, there was no evidence to show the importance or the substantiality of respondents' sales in the toy market. Government reports disclose that in 1956 the value of shipments by domestic toy manufacturers amounted to $469,000,000 (*Annual Survey of Manufacturers*, U. S. Department of Commerce, 1956) while top imports during the same year amounted to

$39,000,000 at the importer's value (*Statistical Abstract of the United States*, U. S. Department of Commerce, 1957). Toy sales at wholesale in 1956 were therefore in excess of $500,000,000.

It also appears from the record that the discount had no apparent effect upon competition for it did not induce members of March of Toys to continue to purchase respondents' line, nor did it deter other wholesalers from doing business with respondents. Sales to non-March of Toys members increased substantially as sales of March of Toys members fell.

It is found that the evidence of record in this proceeding is not sufficient to warrant the reasonable and logical inference therefrom that the price discrimination was such that it might lessen competition, or tend to create a monopoly or to injure, destroy or prevent competition with the respondents, or with any person who received the discount or with customers of either of them.

Late in 1955, within a year after the discount was first allowed, the respondent Fred Bronner of his own volition began to discontinue it. At that time he did acquire sales representation in various parts of the country and his selling agents were paid a commission on all sales effected in their respective territories, including sales made to members of March of Toys. About the end of 1955 Mr. Bronner went to the representatives of March of Toys, the one with whom he had made the arrangement for the discount allowance, and told him he could no longer continue to give the three percent discount and give the salesmen five percent commission in addition. The abandonment of the discount was not related to the investigation and was undertaken before the respondents were aware of the investigation. Respondents have unconditionally pledged never to resume the discount. The discounts were not discontinued at one time. Mr. Bronner explains this as follows: "It was just—perhaps I did not act like a firm the size of General Electric would do, as of January 1st there will be no discounts. I was a small man and I went about it the way a small man would. I spoke to Mr. Lang and told him I would discontinue the discount, and with individual members I started to discontinue giving them a discount."

As shown in a tabulation, hereinbefore set forth, five March of Toys customers of respondents received discounts during the year 1956. The last discount allowed to such members was in November 1956, and it has never been allowed since that time. There were two March of Toys customers who made purchases during the year 1956 but did not make any purchases in 1955. They were not allowed the three percent discount which would indicate that respondents had started to put into effect the program for a discontinuance of the discount.

As primarily pointed out the respondents favored one customer who was not a member of March of Toys, with the three percent discount. Fred Bronner testified, when used as a witness in support of the complaint, that only March of Toys customers had been granted the discount. At a subsequent hearing when Mr. Bronner was putting in his defense he corrected this statement when he testified that he had checked his records and found that he had granted Schranz & Bieber Co. a three percent allowance from 1955 to January 24, 1958, when the last allowance was given them. In explanation Mr. Bronner had this to say: "In connection with this, the reason why this discount, this allowance was continued so long, I really tried to find out for myself why it was done. I only discovered it now, without being aware of it, honestly, but this is actually what happened, and this is the only explanation I have."

The record shows that respondents cooperated to the fullest extent in the course of the investigation, withholding no information and making freely available to the investigator all records and information requested. In his appearances at the hearings Fred Bronner gave the definite impression of being honest and frank and it is the opinion of the hearing examiner that he has the desire to respect the law and he would not have knowingly violated the law. Considering all the circumstances of the case it would appear that respondents have voluntarily discontinued all of the practices involved in the complaint, that a resumption of those practices is not likely, and that everything that could be accomplished by a cease and desist order has already been accomplished.

CONCLUSIONS

1. In the course and conduct of their business in commerce, respondents for a period of time allowed certain of their purchasers a three percent price discount which was not offered or allowed other purchasers of respondents competing with said favored purchasers.

2. The commodities purchased by the competing favored and unfavored purchasers of respondents were of like grade and quality.

3. Many of the purchases involved in the discrimination in price were in commerce, as "commerce" is defined in the Clayton Act, as amended. In addition, commodities of like grade and quality were shipped by respondents from their place of business in New York State to competing favored and unfavored customers located in various other States of the United States.

4. There were no cost savings to the respondents with respect to their business operations which would have justified the difference in price to various purchasers.

5. The evidence was not sufficient to warrant the reasonable and logical inference therefrom that the price discrimination was such that it may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with respondents or the purchasers who received the benefit of such discrimination, or with the customers of either of them.

6. Respondents had initiated a program to discontinue the price discrimination before they became aware of the investigation by the Commission and abandoned and discontinued such discrimination to members of March of Toys more than sixteen months before the issuance of the complaint; respondents co-operated fully with the Commission in the course of the investigation, there is no likelihood of resumption of the discount and respondents unconditionally pledged never to resume the discount.

ORDER

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

OPINION OF THE COMMISSION

By KINTNER, *Chairman:*

The complaint herein charges respondents with violating Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act. Counsel supporting the complaint have appealed from the hearing examiner's ruling dismissing the complaint and from the findings and conclusions on which this ruling was based. Respondents have also appealed from the hearing examiner's conclusion that the price differences here involved were not cost justified.

There is no dispute that respondents, in the sale of imported toys, granted certain wholesale customers a 3% discount off the wholesale price, which discount was not granted to other wholesalers competing with these favored customers. The favored purchasers, with one exception, were members of a corporation known as March of Toys, Inc., which operated as a buying corporation for a group of toy wholesalers located throughout the country. The record discloses that respondents began giving this discount in December, 1954, and that the last discount given to a member of March of Toys was in November, 1956. The only customer receiving a discount who was not a member of March of Toys was a wholesaler located in New York City, who received the 3% off wholesale price for purchases made from 1955 through January, 1958.

The facts concerning respondents' gross sales to March of Toys members and the dollar amounts of the discounts are set forth in the tabulation on page 5 of the initial decision. In summary, these figures show total gross sales to members in the amount of $26,037.93 with a total discount of $753.14 in 1955 and corresponding amounts of $16,565.75 and $233.57 in 1956. The highest discount given to a single member in 1955 was $196.69 and the lowest amount was $4.28. In 1956, the highest amount was $102.14 and the lowest was $11.87. The favored wholesaler who was not a member of March of Toys received discounts totaling $120.77 in 1955; $85.14 in 1956; $111.73 in 1957, and $40.67 in 1958.

The individual respondent began importing and selling toys in April, 1954, and incorporated this business on April 1, 1956, with himself as president and sole owner of all the stock. The record contains no evidence as to the relative size of respondents in the toy industry during the period in which the discount was granted. However, the record discloses that respondents' gross toy sales were approximately $20,000; $200,000; $350,000; and $450,000, respectively, for the years 1954 through 1957.

Counsel supporting the complaint contend that the hearing examiner erred in his ruling that the evidence fails to establish that the effect of the price difference may be substantially to lessen competition between competing purchasers. The hearing examiner based this ruling principally on the statement by the court in *Whitaker Cable Corp.* v. *Federal Trade Commission*, 239 F. 2d 253, 256 (7th Cir. 1956), Cert. denied 353 U.S. 938, that

> If the amount of the discrimination is inconsequential or if the size of the discriminator is such that it strains credulity to find the requisite adverse effect on competition, the Commission is powerless under the Act to prohibit such discrimination whether first or second line competition be involved.

Since the court in that case sustained the Commission's finding that respondent was a major manufacturer in the industry there involved and that the amount of business done by respondent was substantial, the meaning of its statement is not entirely clear. The hearing examiner apparently interpreted the "amount of the discrimination" to mean the actual dollar amounts of the discount. However, it is contended by counsel supporting the complaint that the percentage rate of the discount should be the test for determining the probable effect on competition. They argue that the wording in the *Whitaker* case is not inconsistent with their position and point to the action of the same court in *E. Edelmann & Co.* v. *Federal Trade Commission*, 239 F. 2d 152 (7th Cir. 1956), Cert. denied 355 U.S. 941, which was decided on the same day. In that case, respondent

urged that the price discriminations and the profits derived therefrom by the favored purchasers were small or inconsequential and could only have negligible effects upon competition. Counsel supporting the complaint argue that the court in overruling this contention and sustaining the Commission's finding that the price differentials had the required adverse competitive effect, based its action on the percentage rate of the differential.

Regardless of whether the court in the *Whitaker* case meant the dollar amount or the percentage rate of the discount, it is our view that neither of these factors can be considered separate and apart from the other circumstances of record in determining whether a price discrimination has the proscribed adverse effects. As stated by the court in the *Whitaker* case, "Congress has not outlawed price differentials *per se*, unjustified though they may be." Either of the aforementioned factors must be viewed in the light of the actual competitive situation surrounding the particular pricing practice charged to be illegal. It is clear that this was done by the court in both the *Whitaker* and *Edelmann* cases. We turn therefore to a consideration of the competitive conditions of the market in this case as reflected by the record before us.

There is in the record a stipulation agreed to by counsel as to the testimony of eight toy wholesalers who purchased from respondents and who did not receive the 3% discount. Each stated that it is in competition with a member of March of Toys who is shown by the record to have been granted the 3% discount. Each testified that the 2% discount for cash allowed by respondents to all of their customers was deemed important to it and that it took advantage of cash discounts whenever offered, by others as well as respondents.

Two toy wholesalers were called as witnesses by counsel supporting the complaint. Both testified that they purchase from responednts, do not receive the 3% discount, and resell in competition with the wholesalers who do. Both stated that they take advantage of the 2% cash discount. One testified that his overall net profit ran between 2% and 5% and that a 3% discount would be definitely important to his business. During the years 1956 and 1957 the total sales of this wholesaler were from $700,000 to $950,000. It made no purchases from respondents in 1955 and in 1956 its purchases from respondents totaled $3,780.85. The other witness testified that his percentage of net profit ranges between 2% to 3% of gross sales. There is no evidence in the record as to this witness' annual sales volume. Its purchases from respondents totaled about $2,828.00 in 1955 and 1956. It is in competition with a favored member of March of Toys in 6% of its business.

The only testimony of record concerning the markup on respondents' toys is that of one of the wholesaler witnesses who testified on cross-examination that he buys from respondents at $2.55 a dozen and resells at $3.60 a dozen, a markup of about 41%. Moreover, the record contains no evidence as to the intensity of competition between the favored and nonfavored wholesalers or the competitive condition generally existing in the wholesale toy industry.

It is, of course, well settled that the importance of an allowance for cash to a purchaser and the purchaser's net profit margin are significant factors in determining the probable effect on competition and possible injury to that purchaser as a result of a price discrimination. However, in the automotive parts cases, relied on by counsel supporting the complaint,[1] there were additional factors pertinent to the price discriminations there involved which are not shown to exist in this case. Included among these factors was the unusually keen competition existing in the resale of the products and the small markups on individual products, in many cases not greatly exceeding the percentage of the cash discount allowed by the supplier. In addition, the percentage and dollar volume of the rebates ranged considerably higher than those in this proceeding. Furthermore, the testimony in the automotive parts cases as to the bearing of the cash discount on the purchasers' ability to compete was much more meaningful than the rather vague testimony offered herein.

