stone Tire and Rubber Company, directly or indirectly, pays or contributes anything of value to any such marketing oil company in connection with the sale of TBA products by The Firestone Tire and Rubber Company or any distributor of Firestone products to any wholesaler or retailer of petroleum products of such marketing oil company;

2. Paying, granting or allowing, or offering to pay, grant or allow, anything of value to Shell Oil Company or to any other marketing oil company for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing or promoting the sale of TBA products, directly or indirectly, by The Firestone Tire and Rubber Company or any distributor of Firestone products to any wholesaler or retailer of petroleum products of such marketing oil company;

3. Reporting or participating in the reporting to Shell Oil Company or to any other marketing oil company concerning sales of TBA products to wholesalers or retailers of petroleum products, individually or by groups, of any such marketing oil company.

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

It is further ordered, That respondents Shell Oil Company and The Firestone Tire and Rubber Company, corporations, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the aforesaid order to cease and desist.

In The Matter Of

COLGATE-PALMOLIVE COMPANY

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

Docket 7660. Complaint, Nov. 19, 1959—Decision, Mar. 9, 1961

Order requiring a manufacturer of a dentifrice, among other products, with headquarters in New York City, to cease representing falsely in advertisements and television commercials that its "Colgate Dental Cream with Gardol" formed a "protective shield" around teeth, thereby affording users complete protection against tooth decay or the development of cavities in their teeth.

Edward F. Downs, Esq. and *Anthony J. Kennedy, Esq.* supporting the complaint.

Cahill, Gordon, Reindel & Ohl, by *Mathias F. Correa, Esq.*, and *Corydon B. Dunham, Jr., Esq.*, of New York, N. Y., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

PRELIMINARY STATEMENTS

The complaint issued in this proceeding on November 19, 1959, charges respondent with violating the Federal Trade Commission Act by using false, misleading and deceptive representations in advertising a dentifrice, Colgate Dental Cream with Gardol, sold by it in interstate commerce. Respondent answered the complaint; prehearing conferences were held; and hearings were had in Washington, D.C. and New York, New York. Proposed findings of fact, conclusions of law, and proposed orders were filed by the parties and orally argued on June 17, 1960. On February 4, 1960, a ruling was issued granting the motion of counsel supporting the complaint to strike portions of respondent's answer. On February 26, 1960, a ruling was issued denying respondent's motion to dismiss the proceedings on the grounds that the initial complaint failed to inform the respondent adequately of the charges it would have to meet, and on the further grounds that counsel supporting the complaint had failed to sustain the burden of proof imposed upon them by law.

This is one of the first proceedings under the Federal Trade Commission Act against allegedly deceptive *television* advertising.

There is no substantial controversy over the legally operative facts. Respondent contends (1) its advertising was not false, misleading and deceptive; and (2) should this fact be found against it, that it has, nevertheless, voluntarily abandoned the condemned practices; and that this proceeding should be dismissed because all that could be accomplished by a cease and desist order has already been achieved by respondent's voluntary abandonment of the practices.

Two categories of respondent's advertising are assailed in this proceeding: "print" advertising and television advertising. The print advertising in evidence in this case does not require the application of any criteria different from that which has been applied in countless prior print advertising cases where the charges are that such advertising is false, misleading and deceptive. The precedents for judging such print advertising are legion.

Television advertising, on the other hand, has in it an element which the examiner has designated "visual innuendo." An example of visual innuendo in television advertising is those advertisements in which men in white coats, similar to those worn by doctors and dentists, advertise pharmaceuticals. The television advertisement

does not state that the person in the white coat is a doctor or dentist but such innuendo is intended, and usually is drawn by the viewer, even though neither expressed nor directly implied.

Although the visual innuendo of a television advertisement may be a bit empirical, television advertising, as all other forms of advertising, can be subjected to a disinterested, objective, dispassionate judgment whether it is, with its visual innuendo, false, misleading and deceptive.

The hearing examiner finds that counsel supporting the complaint have proven in this proceeding the legally essential allegations of the complaint by a preponderance of material, relevant and probative evidence and enters an order granting counsel supporting the complaint the relief requested.

On the basis of the entire record, the examiner makes the findings of fact hereinafter set forth. Findings requested by counsel which are not specifically adopted and incorporated in this initial decision are rejected. The fact that the examiner has not incorporated in this decision, nor rejected, nor dismissed specifically, evidence which is in the record, should not be construed as indicating that such evidence has not been fully considered by the examiner in preparing this initial decision. It indicates merely that the evidence which the examiner has specifically incorporated in his findings of fact is sufficiently preponderant, relevant, probative and substantial for a proper adjudication of the issues.

The hearing examiner has excluded two offers of evidence by the respondent which merit comment:

A series of articles written by various persons relating to tooth decay in general and the alleged properties of Colgate Dental Cream with Gardol, (exhibits RX 3A through RX 3Z 58) was excluded because (a) no evidence was introduced as to the qualifications of the persons who wrote the articles; (b) the authors of the articles were not tendered for cross-examination by counsel supporting the complaint; and (c) to have received such hearsay evidence into the record without affording counsel supporting the complaint an opportunity to cross-examine the authors of the articles, would have deprived counsel supporting the complaint of a very fundamental and basic legal right.

A series of advertisements of dentifrices by respondent's competitors was excluded because it is irrelevant and immaterial. *Moog Industries v. FTC, 355, U.S. 411.* A respondent to Federal Trade Commission proceedings may not escape the penalties of its own wrong doing, by showing or attempting to show similar wrong doing of that respondent's competitors. The advertising of respond-

ent's competitors is not relevant to determining whether respondent Colgate's advertising was false, misleading and deceptive.