On the basis of the record before us, we cannot conclude that the testimony concerning net profits and the importance of the cash discount would support a finding that the pricing practice here in question may have the proscribed competitive effect.

While in effect conceding that the dollar amount of the price discrimination is not substantial, counsel supporting the complaint rely on the Supreme Court's holding in the *Morton Salt* case [2] to support their argument that the 3% price discount granted by respondents is illegal for the reason that if discounts at the same rate were granted to respondents' favored customers by all of their suppliers, the effect on competition would be substantial. In the *Morton Salt* case, there was sufficient evidence to show that in the respondent's sale of salt, less-than-carload purchasers might have been handicapped in competing with the more favored carload purchasers by

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[1] *Moog Industries, Inc.* v. *Federal Trade Commission*, 238 F. 2d 43 (8th Cir. 1956); *P. Sorensen Manufacturing Co., Inc.* v. *Federal Trade Commission*, 246 F. 2d 687 (D.C. Cir. 1957); *Standard Motor Products, Inc.* v. *Federal Trade Commission*, 265 F. 2d 674 (2d Cir. 1959), Cert. denied 361 U.S. 826 (1959); In the Matter of *Thompson Products, Inc.*, Docket 5872 (1959) (pending in the United States Court of Appeals for the Sixth Circuit); *In the Matter of Namsco, Inc.*, 49 F.T.C. 1161 (1953).

[2] *Federal Trade Commission* v. *Morton Salt Co.*, 334 U.S. 37 (1948).

the differential in price established by the respondent. The court ruled that this competitive handicap could not be minimized by reason of the fact that salt is only a small item in the non-favored purchasers' businesses. In effect, the court held that it was not necessary for the Commission to consider sales in other merchandise categories in determining injury to the purchaser victimized by respondent's price differential. The contention of counsel supporting the complaint that we project the discount to other merchandise purchased by the favored customers is clearly beyond the holding in the *Morton Salt* case and must be rejected.

Under the circumstances, it is our opinion that the evidence of record fails to establish that the effect of the price difference here involved may be substantially to lessen competition between competing purchasers.

Counsel supporting the complaint have also taken exception to the hearing examiner's ruling that respondents have voluntarily abandoned the discount in question and there is no likelihood of resumption. In addition, respondents have appealed from the hearing examiner's conclusion that the price differences resulting from the 3% discount were not cost justified. In view of our holding that the charge in the complaint is not sustained by the evidence of record, a determination of the questions raised by these exceptions is not necessary to a disposition of this proceeding and, therefore, will not be made.

The appeal of counsel supporting the complaint is denied. As modified in accordance with this opinion, the initial decision will be adopted as the decision of the Commission.

Commissioners Secrest and Anderson concur in the result, and Commissioner Kern dissents.

CONCURRING OPINION OF COMMISSIONER SECREST

This case turns on the substantiality of injury to competition or the probability thereof—that is—has the substantial injurious competitive effects contemplated by the statute been made out or can we project ourselves into the future and foresee the probability thereof under the facts of this particular case.

As indicated in the majority opinion the total discriminatory discounts amounted to only $1,345.02 over a four year period [3] and these discounts have since been discontinued. Under these facts I am following the majority since I cannot see that *substantial* injury to competition has been done or foresee the future probability that

[3] $873.91 in 1955, $318.71 in 1956, $111.73 in 1957 and $40.67 in 1958.

the statutorily envisioned injury may occur under the state of this present record.

The automotive parts records[4] can be distinguished from the instant record on the conclusive evidence of substantial injurious competitive effects and on the further record facts that the discount schedules utilized therein were used on an industrywide basis which made the probability of future injury clearly foreseeable.

CONCURRING OPINION OF ANDERSON, COMMISSIONER

As I understand the majority opinion, dismissal of the complaint in this proceeding is based solely on the conclusion that the record fails to show that the price differences involved may reasonably be expected to adversely affect competition or tend to create a monopoly within the meaning of Section 2(a) of the amended Clayton Act. I agree that the record is deficient in this respect, and therefore concur in the result.

The fact that the respondents have granted to certain of their wholesaler customers a 3% discount off the wholesale price of their toys, which they have not granted to other competing wholesaler customers, is undisputed. There is also testimony that the 2% discount for cash which the respondents grant to all of their customers is a matter of importance to such customers, and, further, that the profits of some of the customers *on their overall business* (involving the purchase and sale of many items in addition to toys purchased from the respondents) have ranged from 2% to 5% of gross sales.

This, however, without more, does not demonstrate the competitive significance of the 3% discount, totaling some $1,350 over a period of four years, granted by the respondents. Any inference of adverse competitive effect of the resulting price differences must be supported by additional circumstances. In other cases, some of the factors which have been considered important in this respect have been the magnitude of the discriminations, the intensity of competition as between the favored and the non-favored purchasers, and the margins of profit obtained by the purchasers on resale of the commodities involved. In the absence of evidence such as this or a showing of other circumstances from which it might be concluded

[4] *Whitaker Cable Corp.* v. *Federal Trade Commission,* 239 F. 2d 253, 256 (7th Cir. 1956), Cert. denied 353 U.S. 938; *E. Edelmann & Co.* v. *Federal Trade Commission,* 239 F. 2d 152 (7th Cir. 1956), Cert. denied 355 U.S. 941; *Moog Industries, Inc.* v. *Federal Trade Commission,* 238 F. 2d 43 (8th Cir. 1956); *P. Sorensen Manufacturing Co., Inc.* v. *Federal Trade Commission,* 246 F. 2d 687 (D.C. Cir. 1957); *C. E. Niehoff & Co.* v. *Federal Trade Commission,* 241 F. 2d 37 (7th Cir. 1957); *Standard Motor Products, Inc.* v. *Federal Trade Commission,* 265 F. 2d 674 (2d Cir. 1959), Cert. denied 361 U.S. 826 (1959).

that purchasers paying the higher prices have been or may be handicapped in competing with purchasers paying the lower prices, dismissal of the complaint was proper.

DISSENTING OPINION OF COMMISSIONER KERN

The majority opinion issued this day dismisses the Commission's complaint on the ground that "the evidence of record fails to establish that the effect of the price difference here involved may be substantially to lessen competition between competing purchasers." I find myself in reluctant disagreement with my colleagues for, as I assess the evidence of record, it clearly establishes the statutory requisite of probability of injury to the non-favored buyers. Moreover, in assessing the evidence, I accept the view of the majority that the hearing examiner erred in placing blind reliance upon a single statement in the *Whitaker Cable Corporation* case [5] and that consideration should be given the entire competitive condition in the market as reflected by the record before us. However, it is in the evaluation of the market factors involved that I discover an irreconcilable area of disagreement.

An examination of the record convinces me that practically all of the factors which persuaded the Commission and the reviewing court in the case of *E. Edelmann & Company* v. *Federal Trade Commission*,[6] are present here. One cannot minimize the undisputed testimony of two nonfavored toy wholesalers that the net profit margin in their businesses ran between 2% and 5%, that a 3% special discount would be definitely important, and that they always take advantage of the 2% cash discount. Moreover, this special 3% discount (constituting the price discrimination involved here) was solicited by a cooperative buying group of toy wholesalers, which group not only considered this special discount as important, but respondent found the discontinuance of such special discount could only be accomplished slowly and at some aggravation to the favored recipients. These facts, it seems to me, bring this case squarely within the *E. Edelmann* case wherein the court stated: "There was evidence tending to show that differentials of small amounts were important to the trade and the existence of so-called cooperative buying groups bears this out. These and other findings justified the Commission in concluding that the profit differences which resulted from petitioner's pricing practices were not insignificant or infinitesimal." In my view the above language fits the factual situation in this proceeding like a glove.

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[5] *Whitaker Cable Corp.* v. *Federal Trade Commission*, 239 F. 2d 253 (7th Cir. 1956), Cert. denied 353 U.S. 938.

[6] 239 F. 2d 152 (7th Cir. 1956), Cert. denied 355 U.S. 941.

Furthermore I find other convincing evidence in the record which was not even mentioned in the majority opinion and yet which I consider of considerable significance.

The individual respondent in this case testified that he had considerable difficulty in terminating the special discount to favored wholesaler customers, thereby establishing the importance these customers accorded such a discount.[7]

Moreover, the record contains some testimony, although unnecessary to the establishment of probability of injury, that the special discount granted favored customers was reflected in a lower price by such favored wholesaler to the retail trade.[8]

The individual respondent himself recognized the impropriety of the special discount. He specifically admitted the unfairness of the practice on several occasions during the course of his testimony.[9] I had thought that admissions of this character constituted the highest form of probative evidence. It seems strange that the individual respondent could readily see the competitive inequity of the practice, yet the majority of my colleagues in the exercise of their expertise, cannot translate that freely admitted competitive inequity into the statutory requirement of probability of competitive injury.

Finally, the reasons given by the majority for distinguishing the instant case from the automotive parts cases not only do not impress me, but in my view are not borne out by the record. It is said that in the automotive parts industry competition was unusually keen

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[7] Mr. Bronner, the individual respondent, testified as follows: "In two or three instances I continued the discount until '56. These were my more important customers and it was perhaps difficult for me at that time to make a clear break, as I perhaps should have done.

"I realize this now. At that time I felt, well, you don't, being a small man, you just don't go around hitting your customers over the head. You have something in mind. I knew what I wanted to do, and you do it slowly and gradually. This is why some of these discounts were continued until '56." (R. 139)

[8] A nonfavored wholesaler witness, Mr. Gurdin, testified as follows: "The Witness: . . . There are complaints in general that they sell at a lesser discount than we do.

Q. Who sells at a lesser discount?

A. That Greenman Brothers sells at a cheaper price than what we sell merchandise for.

Q. You have heard that?

A. Yes, sir.

Q. From whom have you heard that from?

A. From my sales representatives." (R. 64–65) Greenman Brothers was one of the favored toy wholesalers.

[9] At pp. 30–31 of the record the individual respondent Bronner stated: "I just didn't feel good that I was making a differentiation between one group of customers and others. Under these circumstances I told Henry Lang I would have to discontinue it. . . ."

Same witness on pp. 137–138 of the record testified:

Q. During 1955 and 1956, there were a number of—you had a number of customers, did you not, who purchased in volumewise larger than some of the March of Toys members?

A. That is correct, sir. And as soon as I realized it, I also realized that eventually I have to discontinue the discount I am giving to March of Toys. I didn't consider it fair or ethical to continue giving one group of wholesalers the discount where I had other wholesalers buying in approximately the same quantities who do not receive the discount.

and mark-ups small, in many cases not greatly exceeding the cash discount. The same situation is shown by this record. Nor is the importance of the special discount any less meaningful here or the testimony vague in this respect. Indeed, the following language in the Commission's opinion in the matter of *Standard Motor Products, Inc.*, D. 5721, is equally applicable to the testimony in this record:

> The difference in price paid by the nonfavored customer as against the favored is illustrated in the charts included herein. It is a matter of mathematical calculation. The parties involved carry on business under substantially the same conditions. Competition is keen on all levels and margins of profit small. There is evidence that in some cases the overall net profit is between 2% and 4%. Testimony of distributors indicated that they take advantage of the 2% cash discount and that they find it essential to their business.