The examiner makes the following

FINDINGS OF FACT

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

The complaint filed herein states a good cause of action against respondent, and counsel supporting the complaint have proven the essential allegations of the complaint by preponderant, relevant, probative evidence in the record.

Respondent is engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

Colgate-Palmolive Company, a Delaware corporation, whose consolidated income account for the year ended December 31, 1959, was $581,981,689 has its principal office and place of business located at 300 Park Avenue, New York, New York. It manufactures, advertises, offers for sale, sells, and distributes, in interstate and foreign commerce, a dentifrice designated "Colgate Dental Cream with Gardol" and various other products to distributors and retailers for resale to the public. Respondent's domestic sales of Colgate Dental Cream with Gardol for the six months ended June 30, 1958, were $30,764,764.

In promoting the sale of its products respondent advertised and does advertise extensively in magazines of national circulation, in newspapers of interstate circulation, and by means of television programs and commercials broadcast over nation-wide networks.

In the conduct of its business, at all times material to this proceeding, respondent has been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of dental cream. At the time the complaint issued in this proceeding respondent was representing in both its print advertising and its television advertising that brushing with Colgate Dental Cream with Gardol would put a "protective shield" around teeth, and prevent tooth decay. The manner in which this theme is developed in the print advertising is accurately shown in CX 15, CX 16, CX 17, CX 18, CX 19, CX 20, CX 21, CX 22, CX 23, CX 24, and CX 26. The treatment of this theme in respondent's television advertisements is accurately shown in CX 3, CX 4, CX 5, CX 6, CX 7, CX 8, CX 9, CX 10, CX 11, CX 12, CX 13, and CX 14.

It is stipulated in this record that neither Colgate Dental Cream with Gardol nor any other dentifrice on the market at the time this

complaint issued, or now, affords the users thereof complete protection against tooth decay or the development of cavities in their mouth.

The word "audio" as used in these findings refers to that portion of respondent's television advertisements which communicates by means of the auditory sense. The word "video" refers to that portion of the television presentation which communicates by means of the visual sense. In addition to the audio and video portions of the advertisement, considered separately, there is a "visual innuendo" in television advertising which was briefly alluded to and characterized above in the Preliminary Statements.

Respondent's print advertising and its television advertising at the time the complaint issued herein in November, 1959, sought to convey, and did convey, the impression to the prospective purchasers of Colgate Dental Cream with Gardol, (the television advertisement by means of visual innuendo) that persons who brushed their teeth with that toothpaste would thereby prevent decay from *getting to* their teeth; that "Gardol forms an invisible protective shield around your teeth."

The video portion of respondent's television advertisements depicted objects being propelled toward, *but not hitting*, a person because of an invisible shield. The visual innuendo was intended, and was conveyed to the viewer, that decay cannot *get to* the teeth of a person brushing with Colgate Dental Cream with Gardol. This representation was and is false, misleading and deceptive. It deceives and misleads the public concerning the properties and the caries-prevention value, if any, of Colgate Dental Cream with Gardol.

Respondent's specimen television advertisements in evidence (CX 3, CX 5, CX 7, CX 9, and CX 11) have the following audio sequence: In CX 3 as Mighty Mouse in the video sequence takes the top off a Colgate with Gardol tube and points to the Happy Tooth standing near by, the audio portion says,

> Now to put up the *invisible protective shield* around our Happy Tooth with Colgate Dental Cream with GARDOL. (Emphasis supplied.)

At this point in the video portion of the advertisement, Mighty Mouse spreads Colgate Dental Cream on a toothbrush, flies around the tooth and puts up a "gardol shield."

In the video portion of CX 5, CX 7, CX 9, and CX 11, a coconut, tennis ball, and lariat are thrown or hit toward a person in the foreground of the scene. The coconut, tennis ball, and lariat bounce off an unseen transparent glass shield which is, invisibly, between the person propelling the objects, and the person toward whom the object is propelled. The coconut, tennis ball, and lariat do not reach

the person at whom they are thrown because they cannot *get to* them. The audio portion accompanying this action (CX 6A, CX 8B, CX 10B, CX 12B) says,

> And here's how Gardol works. Now just as I was protected by this (man knocks on shield) invisible shield, Colgate's with Gardol forms an invisible, protective shield around your teeth. Fights tooth decay . . . *and* bad breath *all day!* Yes, for most people, just *one brushing* stops mouth odor *all day.*

Respondent's print advertising in the record actually shows a transparent protective shield in front of the teeth of a person whose face appears in the advertisement.

The invisible shield theme in respondent's advertising had the tendency to and did deceive prospective purchasers of Colgate Dental Cream with Gardol insofar as it represented the true nature of the properties of Colgate Dental Cream with Gardol, and the manner in which Colgate Dental Cream with Gardol inhibits tooth decay.

Respondent's print advertising and the visual innuendo of its television advertising were intended to convey the impression, and did convey the impression, that decay could not get to the teeth of a person brushing with Colgate Dental Cream with Gardol, just as the coconut, tennis ball, and lariat could not get to the person at whom they were thrown, because of the "invisible shield." This was, and is, a false, misleading and deceptive portrayal of the true properties of Colgate Dental Cream with Gardol.

Such false, misleading and deceptive advertising is proscribed by the Federal Trade Commission Act.

When the complaint in this proceeding was served upon respondent, alerting respondent to the Commission's objection to the "invisible shield" theme, respondent, at a cost in excess of $100,000, promptly took steps to eliminate, and eliminated, the invisible shield theme from its print and television advertising. It has not been used since.

The invisible shield theme has not been reinserted in respondent's advertising since it was eliminated for the purpose of meeting the objections thereto stated in the instant complaint issued November 19, 1959. The evidence in this record does not support a finding that respondent will not, in the future, unless restrained by this Commission, misrepresent the true properties, and caries-inhibiting value, if any, of Colgate Dental Cream with Gardol.

DISCUSSION

It is in the public interest to prevent the sale of commodities by the use of false and misleading statements and representations.[1]

[1] *Parke Austin & Lipscomb* v. *FTC,* 142 F. 2d 437 [4 S. & D. 168] citing L. & C. Mayers Co., Inc. v. Federal Trade Commission, 97 F. 2d 365, 367 [2 S. & D. 460].

Capacity to deceive and not actual deception is the criteria by which practices are tested under the Federal Trade Commission Act.[2] To tell less than the whole truth is a well-known method of deception; and he who deceives by resorting to such method, cannot excuse the deception by relying upon the truthfulness per se of the partial truth by which it has been accomplished.[3] "A statement may be deceptive even if the words may be literally or technically construed so as to not constitute a misrepresentation . . . The buying public does not weigh each word in an advertisement or misrepresentation. It is important to ascertain the impression that is likely to be created upon the prospective purchaser."[4] Advertisements are not to be judged by their effect upon the scientific or legal mind, which will dissect and analyze each phrase, but rather by their effect upon the average member of the public who more likely will be influenced by the impression gleaned from a first glance.[5]

Measured by these criteria which have been culled from deceptive advertising decisions of the courts, respondent's advertising reflected in this record violated the proscriptions of the Federal Trade Commission Act and the cease and desist order requested by counsel supporting the complaint should issue.

THE "ARGUS DEFENSE"

Respondent argues, most persuasively, that it has always cooperated with the Commission, voluntarily eliminated the invisible shield theme from its advertising after being served with this complaint, and nothing can be accomplished by a cease and desist order which has not already been accomplished by respondent's voluntary action. The proceeding should, therefore, be dismissed. In support of its position respondent cites in its brief, inter alia, *Argus Cameras, Inc.*, 51 FTC 405 (1954); *Dietzgen Co.* v. FTC, 142 F.2d 321 (CA 7 1944); *Firestone Tire and Rubber Co.*, Docket No. 7020; *Wildroot Co., Inc.*, 49 FTC 1578 (1953); *Bell & Howell Co.*, Docket No. 6729; *United States* v. *W. T. Grant Co.*, 345 U.S. 629 (1953).

Although there is in the record respondent's evidence of events occurring prior to the issuance of the complaint to demonstrate its complete cooperation with the Commission, the examiner must assume, and does assume, that respondent's conduct prior to November 19, 1959, was fully considered by the Commission at the time it issued this complaint. The issuance of this complaint carried with it a finding and conclusion that the Commission had reason to

[2] *Goodman* v. *FTC*, 244 F. 2d 584, 604 CA 9th (1957).
[3] *P. Lorillard Co.* v. *FTC*, 186 F. 2d 52, 58 (CA 4 1950).
[4] *Kalwajtys* v. *FTC*, 237 F. 2d 654, 656. Cert Den. 352 U.S. 1025.
[5] *Ward Laboratories Inc., et al.* v. *FTC*, 276 F. 2d 952, 954 (CA 2—April 14, 1960).

believe, at that time, that respondent was violating the law, and that this proceeding was, and is, in the public interest. Respondent seeks to be rewarded for doing that which it was, and is, required by law to do—advertise accurately, truthfully, and honestly the products which it sells. This primary legal duty is upon the advertiser and it may not be shifted to the Federal Trade Commission. Respondent has proven most of the elements which would entitle it to a dismissal under the "Argus defense," except one: The examiner cannot on this record, find that there is "no reasonable likelihood that respondent will in the future misrepresent" the true properties of Colgate Dental Cream with Gardol unless an order to cease and desist therefrom issues.[6]

Now, therefore, the examiner makes the following

CONCLUSIONS OF LAW

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

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

3. Respondent sells Colgate Dental Cream with Gardol in interstate commerce as "interstate commerce" is defined in the Federal Trade Commission Act.

4. Counsel supporting the complaint have proven the legally material allegations of said complaint by a preponderance of relevant, probative and material evidence.

5. In the conduct of its business, at all times material to these proceedings, respondent has been in substantial competition in commerce with corporations, firms, and individuals in the sale of "dental creams."

6. The advertising used by respondent to sell Colgate Dental Cream with Gardol, and complained against in this complaint, and now abandoned, is and was false, misleading and deceptive, and is proscribed by the Federal Trade Commission Act.

It is, therefore,

Ordered, That respondent Colgate-Palmolive Company, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the product "Colgate Dental Cream with Gardol" or any other dentifrice possessing substantially the same properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

[6] See *Charles Pfizer & Co., Inc.*, Docket No. 7487. Commission's opinion of May 23, 1960, affirming examiner's dismissal of complaint.

1. Representing, directly or by implication, that said dentifrice affords the users thereof with complete protection against tooth decay or the development of cavities in their teeth.

2. Misrepresenting in any manner the degree or extent of protection against tooth decay or the development of cavities in teeth afforded users of any such dentifrice.