Moreover, the majority opinion also places some reliance upon the fact that the dollar volume of the rebates was less substantial than in the automotive parts cases. I concur in the majority's view that the argument of counsel supporting the complaint attempting to extend the principle of the *Morton Salt* [10] case is clearly beyond the holding in that case and should be rejected. However, such an extension I do not regard as necessary. A practice barely entered into may violate the statute. The Commission has in the automotive parts cases determined that a similar discount given under similar competitive conditions is violative of the statute. It moved promptly in connection with the particular discrimination involved here. In so doing it fulfilled one of the primary purposes considered important by the Congress in its passage of the Robinson-Patman Act, namely, to reach discriminations in price in their incipiency before actual harm can occur.[11] To suggest a requirement that significant discounts become substantial in volume before they fall within the ambit of the statutory proscription would have the effect of nullifying that Congressional intent.

On the basis of the foregoing analysis, I find it necessary to conclude that the action of the majority constitutes a retreat from the position taken by the Commission and sustained by the courts in the automotive parts cases, an act of retrogression which will adversely affect enforcement of the Robinson-Patman Act in a most critical and important area.

As a result of their determination of the lack of probability of injury to competition, the majority find it unnecessary to reach two other aspects of the appeal—one by counsel supporting the complaint excepting to the hearing examiner's ruling that respondents

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10 *Federal Trade Commission* v. *Morton Salt Co.*, 334 U.S. 37 (1948).

11 *Corn Products Refining Co.* v. *United States*, 324 U.S. 726, 738 (1945).

have voluntarily abandoned the discount in question and that there is no likelihood of resumption; the other by respondents' counsel appealing from the hearing examiner's conclusion that the price differences resulting from the 3% special discount were not cost justified.

In order not to lengthen this opinion unduly, suffice it to state that in my view there is no satisfactory evidence of abandonment, nor is there a satisfactory showing of cost justification. I would therefore overrule the hearing examiner's determination with respect to abandonment, sustaining the appeal of counsel supporting the complaint on this point. I would sustain the hearing examiner's ruling with respect to there being an insufficient showing of cost justification and would deny respondents' appeal as to this point. In my view an appropriate order to cease and desist should be entered. I dissent from the action of the majority dismissing this proceeding.

ORDER DISMISSING COMPLAINT

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

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

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

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

Commissioners Secrest and Anderson concurring in the result, and Commissioner Kern dissenting.

IN THE MATTER OF

BAXTER WOOLEN COMPANY, INC., ET AL.

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

Docket 7375. Complaint, Jan. 23, 1959—Decision, Sept. 29, 1960

Consent order requiring a manufacturer in East Rochester, N.H., to cease violating the Wool Products Labeling Act by labeling as "85% wool—15%

nylon", "70% wool—20% nylon—10% rayon decoration", etc., woolen fabrics which contained substantially less woolen fibers than thus set forth, and by failing to label other wool products as required.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Baxter Woolen Company, Inc., a corporation, and Charles B. Baxter, individually and as an officer 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 Baxter Woolen Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts. Individual respondent Charles B. Baxter is president-treasurer of the corporate respondent. He formulates, directs and controls the acts, policies and practices of the corporate respondent, including the acts and practices hereinafter referred to. All respondents have their office and principal place of business located at East Rochester, N.H.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since 1956, 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 product" is 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 fabrics labeled or tagged by respondents as "85% wool—15% nylon", "70% wool—20% nylon—10% rayon decoration," and "80% wool—20% nylon, exclusive of decoration" whereas, in truth and in fact, said products contained substantially less woolen fibers than set forth on the labels or tags.

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 thereunder.

PAR. 5. In the course and conduct of their business respondents were, and are, in substantial competition, in commerce, with corporations, firms and individuals likewise engaged in the sale of woolen fabrics.

PAR. 6. The acts and practices of the respondents as above set forth were, and are, in violation of the Wool Products Labeling Act 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. 7. In the course and conduct of their business respondents have made certain statements with respect to the fibers of which their wool products were composed on invoices covering the shipment of said fabrics of which the following are typical: "85% wool —15% nylon", "70% wool—20% nylon—10% rayon decoration", and "80% wool—20% nylon, exclusively of decoration" whereas, in truth and in fact, said fabrics contained substantially less woolen fibers than set forth on said invoices.

PAR. 8. The acts and practices of the respondents set forth in paragraph 7 hereof have had, and now have, the tendency and capacity to mislead and deceive the purchasers of their said products as to the true fiber content thereof and to misbrand products manufactured by them in which respondents' fabrics are used.

PAR. 9. The acts and practices of the respondents as set forth above in paragraph 7 were 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 within the intent and meaning of the Federal Trade Commission Act.

Mr. DeWitt T. Puckett for the Commission.

Mr. Richard F. Cooper, of Rochester, N.H., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on January 23, 1959, charging respondents with misbranding certain of their wool products, and with misstating the percentage of woolen fibers contained in certain of their woolen fabrics, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

Thereafter, on June 27, 1960, respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director, the Acting Associate Director, and the Acting Assistant Director of the Commission's Bureau of Litigation, and thereafter, on August 16, 1960, submitted to the hearing examiner for consideration.

The agreement identifies Respondent Baxter Woolen Company, Inc., as a Massachusetts corporation, with its office and principal place of business located in East Rochester, N.H., and individual Respondent Charles E. Baxter (erroneously named in the complaint as Charles B. Baxter) as president and treasurer of the corporate respondent, his address being the same as that of the corporate respondent.

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.

The agreement contains a statement that the violations of law charged in the complaint were confined to the years 1956 and 1957.

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

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

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

It is ordered, That respondents, Baxter Woolen Company, Inc., a corporation, and its officers, and Charles E. Baxter, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of fabrics 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 § 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents, Baxter Woolen Company, Inc., a corporation, and its officers, and Charles E. Baxter, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of fabrics or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fibers of which their products are composed, or the percentages or amounts thereof, on invoices, shipping memoranda or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 29th day of September 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

COURISTAN, INCORPORATED, ET AL.

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

Docket 7853. Complaint, Mar. 30, 1960—Decision, Sept. 29, 1960

Consent order requiring New York City distributors to cease representing falsely in advertising and on labels that certain of their rugs were composed entirely of wool and compared to domestic all-wool rugs retailing for twice the price and more; representing the size of rugs falsely in advertising as "9 x 12", and misleadingly in invoices as "9 x 12 (103 x 139)"; selling rugs under distinctively American names without revealing their Japanese origin; and advertising tubular rugs falsely as the more desirable "braided" type.

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 Couristan, Incorporated, a corporation, and Basil J. Couri, George J. Couri and David E. Murad, individually and as officers of said corporation, and as copartners trading as Couri, Murad & Co., 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 Couristan, Incorporated, 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 300 Fifth Avenue, New York, N.Y. Individual respondents Basil J. Couri, George J. Couri and David E. Murad 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.

The individual respondents also trade and do business as Couri, Murad & Co., with their office and place of business located at the same address as that of the corporate respondent.

PAR. 2. The corporate and individual respondents are now, and for some time last past have been, engaged in the sale and distribution of rugs and floor coverings, some of which are imported by Couri, Murad & Co. from foreign countries. In regard to said imported rugs and floor coverings Couri, Murad & Co. is the importer and the corporate respondent is the sales and distributing agent. Such imported rugs are labeled and advertised under such names as

Bunker Hill, Maple Glen, Valley Forge, and Stoney Creek. Respondents sell and have sold said rugs and floor coverings to retailers for resale to the public. Respondents import rugs and floor coverings not only for their own sale but also as agents for others, including retailers.

PAR. 3. In the course and conduct of their business respondents cause and have caused said rugs and floor coverings, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States, and maintain, and 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, in the conduct of their business, have been, and are engaged in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale and distribution of rugs and floor coverings.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the purchase of their rugs and floor coverings, respondents have made certain statements with respect to the fiber content of said rugs and floor coverings by means of labels attached thereto, and by description of said rugs in brochures, and in price lists and other sales literature. Respondents have also made representations as to prices of said rugs in their advertising. Typical, and among such representations, but not limited thereto, are the following:

IN ADVERTISING: "Bunker Hill . . . only Couristan can give you An All-Wool Braided Rug . . ."

ON PRICE LISTS: "Bunker Hill Wool Braided Rug".

(2) ON LABEL: "All Wool Valley Forge."

ON PRICE LISTS: "All Wool Braided Rug Prices: Valley Forge . . ."

(3) ON LABEL: "Stoney Creek Wool Blend."

IN ADVERTISING: "Stoney Creek . . . Only Couristan can give you a wool blend multi-color braided rug . . ." "Wool Blend . . . Stoney Creek Braided Rugs".

ON PRICE LISTS: "Stoney Creek—Wool Blend Braided Rugs."

(4) ON LABEL: "Maple Glen: Wool Blend Tubular Rug".

ON PRICE LISTS: "Maple Glen Wool Blend Braided Rug."

A: Statements As To Wool Content:

(1) ON LABEL: "All Wool Bunker Hill."

B: Statements As To Prices:

IN ADVERTISING: "Bunker Hill. Only Couristan can give you an All Wool Braided Rug available in multi-tones with the new and exclusive reverse construction with the hidden stitch. 9 x 12, in 6 exciting patterns, and compares with domestic all-wool braided rugs retailing for more than $159.00! Retails For $69.00." "Stoney Creek. Only Couristan can give you a Wool Blend Multi-color Rug made with the new reverse construction, 9 x 12, in 6

exciting patterns. Here you have the greatest excitement in the industry, the finest quality rugs that compare with domestic rugs retailing for twice the price . . . Retails for $39.00."

PAR. 6. By use of the statements appearing in the aforesaid advertisements and on said labels and others of the same import not herein set forth, respondents represented, directly or by implication:

1. That respondents' "Bunker Hill" and "Valley Forge" rugs are composed entirely of wool.

2. That respondents' "Stoney Creek" and "Maple Glen" rugs are composed entirely of wool.

3. That respondents' "Bunker Hill" rug retailing for $69.00 is comparable in quality or value to domestic all wool rugs retailing at more than $159.00.

4. That respondents' "Stoney Creek" rug retailing for $59.00 is comparable in quality or value to domestic rugs retailing for twice said price.

PAR. 7. The aforesaid statements were, and are, false, misleading and deceptive. In truth and in fact:

1. Respondents' "Bunker Hill" and "Valley Forge" rugs are not composed entirely of wool but contain a substantial quantity of fibers other than wool.

2. Respondents' "Stoney Creek" and "Maple Glen" rugs are not composed entirely of wool but contain a substantial quantity of fibers other than wool.

3. Respondents' "Bunker Hill" rugs do not compare, either in quality or value, to domestic all-wool rugs retailing for more than $159.00.

4. Respondents' "Stoney Creek" rugs retailing for $59.00 do not compare, either in quality or value, to domestic rugs retailing for twice said price.