OPINION OF THE COMMISSION

By Kern, Commissioner:

Respondent, Colgate-Palmolive Company, is charged with violation of the Federal Trade Commission Act in advertisements, including television commercials, used by it in promoting the sale of Colgate Dental Cream with Gardol. The hearing examiner in his initial decision held that the allegations were sustained by the evidence and ordered respondent to cease and desist from the practice found to be unlawful. Respondent has appealed from this decision. In substance, the complaint charges respondent with representing that Colgate Dental Cream with Gardol forms a "protective shield" around teeth, thereby affording the users thereof complete protection against tooth decay or the development of cavities in their teeth, when in truth and in fact said product does not afford such complete protection by forming a "protective shield" or otherwise.

There is no dispute concerning the question of whether Colgate Dental Cream with Gardol affords complete protection. It is stipulated in the record that "neither Colgate Dental Cream with Gardol, nor any other dentifrice on the market, affords the users thereof complete protection against tooth decay or the development of cavities in their teeth." However, respondent vigorously contends that its advertisements do not claim such complete protection for its dentifrice.

As aptly described by the hearing examiner, in the video portion of one of respondent's typical television commercials in evidence, a tennis ball is hit toward the announcer in the foreground of the scene. Another commercial pictures a coconut being thrown toward the announcer. The ball and coconut bounce off an unseen transparent shield which is, invisibly, between the person propelling these objects and the announcer. Neither the ball nor the coconut reaches the announcer and the shield is in no way damaged or penetrated. In the audio portion accompanying this action, the announcer states:

And here's how Gardol works. Now just as I was protected by this (announced taps shield) invisible shield, Colgate's with Gardol forms an invisible, protective shield around your teeth. Fights tooth decay . . . and bad breath *all day!*

In another television commercial, Mighty Mouse is pictured spreading Colgate Dental Cream on a tooth after stating:

Now to put the invisible protective shield around our Happy Tooth. Colgate Dental Cream with Gardol.

In the following scene, Mr. Tooth Decay attempts to reach the tooth but is unable to because of the Gardol shield.

In respondent's newspaper and magazine advertisements, a transparent shield is pictured protecting teeth from the words "Tooth Decay" and "Bad Breath." In the text of the advertisements there appears the statement that "* * * only Colgate's contains Gardol to form an invisible, protective shield around your teeth that fights decay all day."

The hearing examiner found that the representation alleged in the complaint was conveyed by means of "visual innuendo." However, we do not find it necessary to rely on an innuendo to establish the existence of the alleged representation in this case. The audio portion of the commercial specifically claims that Colgate's with Gardol forms an invisible protective shield around the teeth and states that this protection is the same as that afforded the announcer by the invisible shield in the commercial. The picture accompanying this statement plainly shows that the announcer was completely protected. The fact that the shield is not visible in the commercial is obviously respondent's method of indicating the *manner* in which Colgate's with Gardol works, which is not at issue in this proceeding. Whether the shield is invisible or visible, as in the print advertisements, is of no consequence in determining whether the alleged representation was made. In our opinion, respondent's television commercials and print advertisements clearly and directly represent that Colgate Dental Cream with Gardol affords users complete protection against tooth decay and against the development of cavities. On the basis of the aforementioned stipulation, such representations as to the degree or extent of the protection afforded users of respondent's dentifrice are deceptive.

Respondent contends that the advertisements do not claim complete protection because of the statement therein that Colgate's "fights" tooth decay and that the product is backed by a two-year clinical research on the "reduction" of tooth decay. In our opinion, the words "fights" and "reduction" in the context in which they are used in respondent's advertisements, do not negate a claim of complete protection from tooth decay. Viewed in the light most favorable to respondent, these words only serve to make the advertisements capable of two meanings. It is well settled that where one of two meanings conveyed by an advertisement is false, the advertisement

is misleading.[1] Respondent's argument on this point is rejected.

Likewise, we must reject respondent's various arguments in support of its contention that evidence of public understanding is required to determine whether its advertising has a capacity to lead purchasers into believing that Colgate's affords complete protection. The courts have made it clear that the Commission is not required to sample public opinion to determine what meaning is conveyed to the public by particular advertisements.[2]

Respondent next contends that the hearing examiner erred in failing to dismiss the complaint on the grounds of abandonment. In support of its position respondent relies principally on the Commission's action in *Argus Cameras, Inc.*, 51 F.T.C. 405 (1954).

Although the hearing examiner rejected this defense, he found that respondent has proven most of the elements which would entitle it to dismissal under the *Argus* case, except one. The "element" which the hearing examiner found was not proven is that there is no reasonable likelihood of a resumption of the practice. We do not fully understand the hearing examiner's reasoning on this point, as this "element" is obviously a conclusion which must result if all other elements present in the *Argus* case are proven. Regardless, however, of his reasoning, his finding that most of the elements present in the *Argus* matter have been established on this record is in error.

In the *Argus* case, the respondent filed affidavits stating that it had no intention of resuming the practices with which it was charged. Nowhere in this record has the Colgate-Palmolive Company given any such express assurance. It is true, as asserted in respondent's answer and as found by the hearing examiner, that upon being served with the complaint, respondent eliminated the protective shield theme from its advertising at a cost in excess of $100,000 and has not resumed the use of that theme. However, the fact that respondent has discontinued one means by which it has misrepresented the degree of protection afforded by its dentifrice cannot be considered an assurance that the practice itself will not be resumed by other means.

In dismissing the complaint against *Argus*, the Commission took into consideration its letter to that respondent several years before complaint issued which stated in part that the Commission did not contemplate further proceedings at that time. Colgate was not given any such express assurance and was, in fact, informed by

[1] *Rhodes Pharmacal Co., Inc.* v. *Federal Trade Commission*, 208 F. 2d 382 (7th Cir. 1953); *United States* v. *95 Barrels of Vinegar*, 265 U.S. 438 (1924).

[2] *E. F. Drew & Co., Inc.* v. *Federal Trade Commission*, 235 F. 2d 735 (2d Cir. 1956); *Rhodes Pharmacal Co., Inc., supra.*

the Commission's staff that its advertising practices were under investigation during the period immediately preceeding issuance of the complaint.

Another factor militating against dismissal of this complaint on the grounds of abandonment is respondent's continued insistence that its advertising is not false. In our view, this attitude on the part of respondent has a definite bearing on whether there is any likelihood of a resumption of the practice either for competitive or for other reasons.

In support of its argument for dismissal on the basis of the *Argus* case, respondent relies to a great extent on certain exhibits which were rejected by the hearing examiner. Respondent argues that the exhibits should have been admitted to show that although it did not discontinue the protective shield theme until after complaint issued, such discontinuance should be viewed as voluntary.

We do not find it necessary to decide whether the hearing examiner erred in excluding these exhibits. Since he allowed them to be forwarded with the record, the exhibits are available for our examination and have been reviewed by us. They consist of copies of a letter and documents submitted by respondent to the Commission about one year before complaint issued and purport to show that respondent did not attempt to support a claim of complete protection for its dentifrice. From the fact that the Commission's staff had this data before it for a year prior to issuance of the complaint, respondent argues that the staff did not view respondent's advertising as claiming complete protection and that it was justified in believing that no challenge was being made to its protective shield theme.

Respondent's argument as to the reason complaint did not issue a year earlier is purely speculative. There is no evidence that the Commission's staff gave respondent any reason to believe that its protective shield theme was not deceptive. To the contrary, respondent was advised by the staff on three occasions prior to issuance of the complaint that its advertising, in which the protective shield is featured, was still under investigation. Moreover, respondent's argument ignores the fact that the interval between the initiation of an investigation and the issuance of a complaint may be affected by several factors. One such factor would be the necessity for consideration of all aspects of a respondent's advertising at staff level to determine the number and nature of the charges which may be warranted by the available evidence. Under the circumstances, we find no substance in respondent's argument on this point. Respondent was in no way prejudiced by the hearing examiner's exclusion of the exhibits.

It is true that respondent was cooperative throughout the investigation of this matter. Nevertheless, respondent did not revise its advertising to eliminate the protective shield theme until after complaint issued. Moreover, as we had previously stated, respondent has persisted in its argument that the advertising is not false. On the basis of this record, we cannot find that the circumstances of this case warrant a conclusion that the practice charged has been surely stopped and will not be resumed. In our view, an order to cease and desist is required in the public interst.

Respondent next contends that the hearing examiner's order goes beyond the charge in the complaint. Specifically, it objects to paragraph 2 of the order which requires that in connection with the sale of Colgate Dental Cream with Gardol, or any other dentifrice possessing substantially the same properties, respondent cease "Misrepresenting in any manner the degree or extent of protection against tooth decay or the development of cavities in teeth afforded users of any such dentifrice."

We have found that respondent has engaged in the practice of misrepresenting the degree of protection afforded users of its dentifrice by its claims of complete protection. It is well settled that the Commission is not limited to proscribing an unfair practice in the precise form to have existed in the past but may frame its order broadly enough to prohibit the future use of the deceptive sales method in any form.[3] In our opinion, paragraph 2 of the order in the initial decision is necessary to achieve that purpose.

Under the circumstances, respondent's appeal is denied. To the extent the findings of the hearing examiner are deficient, the initial decision is modified to include the factual findings together with the reasons and basis thereof embodied in this opinion. As so modified, the initial decision is adopted as the decision of the Commission.

FINAL ORDER

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

The Commission, 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:

[3] *Consumer Sales Corp.* v. *Federal Trade Commission*, 198 F. 2d 404 (2d Cir. 1952); *Hershey Chocolate Corp.* v. *Federal Trade Commission*, 121 F. 2d 968 (3d Cir. 1941); *Niresk Industries, Inc.* v. *Federal Trade Commission*, 278 F. 2d 337 (7th Cir. 1960).

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 respondent, Colgate-Palmolive 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 contained in said initial decision.

In The Matter Of

W & J SLOANE

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

Docket 7579. Complaint, Sept. 8, 1959—Decision, Mar. 10, 1961

Order dismissing without prejudice—for the reason that the alleged unfair practices were committed by another company, since dissolved—complaint charging a New York City dealer with misrepresenting the price, composition, and size of its rugs.

Mr. Charles Donelan and *Mr. Charles S. Cox* for the Commission.
Goldstein, Judd & Gurfein, of New York, N. Y., for respondent.

Initial Decision by Harry R. Hinkes, Hearing Examiner

Respondent W & J Sloane, a New York corporation, is charged in a complaint issued by the Federal Trade Commission on September 8, 1959 with violations of the provisions of the Federal Trade Commission Act in connection with the advertising, offering for sale, sale and distribution of rugs. Pursuant to notice, hearings were held in New York City.

Counsel for the complaint now moves that this proceeding be dismissed without prejudice to the right of the Commission to institute further proceedings in this matter. He points out that the proceeding is directed against W & J Sloane, a corporation, incorporated under the laws of the State of New York; that no officer or other individuals were joined as parties respondent; that the acts and practices alleged in the complaint apparently occurred in December, 1957, and were committed by W & J Sloane, Inc., a corporation existing and doing business under the laws of the State of Delaware and not by respondent herein; that W & J Sloane, Inc. of Delaware was dissolved on February 2, 1960; and that on or about September

1, 1957, the name of respondent herein was changed to W & J Sloane Realty Corporation.