PAR. 8. Respondents engage in the practice of setting out the sizes of their various rugs in advertising and price lists. For example, the following has appeared:

(1) IN ADVERTISING: "Bunker Hill—9 x 12 in 6 exciting patterns"; "Stoney Creek—9 x 12 in 6 exciting patterns."

(2) IN INVOICES: "Stoney Creek—9 x 12 (103 x 139)"; "Maple Glen—9 x 12 (103 x 139)"; "Valley Forge—9 x 12 (103 x 139)."

In truth and in fact said rugs are not 9 x 12 feet in size but are approximately 103 inches by 139 inches.

The use of the 9 x 12 description of the "Bunker Hill" and "Stoney Creek" rugs in advertising is, therefore, false and misleading. The practice of setting out two sizes on invoices, one incorrect and the other approximately correct, is confusing and mislead-

ing and has the tendency to cause dealers to misrepresent the size of respondents' rugs sold by them.

PAR. 9. Respondents' practice of designating their rugs, made in foreign countries, including Japan, and imported into the United States with names of American connotation such as "Bunker Hill", "Stoney Creek", "Maple Glen" and "Valley Forge" has the tendency and capacity to induce the mistaken and erroneous belief in the minds of the public that the rugs so designated were made in the United States, and constitutes an unfair and deceptive practice.

PAR. 10. There are among the members of the purchasing public a substantial number who have a preference for products originating in the United States over products originating in Japan, including rugs, and who are willing to pay higher prices to obtain such products of domestic origin when such domestic articles command higher prices.

PAR. 11. In the course and conduct of their business and for the purpose of inducing the purchase of their rugs and floor coverings, respondents, through advertisements appearing in trade papers of general circulation and upon price lists and other sales literature have referred, and now refer, to their "Bunker Hill", "Stoney Creek" and "Maple Glen" rugs as braided rugs. By such reference respondents have represented, and now represent, that such rugs are true braided rugs as "braided rugs" are known in the rug industry.

In truth and in fact, the aforementioned rugs of the respondents are not true braided rugs as known in the rug industry, but are known as tubular rugs and are constructed by a process of strands of material being wrapped around and sewn to a core or tube. The said core or tube is filled with waste and other shoddy material. The true braided rug, on the other hand, is made by the process of strands of material being braided around a single or double core, said core being composed of small cotton string. The braided rug is considered in the rug industry as being superior to the tubular rug in regard to construction and wearing qualities.

PAR. 12. The use by respondents of the false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such statements and representations were and are true, and into the purchase of substantial quantities of respondents' products because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly directed to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 13. The aforesaid acts and practices of the 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. Garland S. Ferguson for the Commission.

Mehler, Goldsborough & Ives, of Washington, D.C., by *Mr. George S. Ives*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

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

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

1. Respondent Couristan, Incorporated is a New York corporation with its office and place of business located at 300 Fifth Avenue, New York, N.Y. Individual respondents Basil J. Couri, George J. Couri and David E. Murad are officers of said corporation and formulate, direct and control the practices of said corporate respondent, with their address the same as that of the corporate re-

spondent. Said individual respondents are also copartners trading as Couri, Murad & Co., with their office and place of business located at the same address as 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 Couristan, Incorporated, a corporation, and its officers, and Basil J. Couri, George J. Couri and David E. Murad, individually and as officers of said corporation, and trading under the name of Couri, Murad & Co., or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of rugs and floor coverings, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "wool" or any other word or term indicative of wool to designate or describe any product or portion thereof which is not composed wholly of wool, the fiber from the fleece of the sheep or lamb, or hair of the angora or cashmere goat, or hair of the camel, alpaca, llama or vicuna, which has never been reclaimed from any woven or felted product; provided that in the case of products or portions thereof which are composed in substantial part of wool and in part of other fibers or materials, the term "wool" may be used as descriptive of the wool content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designated 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. 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.

2. Misrepresenting the constituent fibers of which their products are composed, or the percentages or amounts thereof, on labels, in advertising, or in any other manner. Provided, however, that nothing hereinabove contained in paragraphs 1 and 2 hereof shall re-

lieve 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.

3. Using two or more sets of figures to represent the size of their products which are at variance, or in conflict, or representing directly or indirectly the size of said products to be of larger dimensions than is the fact.

4. Using the words "Bunker Hill", "Stoney Creek", "Maple Glen", or "Valley Forge", or any other distinctly American name in advertising or in labeling to designate or describe the aforesaid products which are not in fact made in the United States, or using any other word or term in advertising or in labeling as descriptive of the aforesaid products which represents, directly or indirectly, that said products are made in a country other than the one in which they are in fact made, without clearly and conspicuously revealing in immediate connection with each of the aforesaid names, words or terms the actual country of origin of such products.

5. Using the term "braided" to describe or designate any rug which is not constructed by a braiding process, or misrepresenting in any manner the manner of maufacture of their rugs.

6. Representing in any manner that their products are of a quality comparable to domestic rugs, floor coverings, or other products, unless such is the fact.

7. Representing in any manner that their products are of a value comparable to domestic rugs or floor coverings retailing at a higher price unless the merchandise to which the advertised products are compared is of a like grade and quality in all material respects and is generally available for purchase at the comparative price in the same trade area, or areas, where the claim is made; or if not available, such fact shall be clearly disclosed.

And, it appearing that said agreement further provides for amending the complaint in the manner hereinafter set forth,

It is further ordered, That the complaint be, and it hereby is, amended by deleting from lines 19–20, in paragraph 11 the words "said core being composed of small cotton string," so that, as amended, the sentence of which such words now form a part shall read "The true braided rug, on the other hand, is made by the process of strands of material being braided around a single or double core."

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 29th day of 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

STARDAY RECORDING & PUBLISHING CO., INC., ET AL.

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

Docket 7886. Complaint, May 13, 1960—Decision, Sept. 29, 1960

Consent order requiring manufacturers of phonograph records in Madison, Tenn., to cease giving concealed payola to disc jockeys or other personnel of radio and television programs to induce frequent playing of their 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 Starday Recording & Publishing Co., Inc., a corporation, Starday International Sales Company, Inc., a corporation, and Donald F. Pierce, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Starday Recording & Publishing Co., Inc., and Starday International Sales Company, Inc., are both corporations organized, existing and doing business under and by virtue of the laws of the State of Tennessee. The address of their principal office and place of business is P.O. Box 115, Madison, Tenn.

Respondent Donald F. Pierce is president of both of the corporate respondents and formulates, directs and controls the policies, acts and practices of both of said corporations, including the acts

and practices set out herein. The address of the individual respondent is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, distribution and sale of phonograph records to independent distributors for resale to retail outlets and jukebox operators in various States of the United States.

In the course and conduct of their business, respondents now cause, and for some time last past have caused, the records they manufacture, sell and distribute, when sold, to be shipped from their place of business in the State of Tennessee, 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 phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, at all times mentioned herein, the respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the manufacture, 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 jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration for 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 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 manufacturers and/or 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 manufacturers and/or 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 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 manufacture, sale and distribution, and/or the offering for sale, sale and distribution of phonograph records, and to divert trade unfairly to respondents from their 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 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. John T. Walker and *Mr. James H. Kelley* for the Commission.
Mr. Harlan Dodson, Jr., of Nashville, Tenn., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act in the sale and distribution of phonograph records by negotiating for and disbursing "payola" (money and other valuable consideration) to disk jockeys broadcasting musical programs, and causing such fact to be withheld from the public. 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. Respondents Starday Recording & Publishing Co., Inc., and Starday International Sales Company, Inc., are both Tennessee corporations with their office and place of business located at Madison, Tenn. Respondent Donald F. Pierce is president of both corporate respondents and formulates, directs and controls the policies, acts

and practices of both of said corporations. The address of the individual respondent is the same as that of the corporate respondents.

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 Starday Recording & Publishing Co., Inc., a corporation, Starday International Sales Company, Inc., a corporation, and their officers, and Donald F. Pierce, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 29th 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

THE LAMSON BROTHERS COMPANY

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

Docket 7892. Complaint, May 16, 1960—Decision, Sept. 29, 1960

Consent order requiring Toledo, Ohio, furriers to cease violating the Fur Products Labeling Act by failing to set forth the terms "Persian Lamb" and "Dyed Broadtail processed Lamb" where required on invoices and in advertising, by advertising in newspapers which failed to disclose the names of animals producing certain furs or the country of origin of imported products or the fact that some furs were artificially colored, and which contained the names of animals other than the true producers, and by failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that The Lamson Brothers Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The Lamson Brothers Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its office and principal place of business located at 600 Jefferson Street, Toledo, Ohio.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now engaged in the introduction into commerce, and in the sale, advertising, and offering for sale, in commerce, and in the transportation

and distribution, in commerce, of fur products; and has 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 products" are defined in the Fur Products Labeling Act.

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

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

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

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

C. Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs in violation of Rule 31 of said Regulations.

D. Required item numbers were not set forth on labels in violation of Rule 40 of said Rules and Regulations.

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "Persian Lamb" was not set forth in the manner required where an election is made to use that term instead of Lamb in violation of Rule 8 of said Rules and Regulations.

(c) The term "Dyed Broadtail processed Lamb" was not set forth in the manner required where an election was made to use that term instead of Lamb in violation of Rule 10 of the Rules and Regulations.

PAR. 7. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondent caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act, and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 8. Among and included in the advertisements as aforesaid, but not limited thereto, where advertisements of respondent which appeared in issues of the Toledo Blade, a newspaper published in the City of Toledo, State of Ohio, and having a wide circulation in said State and various other States of the United States.

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

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

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

(c) Contained the name or names of an animal or animals other than those producing the fur contained in the fur product in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(d) Failed to disclose the name of the country of origin of the imported furs contained in the fur products in violation of Section 5(a)(6) of the Fur Products Labeling Act.

(e) Failed to set forth the term Persian Lamb in the manner required where an election was made to use that term instead of Lamb in violation of Rule 8 of said Rules and Regulations.

(f) Failed to set forth the term "Dyed Mouton processed Lamb" in the manner required where an election was made to use that term

instead of Lamb in violation of Rule 9 of said Rules and Regulations.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Mr. DeWitt T. Puckett, supporting the complaint.

Marshall, Melhorn, Block & Belt by *Mr. Edward F. Weber*, of Toledo, Ohio, for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that The Lamson Brothers Company, a corporation, hereinafter referred to as respondent, misbranded, falsely and deceptively invoiced and advertised fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act and the rules and regulations promulgated under the last named act.

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

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

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

JURISDICTIONAL FINDINGS

1. Respondent The Lamson Brothers Company is a corporation existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 600 Jefferson Street, Toledo, Ohio.

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

ORDER

It is ordered, That The Lamson Brothers Company, a corporation, and its officers and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

B. Setting forth on labels affixed to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with nonrequired information.

C. Failing to set forth on labels affixed to fur products all the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on one side of the labels.