The record taken at the hearings held in this proceeding confirms this recitation of corporate identities.

Under the circumstances, there does not appear to be any basis for a continuation of this proceeding against the named corporate respondent. The dismissal of the complaint should, however, in the hearing examiner's opinion, be without prejudice to the right of the Commission to take further action in the matter in the future should that course appear to be necessary.

ORDER

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

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner as to the above-named respondent shall on the 10th day of March, 1961, become the decision of the Commission.

IN THE MATTER OF

JOHN HOLONKA ET AL. DOING BUSINESS AS ALPHA DISTRIBUTING CO.

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

Docket 7725. Complaint, Jan. 6, 1960—Decision, Mar. 14, 1961

Consent order requiring New York City distributors of phonograph records to cease giving concealed payola to disc jockeys and other personnel of television and radio programs as inducement for the frequent playing of their records 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 John Holonka and Harry Apostoleris, individually, and as copartners, doing business as Alpha Distributing 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. Respondents John Holonka and Harry Apostoleris are individuals and copartners, doing business as Alpha Distributing Co., with their principal office and place of business located at 457 West 45th Street, New York, N. Y.

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

In the course and conduct of their business, respondents now cause, and for some time last past have caused, the records they distribute, when sold, to be shipped from their place of business in the State of New York 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, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of phonograph records.

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

Record manufacturing companies and distributors ascertained that popular disc 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 disc jockeys of musical programs on radio and television stations to induce, stimulate or motivate the disc jockey to select, broadcast, "expose" and promote certain records in which the payer has a direct financial interest.

Disc jockeys, in consideration of their receiving the payment 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, negotiated for and disbursed "payola" to disc 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 disc 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 disc 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, have aided and abetted the deception of the public by various disc jockeys by controlling or unduly influencing the "exposure" by records by disc 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 disc jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they otherwise might not have purchased and also to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 6. The aforesaid acts, practices, and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the offering for sale, sale and distribution of phonograph records, and to divert trade unfairly to the 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 for the Commission.
Mr. Samuel Kaufman, of New York, N. Y., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On January 6, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the offering for sale, sale and distribution of phonograph records as an independent distributor for several record manufacturers to retail outlets and jukebox operators in various states of the the United States.

On January 12, 1961, the respondents and counsel supporting the the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

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

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

agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondents John Holonka and Harry Apostoleris are individuals and copartners, doing business as Alpha Distributing Co., with their principal office and place of business located at 457 West 45th Street, New York, New York.

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

ORDER

It is ordered, That respondents John Holonka and Harry Apostoleris, individually, and as copartners doing business as Alpha Distributing Co., 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 record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 14th day of March, 1961, 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

THOMASVILLE CHAIR COMPANY

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

Docket 7273. Complaint, Oct. 7, 1958—Decision, Mar. 15, 1961

Order requiring a manufacturer of household furniture with factory at Thomasville, N. C., with gross sales in 1956 exceeding $22,000,000, to cease violating Sec. 2(c) of the Clayton Act by passing on to some of its retail furniture dealer customers a discount or lower price in lieu of a commission or brokerage; specifically, dividing its dealer customers into two groups and charging those on its "Jobber" price list—presumably making annual purchases in excess of $50,000—five per cent less than the "Carload" list, and paying a commission of 6% on sales to the latter group, while paying only 3% on "Jobber" sales and unlawfully passing on the 3% difference to customers as part of their 5% lower price.

Before *Mr. Frank Hier* and *Mr. William L. Pack*, hearing examiners.

Mr. William W. Rogal for the Commission.

Mr. Raymond S. Smethurst, of Washington, D. C., for respondent.

Findings as to the Facts, Conclusions and Order

Pursuant to the provisions of an Act of Congress, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U.S.C., Sec. 13), the Federal Trade Commission on October 7, 1958, issued and subsequently served upon the respondent named in the caption hereof its complaint in this proceeding, charging said respondent with having violated subsection (c) of Section 2 of said Clayton Act, as amended. The respondent's answer to the

complaint was filed on November 20, 1958. Hearings were thereafter held before duly designated hearing examiners of the Commission and testimony and other evidence in support of and in opposition to the allegations of the complaint were received into the record. In an initial decision filed August 12, 1960, the hearing examiner found that the charge had not been sustained by the evidence and ordered that the complaint be dismissed.

The Commission having considered the appeal of counsel supporting the complaint from the initial decision and the entire record in this proceeding and having determined that the appeal should be granted and that the initial decision should be vacated and set aside, now makes this its findings as to the facts, conclusions drawn therefrom and order to cease and desist which, together with the accompanying opinion, shall be in lieu of the findings, conclusions and order contained in the initial decision.

FINDINGS AS TO THE FACTS

1. Respondent, Thomasville Chair Company, is a corporation organized, existing and doing business under and by virtue of the State of North Carolina, with its principal office and place of business located at Thomasville, North Carolina. Respondent is engaged in the business of manufacturing and selling household furniture, including bedroom and dining room furniture.

2. In the course and conduct of its business, respondent, in the sale of said furiture, has been and now is engaged in commerce, as "commerce" is defined in the Clayton Act, as amended.

3. In the sale of its furniture to retail furniture dealer customers, respondent utilizes the services of sales agents who are compensated by the payment of a commission upon sales of such merchandise.