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

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

2. Falsely or deceptively invoicing fur products by:

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

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

C. Failing to set forth the term "Persian Lamb" when an election is made to use that term instead of Lamb.

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

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

A. Fails to disclose:

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

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

3. The name of the country of origin of any imported furs contained in a fur product.

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

C. Fails to set forth the term "Persian Lamb" when an election is made to use that term instead of lamb.

D. Fails to use the term "Dyed Mouton processed Lamb" when an election is made to use that term instead of lamb.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 29th day of September 1960, become the decision of the Commission, and, accordingly:

It is ordered, That respondent The Lamson Brothers 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

PEACOCK RECORD COMPANY, INC.

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

Docket 7901. Complaint, May 20, 1960—Decision, Sept. 29, 1960

Consent order requiring a manufacturer of phonograph records in Houston, Tex., to cease giving concealed payola to disc jockeys or other personnel of radio and television programs to induce frequent playing of their 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 Peacock Record Company, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Peacock Record Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 2809 Erastus Street, in the city of Houston, State of Texas.

PAR. 2. Respondent is now, and for some time last past has 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 its business, respondent now causes, and for some time last past has caused, its 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 in the District of Columbia, and maintains, and at all times mentioned herein has 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 its business, and at all times mentioned herein, respondent has been in competition, in com-

merce, 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 its 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 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 respondent by participating individually or in a joint effort with certain collaborating record distributors 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.

Thus, "payola" is used by the respondent 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 respondent from its 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 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. Harold A. Kennedy and *Mr. Arthur Wolter, Jr.*, for the Commission.

Mr. William H. Scott, Jr., of Houston, Tex., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

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

will conceal, withhold or camouflage the fact of such payment from the listening public.

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

The agreement states that respondent Peacock Record Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 2809 Erastus Street, Houston, Tex.

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

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

The hearing examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered, That respondent Peacock Record Company, Inc., a corporation, and its officers, 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 broad-

casting 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 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 29th day of September 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

DISCOUNT MOTOR SALES, INC., ET AL.

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

Docket 7912. Complaint, June 3, 1960—Decision, Sept. 29, 1960

Consent order requiring Washington, D.C., used car dealers to cease misrepresenting down payments, financing rates, and guarantees on their used cars, as in the order below specified, and representing falsely, by use of the name

"Military Discount Motor Sales, Inc." in advertising in publications circulating among Armed Forces personnel, or otherwise, that their business had some connections with the military forces.

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 Discount Motor Sales, Inc., a corporation, and John E. Kymingham, Leon N. Pappas and Pearl S. Kymingham, 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 Discount Motor Sales, Inc., is a corporation organized and existing under and by virtue of the laws of the District of Columbia. Its office and principal place of business is located at 1300 14th Street, NW., Washington, D.C.

Respondents John E. Kymingham, Leon N. Pappas and Pearl S. Kymingham are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business 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 advertising, offering for sale, sale and distribution of used automobiles in the District of Columbia. Their volume of business is substantial.

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

$1.00 Down on Approved Credit. Take Up to 36 Months to Pay.

No Small Loan—One Place to Make Payments—4% bank financing available—1 yr. 100% parts & labor Warranty available.

$1.00 Down on Approved Credit. Payments as low as $14.60 per mo.

Special Bank Financing for Military Personnel.

4% Bank Financing Available on approved credit.

No Money Down to Officers and First 3 Enlisted Grades.

New Car Warranty.

Many, many cars at Discount Motor Sales leave the lot with only $1. Down . . . and this week-end special is a genuine example of top quality cars at un-

believable low . . . low prices . . . this is just one of the many $1. Down specials . . . this '54 2-door Chevy . . . a really beautiful looking car . . . comes completely equipped . . . radio, heater, whitewall tires . . . mechanically perfect . . . and full price is only $195. . . . Yes, a dollar down and you can drive this Chevy right on home tonight . . . with $19 a month for your low, low payments!

We don't have time to show you all the wonderful cars to be found at Discount Motor Sales for just $1 Down . . . but we do have time to tell you that every car you see is positively guaranteed 100% to your satisfaction with the famous DMS Warranty . . . is offered to you along with a free trial . . .

. . . at Discount Motor Sales . . . You have over 200 cars to choose from . . . many Xmas specials priced from $49 to $295 . . . really neat looking and smooth running cars . . . each with the famous DMS Warranty! These specials can be yours for only a dollar down and monthly payments as low as $19 a month.

. . . and for Officers and Enlisted Men in the first three grades . . . stationed anywhere in the U.S.A., you can buy a car with NO MONEY DOWN!

Discount Motor Sales . . . has price-slashed over 200 cars for the great August Sale . . . Every single car carries the famous DMS blue ribbon warranty! You just can't find a better deal any place than Discount Motors . . . for instance . . . Discount Motors has a beautiful '56 Oldsmobile hardtop—radio, heater, whitewall tires . . . all the trimmings and full price is only $595 . . . Yes, total price tag is $595 . . . a dollar down and your monthly payments can be as little as $26 a month! Yes, for $26 a month you can own a wonderful Discount Motors Car!

. . . every car you see is positively GUARANTEED 100% to your satisfaction . . . with the FAMOUS DMS WARRANTY . . . This 90-Day 100% No Cost Parts or Labor Warranty . . . is offered to you . . .

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

(a) They sell used automobiles on credit accounts with a minimum down payment of one dollar.

(b) They offer bank rate financing at four percent interest.

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

(d) Only one monthly payment in one place is required on their credit accounts.

(e) No down payment is required of officers and the first three enlisted grades of the Armed Forces who wish to purchase a used car.

(f) Used cars are sold with a new car warranty.

(g) Their used cars are guaranteed 100% and have a 90-day no cost parts and labor warranty.

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

(a) Respondents do not sell used cars on credit with a minimum down payment of one dollar. When one dollar is accepted by respondents it is not as a down payment but is for the purpose of providing a consideration for a contract of purchase.

(b) Bank rate financing at four percent interest is not offered by the respondents with respect to sales of used cars.

(c) Purchasers of respondents' used cars have been and frequently are required to contract for small loans, mostly with sources outside of the District of Columbia, in addition to installment financing in order to meet respondents' down payment requirements. The representation of "low monthly payments" does not include the small loan charges.

(d) Where purchasers of respondents' used cars contract for small loans to meet down payment requirements and finance the unpaid balance over a term of months or years with a finance company, which is frequently the case, monthly payments are required by each of the lenders involved and at their respective places of business.

(e) Officers and enlisted men of any pay grade cannot purchase a used car without a substantial down payment, unless they have an automobile to trade in lieu thereof.

(f) Respondents do not sell used automobiles with a new car warranty.

(g) Respondents' used cars are not guaranteed or warranted 100% and a 90-day no cost parts and labor guarantee or warranty is given infrequently and only in connection with the sale of late model cars.

PAR. 6. Respondents use the name "Military Discount Motor Sales, Inc.," in advertising their used cars in publications circulating among the personnel of the Armed Forces, thereby representing, contrary to the fact, that their business has some connection with the military forces or offers some special consideration or advantages to members of the military services.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of used automobiles.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of a substantial number of respondents' used automobiles by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substan-

tial injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

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

Mr. Bernard T. Levin, of Washington, D.C., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the advertising, offering for sale, sale and distribution of used automobiles in the District of Columbia, with violation of the Federal Trade Commission Act, by the use of false, misleading and deceptive statements and representations in newspapers published in the District of Columbia, in television and radio broadcasts emanating from the District of Columbia, and in publications circulating among the personnel of the Armed Forces, with respect to said used automobiles.

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 Discount Motor Sales, Inc., is a corporation existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 1300 14th Street, NW., Washington, D.C., and that respondents John E. Kymingham, Leon N. Pappas and Pearl S. Kymingham are officers of the corporate respondent, their business address being the same as that of the corporate respondent.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this

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

A deposition attached to and incorporated in the agreement indicates that the deponent, individual respondent Pearl S. Kymingham, while a nominal officer, did not participate in the formation and direction of corporation policy respecting the acts and practices set forth in the complaint, and all parties to the agreement assent to the dismissal of the charges as to Pearl S. Kymingham, individually.

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

The hearing examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Accordingly,

It is ordered, That respondents Discount Motor Sales, Inc., a corporation, and its officers, and John E. Kymingham and Leon N. Pappas, individually and as officers of said corporation, and Peral S. Kymingham, as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That used cars can be purchased with a minimum down payment of one dollar or any other amount not in accord with the facts;

2. That they offer or make available 4% bank rate financing, or misrepresenting the financing rates under which their used cars are sold;

3. That no small loans are necessary to make a purchase of a used car; or only one monthly payment in one place is required on their credit accounts, unless such is the fact;

4. That no down payment for the purchase of a used car is required of officers and enlisted men of the first three grades of the Armed Forces; and that no down payment is required of any other person, unless such is the fact;

5. That used cars are sold with a new car warranty;

6. That their used cars are guaranteed 100%; or are guaranteed to any other extent, that is not in accord with the facts, or have a 90-day no-cost parts or labor warranty, unless such is the fact, or have a warranty for any other period of time or for any other coverage, that is not in accord with the facts;

7. That they are connected with or endorsed by the military services.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Pearl S. Kymingham, individually.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 29th day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Discount Motor Sales, Inc., a corporation; John E. Kymingham and Leon N. Pappas, individually and as officers of said corporation; and Pearl S. Kymingham, as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

L. L. BERGER, INC.

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

Docket 7965. Complaint, June 22, 1960—Decision, Sept. 29, 1960

Consent order requiring a Buffalo, N.Y., furrier to cease violating the Fur Products Labeling Act by false advertising in newspapers which represented prices of fur products as reduced from fictitious "regular" prices; which represented, by use of such statements as "½ off original prices", that usual retail prices were reduced by such percentage; which represented prices as reduced without giving the time of compared higher prices; and which contained names of animals other than those producing certain furs; and by failing to maintain adequate records as a basis for price and value claims.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that L. L. Berger, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent L. L. Berger, 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 514 Main Street, Buffalo, N.Y.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has introduced, sold, advertised, offered for sale, transported and distributed fur products in commerce, and has 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 "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

PAR. 4. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondent which appeared in issues of the Buffalo Courier Express, a newspaper published in the city of Buffalo, State of New York, and having a wide circulation in said State and in various other States of the United States.

By means of the aforesaid advertisements and through others of the same import and meaning, not specifically referred to herein, respondent falsely and deceptively advertised its fur products in that said advertisements:

(a) Represented prices of fur products as having been reduced from regular or usual prices where the so-called regular or usual

prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by respondent in the recent regular course of business in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

(b) Represented through the use of percentage savings claims through such statements as "½ off original prices" that the regular or usual retail prices charged by respondent for fur products in the recent regular course of business were reduced in direct proportion to the percentage of savings stated when such was not the fact in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(c) Represented prices of fur products as having been reduced from previous higher prices without giving the time of such compared higher prices in violation of Rule 44(b) of said Rules and Regulations.

(d) Contained the name or names of an animal or animals other than those producing the fur contained in the fur product in violation of Section 5(a)(5) of the Fur Products Labeling Act.

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

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

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

Jaeckle, Fleischmann, Kelly, Swart & Augspurger, of Buffalo, N.Y., for respondent.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on June 22, 1960, charging it with having violated the Fur Products Labeling Act and the Rules and Regulations issued thereunder, and the Federal Trade Commission Act, through the false and deceptive advertising of certain fur products. After being served with said complaint, respondent appeared by counsel and thereafter entered into an agreement, dated August 3, 1960, containing a consent order to cease and desist purporting to dispose of all this proceeding as to all parties. Said agreement

which has been signed by respondent, by counsel for said respondent, and by counsel supporting the complaint, and approved by the Director, Acting Associate Director, and Acting Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

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

1. Respondents L. L. Berger, 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 514 Main Street, in the city of Buffalo, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under 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 L. L. Berger, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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

A. Represents directly or by implication that the regular or usual price of any fur product is any amount which is in excess of the price at which respondent has usually and customarily sold such products in the recent regular course of business.

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

C. Bases comparative prices on former or original prices that are not the prevailing prices at the time of the advertisement without stating the times or dates of the compared prices.

D. Misrepresents in any manner the savings available to purchasers of respondent's fur products.

E. Sets forth the name or names of any animal or animals other than the name or names provided in Section 5(a)(1) of the Fur Products Labeling Act.

2. Making price claims and representations respecting prices and values of fur products unless there is maintained by respondent full and adequate records disclosing the facts upon which such claims and representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 29th 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

MAYFAIR DISTRIBUTORS, INC., ET AL.

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

Docket 8021. Complaint, June 27, 1960—Decision, Sept. 29, 1960

Consent order requiring distributors of phonograph records in New York City to cease giving concealed payola to disc jockeys or other personnel of radio and television programs to induce frequent playing of their 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 Mayfair Distributors, Inc., a corporation, and Jerry Winston, 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 Mayfair Distributors, 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 640 Tenth Avenue, in the city of New York, State of New York.

Respondent Jerry Winston 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 various retail outlets.

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.

Mr. Arthur Wolter, Jr., for the Commission.

Respondents, for themselves.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

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

interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

After the issuance of the complaint, respondents 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 Mayfair Distributors, 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 640 Tenth Avenue, New York, N.Y., and that respondent Jerry Winston is an officer of the corporate respondent and formulates, directs and controls the acts and practices of the corporate respondent, his address being the same as that of the corporate respondent.

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

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

The hearing examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore

It is ordered, That respondents Mayfair Distributors, Inc., a corporation, and its officers, and Jerry Winston, 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 29th day of September 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

CLARK H. GEPPERT ET AL. TRADING AS DEAN STUDIOS

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

Docket 8024. Complaint, June 27, 1960—Decision, Sept. 29, 1960

Consent order requiring a partnership in Des Moines, Iowa, engaged in developing film and enlarging, tinting, and framing photographs, to cease using deceptive promotional schemes to sell its photographic services and products, specifically, purported puzzle contests—so easy to solve that anyone could "qualify" and "win" but then was required to sell respondents' products to 20 others before receiving the "real, live Miniature" dog or monkey offered as prize—which were thus used as "bait" to get names of persons who might sell respondents' services and products.

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 Clark H. Geppert, Byron Geppert and Fidelis Geppert, individually and as partners trading as Dean Studios, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Clark H. Geppert, Byron Geppert and Fidelis Geppert are individuals and partners trading as Dean Studios, with their principal office and place of business located at 211 West Seventh Street, in the city of Des Moines, State of Iowa.

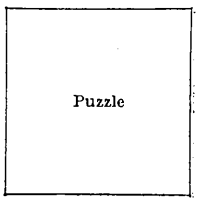
Respondents have cooperated and acted together in the performance of the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the photographic business, including the developing of film and other services, such as the enlargement, tinting and framing of photographs. Sales are made to the public through respondents' retail store in Des Moines, Iowa and by mail order.

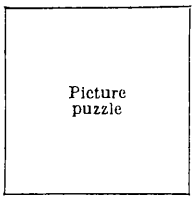
PAR. 3. In the course and conduct of their mail order business, respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the State of Iowa to purchasers thereof located in various other States of the United States, and maintain,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

PAR. 4. In the course and conduct of their mail order business, and for the purpose of inducing the sale of their photographic services and products, respondents have made certain statements in advertisements appearing in magazines and periodicals of national circulation, of which the following are typical:

WIN NEW LIVE MINIATURE DOG *Join the fun. Everybody can win* This poor little dog is lonesome and wants to get a home . . . *Can you help show it the way?* Take a pencil and draw a line from the dog to the house . . . Then cut out the puzzle and send it to us with your name.

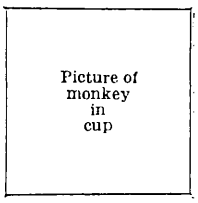


CAN YOU HELP THIS TINY DOG GET HOME? Just to get acquainted . . . I'll send you at *no cost* this real live miniature dog . . . Send in your entry today and simply hand out twenty get-acquainted coupons to friends or relations to help us get that many new customers . . . and I'll send you at *no cost* this wonderful Miniature Dog when the coupons are used as per our premium letter.



CAN YOU FIND 5 OBJECTS BEGINNING WITH THE LETTER 'C'? *Look at this Picture! Join the fun. Try your skill—everybody can win!* Think of having such a wonderful prize. Look at the picture carefully, write down 5 objects in the picture with names beginning with the letter 'C' (like 'cactus', etc.), then send us your list. Anyone can enter. *We're runing this special test to get acquainted, and find a home for this real, live Miniature Monkey.*

WIN REAL LIVE MINIATURE MONKEY



PAR. 5. Through the use of the aforesaid statements, respondents have represented, and now represent, that they are conducting a puzzle contest and that a pet dog or monkey or other merchandise will be furnished as prizes to persons who solve or correctly complete the puzzles published.

PAR. 6. Said statements and representations are false, misleading and deceptive. In truth and in fact, a miniature dog or monkey is not furnished as a prize to persons who solve or correctly complete the respective puzzles or contests. Such statements and representations of respondents are merely promotional schemes for the purpose of obtaining purchasers for respondents' services and prod-

ucts. Persons responding to respondents' advertising are sent further advertising and explanatory material, together with twenty coupons. These coupons are to be distributed to twenty persons who must use them in purchasing at least three dollars worth of respondents' services and products. It is only when these coupons are thus distributed and used that the miniature dog or monkey will be delivered by respondents.

PAR. 7. Said promotional schemes in respondents' advertising are false, misleading and deceptive for the further reason that the purported puzzles and contests are not bona fide puzzles or contests. They are, instead, a deceptive form of "bait" or "decoy", attractive to the innocent, unwary and unsuspecting members of the purchasing public, and have been, and are, used as the initial steps in a system of effecting sales of respondents' photographic services and products. The purported puzzles and contests are, and have been, so simple of solution, or the winning thereof so easy, as to remove them from the categories of competition or skill, and are such that substantially everyone, if not all, may "qualify" and "win". Thus, these promotional schemes are not bona fide puzzle contests but are used to obtain the names of persons who are later encouraged by respondents to assist in the sale of their services and products.

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 other individuals likewise engaged in the sale of photographic products and services.

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 directly aids and assists respondents in the sale of their services and products. 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.

Mr. John W. Brookfield, Jr., supporting the complaint.

Mr. Roy C. Frank, of Washington, D.C., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that the above-named respondents have violated the Federal Trade Commission Act by making false, misleading and deceptive statements and representations for the purpose of inducing the sale of their photographic services and products.

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

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

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

JURISDICTIONAL FINDINGS

1. Respondents Clark H. Geppert, Byron Geppert and Fidelis Geppert are individuals and partners trading as Dean Studios, with their office and principal place of business located at 211 West Seventh Street, Des Moines, Iowa.

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

ORDER

It is ordered, That respondents Clark H. Geppert, Byron Geppert and Fidelis Geppert, individually and as partners trading as Dean Studios, or trading under any other name or names, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographic services, including the developing of film, and the sale of enlargements, frames for photographs, or 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, that respondents are conducting a puzzle contest in which prizes will be awarded for correctly solving the puzzle, unless such is the fact.

2. Failing to clearly and conspicuously disclose that participants in "puzzle contests" will not receive prizes until their efforts have resulted in the sale to others of respondents' products.

3. Misrepresenting in any manner, directly or by implication, the nature of any contest or the prizes which will be awarded in connection therewith.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 29th day of 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

EVERSHARP LAWN MOWER CORPORATION ET AL

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

Docket 7656. Complaint, Nov. 16, 1959—Decision, Sept. 30, 1960

Consent order requiring a St. Louis distributor to cease giving retailers the means to deceive the public as to the usual price of its lawn mowers through furnishing them with price lists containing purported retail prices that were fictitiously high and through participating with them in advertising in newspapers which used the fictitious list prices.

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 Eversharp Lawn Mower Corporation, a corporation, and Oscar S. Rudman and Michael L. Rudman, individually and as officers of the 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 Eversharp Lawn Mower Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its principal office and place of business at 4927 Delmar Street, St. Louis, Mo.

Respondents Oscar S. Rudman and Michael L. Rudman are officers of the aforesaid corporate respondent. They formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of lawn mowers to wholesalers and to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some last past have caused, their said product, when sold, to be shipped from the place of business and factories in the State of Missouri 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 product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, for the purpose of inducting the purchase of their product, have engaged in the practice of using fictitious prices in connection therewith:

1. By furnishing to their customers price lists upon which certain amounts are indicated as "list prices", thereby representing directly or by implication that said amounts are the usual and regular retail prices of said lawn mowers in the trade area or areas where the representations were made. In truth and in fact, said amounts are fictitious and in excess of the usual and regular retail prices of said lawn mowers in many areas where the representations were made.

2. By participating with retailers in advertising said product, using the aforesaid fictitious list prices, in newspapers of general distribution.

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

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 lawn mowers 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 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' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

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

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

Shifrin, Treiman, Agatstein & Schermer, by *Mr. J. Leonard Schermer*, of St. Louis, Mo., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On November 16, 1959, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the offering for sale, sale and distribution of lawn mowers. On May 11, 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 agreement shall not become a part of the official record unless and until it becomes a part of the decision of the commission, and that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The agreement further provides that the complaint insofar as it concerns respondent Michael L. Rudman, in his individual capacity only, should be dismissed for the reasons set forth in an affidavit attached thereto to the effect that said respondent had no part in the formulating, directing or controlling of the acts and practices of the corporate respondent and the individual respondent, Oscar S. Rudman. 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 Eversharp Lawn Mower Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 4927 Delmar Street, in the City of St. Louis, State of Missouri.

Respondents Oscar S. Rudman and Michael L. Rudman are officers of the corporate respondents and are located at the same address. Individual respondent Oscar S. Rudman formulates, directs and controls the acts and practices of the said corporate respondent.