4. In selling its bedroom and dining room furniture, respondent utilizes two different price lists, known as the "Jobber" or "J" list and the "Carload" or "CL" list. The prices on the "Jobber" list are approximately 5% lower than the prices on the "Carload" list. On sales to "Carload" or "CL" accounts, respondent pays its sales agents a commission of 6% of the amount of the sale and on sales to the "Jobber" or "J" accounts respondent pays its sales agents a commission of 3% of the amount of the sale.

5. Respondent claims that dealers that purchase at least $50,000 worth of bedroom and dining room furniture per year are classed as "Jobber" accounts and that all other customers are "Carload" accounts. It further claims that because the "Jobber" accounts' annual volume of purchases is larger than that of the "Carload" accounts, there is a difference in respondent's costs of at least 5%, not includ-

ing the difference in sales commissions, in serving the two classes of customers. The purchases of many of the "Jobber" accounts, however, have amounted to substantially less than $50,000 per year. Consequently, it would appear that annual volume of purchases of at least $50,000 has not been the criterion used by respondent in determining which customer will receive the 5% price reduction.

6. Cost data introduced by respondent establishes that any difference that may exist in respondent's costs in serving the two classes of customers, aside from the difference in sales commissions, was less than the 5% reduction in respondent's price on sales to the "Jobber" accounts. The lower price to these favored customers was therefore based in part on a saving in the sales commission.

7. On the basis of the foregoing evidence, the Commission finds that respondent, in connection with its sale of bedroom and dining room furniture in interstate commerce, has passed on or granted to some of its retail furniture customers a discount or lower price in lieu of a commission or brokerage.

CONCLUSIONS

The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent. The aforesaid acts and practices of respondent, as herein found, constitute violations of subsection (c) of Section 2 of the Clayton Act, as amended.

ORDER

It is ordered, That respondent, Thomasville Chair Company, a corporation, and its officers, agents and employees, directly or indirectly, or through any corporate or other device, in connection with the sale of household furniture in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying, granting or allowing, directly or indirectly, to any buyer, or to any one acting for or on behalf of or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, by selling household furniture to any buyer at prices lower than the prices at which such furniture is sold to any other buyer, where such reduction in price reflects any saving in any sales commission or fee, or any part or percentage thereof.

It is further ordered, That respondent, Thomasville Chair Company, 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.

OPINION OF THE COMMISSION

By Secrest, Commissioner:

The complaint herein charges respondent with violating subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. The hearing examiner held in his initial decision that the charge was not sustained by the evidence and ordered that the complaint be dismissed. The matter is now before the Commission upon the appeal of counsel supporting the complaint from this decision.

The following facts are not in dispute: Respondent is a manufacturer of bedroom, dining room, and upholstered furniture which it sells to retail stores throughout the United States. The bedroom and dining room furniture, sold under the name "Thomasville", accounts for approximately 87% of respondent's total sales, and the upholstered furniture, sold under the name "Finch Furniture Company", accounts for the remainder. In selling the bedroom and dining room furniture, respondent utilizes two different price lists, known as the "Jobber" or "J" list and the "Carload" or "CL" list. The prices on the "Jobber" list are approximately 5% lower than those on the "Carload" list. On sales to "Carload" or "CL" accounts, respondent pays its salesmen a commission of 6% of the amount of the sale and on sales to the "Jobber" or "J" accounts respondent pays its salesmen a 3% commission. The Finch furniture is sold at the same price to all customers and a 6% commission is paid the salesmen on all sales.

The complaint alleges, in substance, that the difference between the 6% commission on sales made to "CL" customers and the 3% commission on sales made to "J" customers is withheld by respondent and is passed on to the "J" customer as part of that customer's 5% lower price.

At the conclusion of the case in chief, respondent moved the hearing examiner to dismiss the complaint on the ground that a *prima facie* case had not been established, and further argued that the hearing examiner had erred in refusing to admit certain cost data proffered by respondent. The hearing examiner denied this motion, reaffirmed the exclusionary rulings to which respondent had taken exception and held that a *prima facie* case had been made. We denied an appeal taken by respondent from the rulings, and in an opinion, issued May 11, 1959, we stated that respondent could not as a matter of law cost justify a discount or allowance granted to a buyer in lieu of brokerage, but indicated that respondent should be permitted to introduce any evidence which would tend to rebut the

prima facie case, including evidence that respondent claimed would show that the lower prices charged certain buyers did not result from a passing on of a part of the salesmen's commissions. The matter was then remanded to afford respondent an opportunity to present its defense.

This evidence having been received, the hearing examiner has now filed his initial decision, holding therein that the evidence adduced by counsel supporting the complaint during the case in chief did not support an inference that respondent's lower price to "J" customers was based in part on the saving in sales commissions, and further holding that even if such an inference had been warranted, it would have been rebutted by the evidence introduced by respondent in its defense.

The first question raised on the appeal is whether this matter is cognizable under Section 2(c), respondent having contended that its salesmen are employees rather than brokers and that its payment for their services is not brokerage within the meaning of the subsection. The hearing examiner found it unnecessary to rule on this question in view of his conclusion that there had been no passing on of the sales commission. Although the legislative history of the Robinson-Patman Act discloses that in enacting Section 2(c) Congress was concerned with the abuse of the brokerage function as a means of effecting discrimination, the subsection as drafted does not relate solely to the payment or receipt of "brokerage". It provides in pertinent part "That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, *anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof*, except for services rendered in connection with the sale or purchase of goods, wares or merchandise . . ." (Emphasis supplied.) In view of this broad language, there is no burden on counsel supporting the complaint to show that respondent's representatives are "brokers" within the generally accepted meaning of that term. Whatever may be the characterization of their function, these representatives render services to respondent in connection with the sale of respondent's merchandise and they are compensated by a commission on sales of such merchandise. We are of the opinion, therefore, that the payment made by respondent for the services of these representatives is a "commission, brokerage or other compensation," the payment or granting of which to a customers instead of to the representative is prohibited by Section 2(c).