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

ORDER

It is ordered, That respondents, Eversharp Lawn Mower Corporation, a corporation, and its officers, and Oscar S. Rudman, individually and as an officer of said corporation, and Michael L. Rudman, as an officer of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of lawn mowers or any other product 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 furnishing price lists to their customers setting out suggested retail prices of their lawn mowers or any other product, or otherwise, that certain amounts are the usual and regular retail prices of their products, when such amounts are in excess of the prices at which such products are usually and regularly sold at retail in the trade area or areas where the representations are made;

2. Putting any plan into operation through the use of which retailers or others may misrepresent the usual and regular retail prices of such products.

It is further ordered, That the complaint, insofar as it relates to the respondent, Michael L. Rudman, in his individual capacity be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 30th day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Eversharp Lawn Mower Corporation, and Oscar S. Rudman, individually and as officer of said corporation, and Michael L. Rudman, as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Complaint

IN THE MATTER OF

EVERSHARP, INC., ET AL.

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

Docket 7811. Complaint, Mar. 10, 1960—Decision, Sept. 30, 1960

Consent order requiring the manufacturer of "Schick" safety razors and razor blades and its advertising agency to cease use of deceptive television demonstrations purporting to prove that the Schick razor was safer than other safety razors, disparaging competitive razors, and misrepresenting harmful consequences that might result from use of the latter.

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 Eversharp, Inc., a corporation, and E. E. Ettinger, individually and as an officer of said corporation, and Compton Advertising, Inc., a corporation, and John Hise, individually and as an officer of said corporation, and Alex Hoffman, individually and as an account executive of Compton Advertising, Inc., hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Eversharp, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at 350 Fifth Avenue, New York, N.Y.

Respondent E. E. Ettinger is a vice president of said corporate respondent and insofar as the allegations of this complaint are concerned was responsible for, or active in, the practices of said corporate respondent Eversharp, Inc. His address is 8510 Warner Drive, Culver City, Calif.

PAR. 2. Respondent Compton Advertising, 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 place of business located at 625 Madison Avenue, New York, N.Y. This corporate respondent is the advertising agency of the respondents referred to in paragraph 1 and prepares and places for publication and dissemi-

nation advertising material, including but not limited to that hereinafter set forth, to promote the sale of Schick safety razors and safety razor blades.

Individual respondent John Hise is a vice president, and individual respondent Alex Hoffman is an account executive of the corporate respondent Compton Advertising, Inc., and insofar as the allegations of this complaint are concerned, were responsible for, or active in, the practices of said corporate respondent. The address of these individual respondents is the same as that of the corporate respondent.

PAR. 3. Respondent Eversharp, Inc., is now, and for some time last past has been, engaged in the business of manufacturing, selling and distributing safety razors and safety razor blades sold under the brand name "Schick", and now causes said Schick safety razors and safety razor blades, when sold, to be transported from its factories in various cities to wholesalers, distributors and retailers located in various States of the United States and in the District of Columbia, and maintains and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents Eversharp, Inc., and E. E. Ettinger are now, and have been at all times mentioned herein, in substantial competition, in commerce, with corporations, firms and individuals in the sale of safety razors and razor blades.

Respondents Compton Advertising, Inc., and John Hise and Alex Hoffman are now, and have been at all times mentioned herein, in substantial competition, in commerce, with corporations, firms and individuals engaged in the advertising business.

PAR. 5. In the course and conduct of its business and for the purpose of inducing the sale of its Schick safety razors and safety razor blades, respondents Eversharp, Inc., and E. E. Ettinger, with the aid and direct participation of respondents Compton Advertising, Inc., John Hise and Alex Hoffman, have advertised said Schick safety razors and razor blades by means of demonstrations and various statements used in connection therewith in television broadcasts transmitted by television stations located in various states of the United States and in the District of Columbia having sufficient power to carry such broadcasts across state lines.

Among and typical, but not all inclusive, of said demonstrations and the statements used in connection therewith, are the following:

Title: "Heavyweight Champion"

Video	*Audio*
Open on MCU of Johansson in shower. He has just finished shaving and has a towel around his neck. He holds up a Schick Safety Razor as he calls out.	SFX: Out. Johansson: (D.V.) Sa palilig Ni kan raka Er i duschaen. Right, Bud Palmer!
Cut to CU of Bud Palmer. He is holding a boxing glove and waves toward Johansson.	Palmer: (D.V.) Right, Ingo. That's Ingemar Johansson, World's Heavyweight champion. He just said, in Swedish, the Schick Safety Razor is so safe you can shave in the shower.
Pull back as Johansson comes into scene next to Palmer, wearing fighter's robe and still has towel around his neck. Palmer slips glove on Johansson's hand.	Slip this glove on Ingo and I'll show you why the new modern Schick Safety Razor is so *safe*.
Cut to CU exposed edge of Matador Razor. Pencil indicates exposed corner. (See Exhibit 1 attached)	First, let's compare it with this old style round head razor, where blade corners are unprotected.
Cut to CU of boxing glove as Palmer runs Matador Blade corner across it cutting glove surface. (See Exhibits 2, 3 and 4 attached)	Palmer: (V.O.) Look! If that can happen to this glove, think what could happen to your face. Johansson: (V.O.) No thanks!
Palmer puts down Matador and picks up a Schick Safety Razor. He holds it up. Super: "Shielded blade corners" as he runs thumb over edge.	Palmer: (D.V.) But, Schick shields blade corners.
Palmer runs Schick safety razor across it. It doesn't cut the glove.	(V.O.) . . . no danger of nicks or scrapes.
Cut back to two shot of Johansson and Palmer.	(D.V.) Shave with confidence. . . . Switch to Schick Safety razor. Johansson: You know Bud, I live near the Schick factory in Sweden. Palmer (D.V.) That's where we make our fine Swedish steel blades. They're the sharpest ever!
Dissolve to shower set. "So safe you can shave in the shower", on glass with "Schick Safety Razor . . . still only 1:00 with blades." Man in BG shaving in shower.	Yet, so safe you can shave in the shower. Schick Safety Razor . . . still only one buck with blades.

The exhibits referred to above are made a part of this complaint by reference.

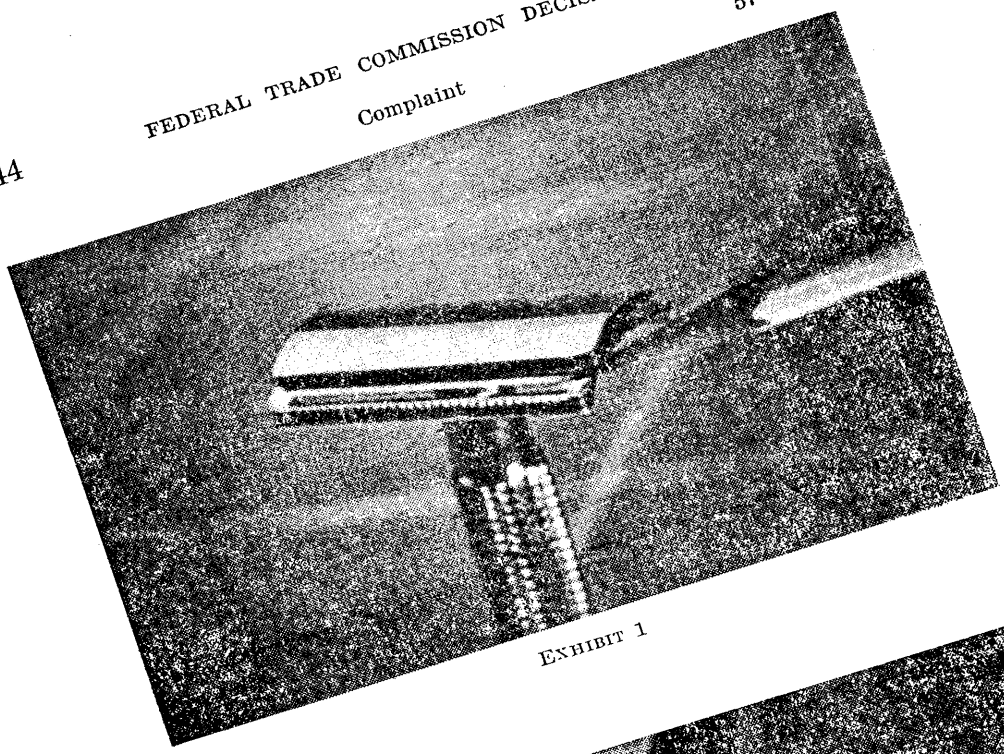


EXHIBIT 1

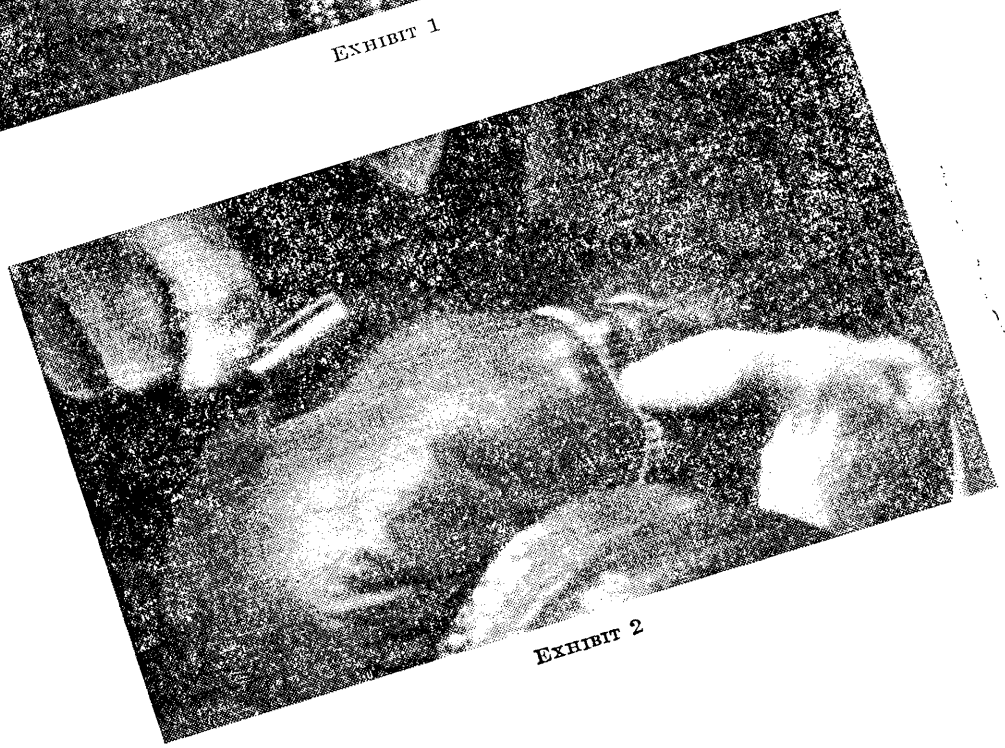


EXHIBIT 2

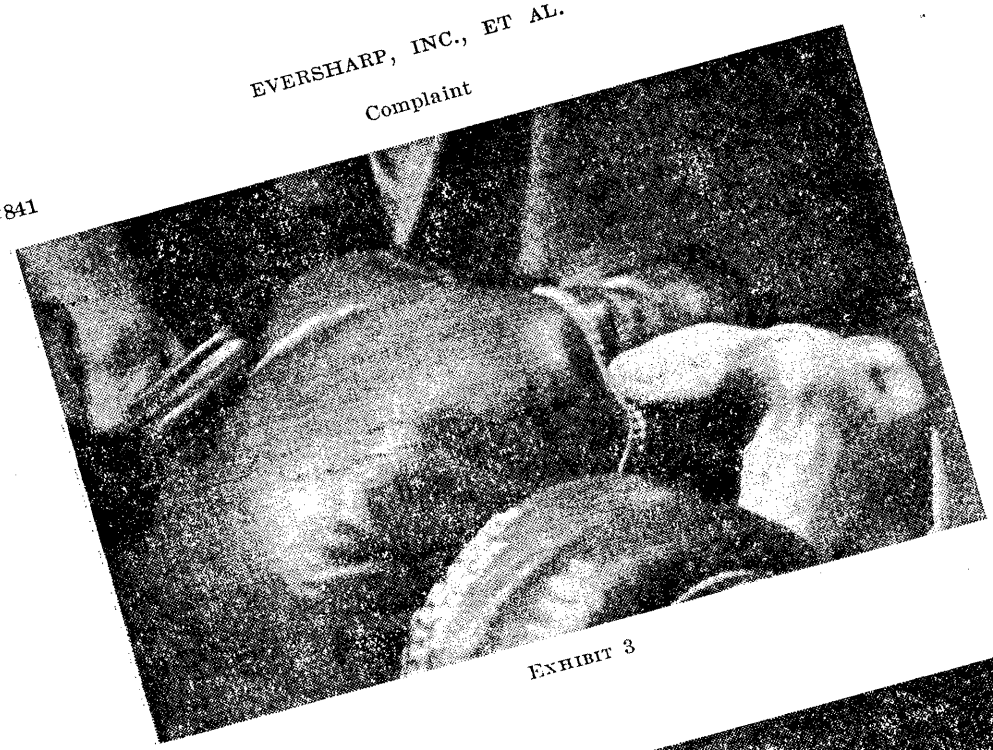


EXHIBIT 3

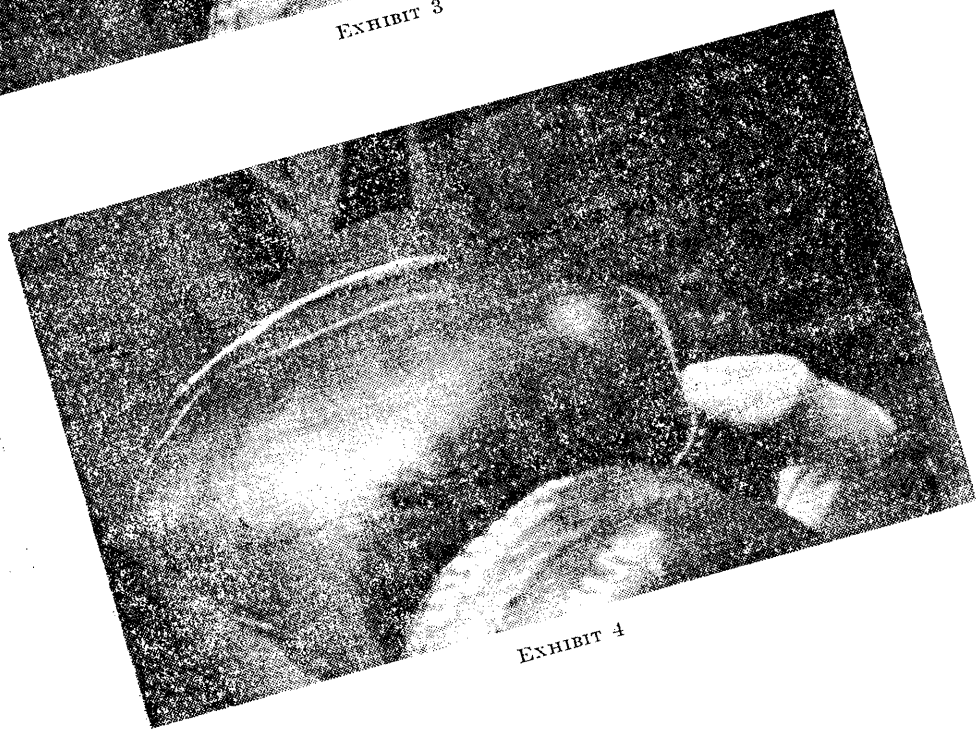


EXHIBIT 4

PAR. 6. Through the use of the aforesaid demonstration and the statements used in connection therewith, and others of similar import not specifically set out herein, respondents represent, directly and by implication, that said demonstration is a valid portrayal of the danger in actual use of competitive so-called round head razors.

PAR. 7. The said demonstration and the statements and representations used in connection therewith are false, misleading and deceptive. In truth and in fact, said demonstration is not a valid portrayal of any danger in actual use of competitive so-called round head razors since said demonstration does not duplicate, in any manner, the conditions of actual use.

The use by the respondents of said demonstration, including the statements and representations used in connection therewith, has the tendency and capacity to unduly frighten and alarm prospective purchasers of competitive razors with respect to consequences which may result from the use of said competitive razors.

Further, the use by respondents of said demonstration, and the statements and representations used in connection therewith, constitutes disparagement of said competitive razors.

PAR. 8. The use by the respondents of the aforesaid invalid demonstration and the false, misleading and deceptive statements and representations used in connection therewith has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of a substantial quantity of respondent Eversharp, Inc.'s Schick safety razors and safety razor blades 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 done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Frederick McManus for the Commission.

Mr. Sidney Davis of New York, N.Y., by *Mr. Robert L. Laskey*, for respondents Eversharp, Inc., and E. E. Ettinger.

Duke and Landis of New York, N.Y., by *Mr. David B. Landis*, for respondents Compton Advertising, Inc., John Hise and Alex Hoffman.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On March 10, 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 and sale of safety razors and safety razor blades sold under the brand name of "Schick."

On July 25, 1960, respondents and their attorneys 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.

It is set out in the agreement that individual respondent Alex Hoffman was formerly an account executive of the corporate respondent Compton Advertising, Inc., but is no longer connected with said corporation, and it was agreed that the complaint should be dismissed as to this individual in his capacity as account executive.

Under the agreement, the respondents admit the jurisdictional facts alleged in the complaint. The said 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 agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of Section 3.25(b) of the Rules of Practice.

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

1. Respondent Eversharp, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 350 Fifth Avenue, New York, N.Y.

Respondent E. E. Ettinger is a vice president of said corporate respondent and insofar as the allegations of the complaint are concerned was responsible for, or active in, the practices of said cor-

porate respondent, Eversharp, Inc. His address is 8510 Warner Drive, Culver City, Calif.

Respondent Compton Advertising, 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 place of business located at 625 Madison Avenue, New York, N.Y.

Individual respondent John Hise is a vice president of the respondent Compton Advertising, Inc., and his address is the same as that of said corporate respondent. It appears that respondent John Hise signed the aforesaid agreement as John A. Hise, Jr.

The address of the individual respondent Alex Hoffman is 15 Oak Crest Road, Darien, Conn.

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 Eversharp, Inc., a corporation, and its officers, and E. E. Ettinger, individually and as an officer of said corporation, and Compton Advertising, Inc., a corporation, and its officers, and John Hise, individually and as an officer of said corporation, and Alex Hoffman, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of safety razors and safety razor blades in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any pictorial presentation or demonstration purporting to prove or representing as proving, that the Schick safety razor or any other safety razor of substantially similar design, is safer, than other safety razors, in actual use, when such pictorial presentation or demonstration does not in fact so prove.

2. Disparaging by untruthful statements or any misleading or deceptive method, safety razors competitive with those of respondent Eversharp, Inc., by any pictorial presentation, demonstration, or in any other manner.

3. Misrepresenting, directly or by implication, in any manner, any consequence that may result in the actual use of safety razors competitive with those of respondent Eversharp, Inc.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to the respondent Alex Hoffman as an account executive of Compton Advertising, Inc.

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 Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 30th 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

CARL W. HERRMANN, INC., ET AL.

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

Docket 7988. Complaint, June 24, 1960—Decision, Oct. 4, 1960

Consent order requiring a Pittsburgh furrier to cease violating the Fur Products Labeling Act by failing to set forth the terms "Persian Lamb" and "Dyed Broadtail processed Lamb" where required on labels and invoices, and by failing to comply in other respects with regulations under the Act.

COMPLAINT

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

PARAGRAPH 1. Carl W. Hermann, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania. Its office and principal place of business is located at 516 Federal Street, Pittsburgh, Pennsylvania.

Carl W. Herrmann, Jr., is president, and Carl W. Herrmann, III, is vice president and secretary of the said corporate respondent. These individuals control, formulate and direct the acts, practices

and policies of the said corporate respondent. Their office and principal place of business is the same as that of the said corporate respondent.

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

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

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

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

(b) The term Persian Lamb was not set forth in the manner required where an election was made to use that term instead of Lamb in violation of Rule 8 of the said Rules and Regulations.

(c) The term Dyed Broadtail processed Lamb was not set forth in the manner required where an election was made to use that term instead of Dyed Lamb in violation of Rule 10 of the said Rules and Regulations.

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

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "Persian Lamb" was not set forth in the manner required where an election was made to use that term instead of Lamb in violation of Rule 8 of the said Rules and Regulations.

(c) The term "Dyed Broadtail processed Lamb" was not set forth in the manner required where an election was made to use that term instead of Dyed Lamb in violation of Rule 10 of the said Rules and Regulations.

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

Mr. Charles W. O'Connell for the Commission.

No appearance for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued June 24, 1960, charged respondents Carl W. Herrmann, Inc., a Pennsylvania corporation, with its principal office and place of business located at 516 Federal Street, Pittsburgh, Pennsylvania; and Carl W. Herrmann, Jr., and Carl W. Herrmann, III, individually and as officers of said corporation and located at the same address as the corporate respondent, with the use of unfair and deceptive acts and practices in interstate commerce in violation of the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

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

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

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

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

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

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

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

ORDER

It is ordered, That Carl W. Herrmann, Inc., a corporation, and its officers, and Carl W. Herrmann, Jr. and Carl W. Herrmann, III, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, manufacture for introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in

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

1. Misbranding fur products by:

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

B. Failing to set forth the term "Persian Lamb" where an election is made to use that term instead of Lamb.

C. Failing to set forth the term Dyed Broadtail processed Lamb where an election is made to use that term instead of Dyed Lamb.

D. Setting forth on labels affixed to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder:

(1) In abbreviated form;

(2) In handwriting.

2. Falsely or deceptively invoicing fur products by:

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

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

C. Failing to set forth the term Persian Lamb where an election is made to use that term instead of Lamb.

D. Failing to set forth the term Dyed Broadtail processed Lamb where an election is made to use that term instead of Dyed Lamb.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 4th day of October, 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.