The next question raised by the appeal is whether it may be inferred from the evidence adduced that the saving in sales com-

mission has been passed on to the "J" customers. In holding that the circumstances of this case do not support this inference, the hearing examiner regarded as highly significant the fact that there is a mathematical difference between the saving in sales commission and the amount of the price reduction. While we do not attach the same importance to this fact, it is, of course, one which must be considered since it suggests that the price reduction to favored customers may be attributed to some factor or factors having no connection with the seller's saving in sales commissions. If it appears from the facts of record, however, that the lower price cannot be accounted for in whole or in part except by a saving in sales commissions, we think it may be inferred that the lower price is based in part on this saving even though such saving is not arithmetically commensurate with the price reduction.

Respondent contends in this connection and its officials testified that the lower prices to "J" customers reflect cost savings to respondent, other than the saving in sales commission. According to this testimony, the classification of respondent's customers as "J" or "CL" accounts is made on the basis of the volume of the customers' annual purchases. "J" accounts are those whose purchases amount to at least $50,000 per year, and "CL" accounts are those that purchase less than that amount. Because of the "J" customer's larger volume of purchases, as distinguished from the quantity purchased on individual orders, respondent's officials assert that there is a difference in costs of at least 5%, not including saving in sales commission, in serving the two classes of customers. This testimony, if accepted as true, would rebut any inference created by other evidence of record that the saving in sales commission is not retained by respondent, but is passed on to the "J" customers. In view of this testimony, therefore, it is important to determine whether respondent has adhered to the criterion of volume purchases in classifying its customers. The hearing examiner found that respondent has deviated from this criterion in only a few isolated instances and has, in good faith, sought to maintain the integrity of the "J" and "CL" classifications.

We do not agree with this finding. The record contains information with respect to sales by respondent in four trade areas: Philadelphia, Pennsylvania, Washington, D. C., Chicago, Illinois, and New York City. In 1955, nine out of ten customers in the Philadelphia area who were charged the lower price purchased less than $50,000 worth of respondent's bedroom and dining room furniture. Four of these customers purchased less than $10,000 worth of furniture during that year. In 1956, only one "J" customer in Philadelphia

purchased in excess of $50,000. In the Washington, D. C., area, one customer received the lower price in 1956 and 1957 when its purchases amounted to $16,000 and $5,682. Another customer in that area received the lower price in 1955, 1956 and 1957 although its volume did not reach the $50,000 minimum during these years. Another customer was charged the "J" price although its purchases amounted to only $17,393 in 1954 and did not reach $50,000 in 1955 or 1956. In the four trade areas mentioned above, only 12 out of 28 "J" customers purchased in excess of $50,000 worth of respondent's products during the year 1955 and, in 1956, only 12 out of 30 "J" customers purchased in excess of the $50,000 minimum.

Despite the testimony that respondent classified its customers on the basis of volume purchases, we think the record clearly demonstrates that the purchases of a large percentage of the favored customers have amounted to substantially less than $50,000 a year. Consequently, there would appear to be no valid basis for distinguishing between this group of "J" customers and the "CL" customers. Applying respondent's criterion of volume purchases, there would be no demonstrable savings in costs to respondent in dealing with the one as opposed to the other. As to these "J" customers, at least, the price reduction cannot be accounted for by any savings in costs other than the saving in the salesmen's commissions. We think it may be inferred, therefore, that the saving in commission on sales to such "J" customers was not retained by respondent, but was passed on to the customer.

In reaching the conclusion that a case in support of the complaint had not been established, the hearing examiner was also influenced by testimony of respondent's officials that respondent did not intend to grant an allowance or discount in lieu of brokerage. On the basis of this testimony, the hearing examiner found, in effect, that respondent has always regarded its lower price as a volume price based upon lower costs aside from sales commissions, and its sales commissions as representing fair compensation to the salesmen for selling to the respective classes of purchasers, without regard to any difference in price.

Although Section 2(c) does not require a showing of knowledge or intent on the part of the person charged with violation thereof, evidence with respect to the intent of such person may be relevant in a proceeding under the subsection. Where, as here, the case in chief rests upon an inference that part of the sales commission has been passed on, evidence that respondent intended to pass on savings in costs other than in the sales commission would be relevant, but only as a factor bearing on the issue of whether the price reduction

was in fact based on the saving in the sales commission. We need not decide whether a showing that there was no intent to pass on the saving in sales commission would have been sufficient to rebut the inference established by counsel supporting the complaint, since we are of the opinion that the hearing examiner erred in finding that such a showing had been made.

The testimony on which the hearing examiner's findings is based is undeniably self-serving. Moreover, the statements by respondent's officials that the lower price has always been regarded as a volume price is weakened by other testimony to the effect that they were uncertain why the pricing system was established in the manner in which it presently exists. The testimony relied on by the hearing examiner is further weakened by the showing that respondent has not adhered to the criterion on which the lower price was purportedly based. But perhaps most damaging to respondent's position is the fact that respondent had not made any cost studies prior to the investigation of this matter. Certainly it would seem that if respondent had intended to pass on savings in cost other than the saving in the sales commission it would have had some accurate information as to the amount of such savings.

Considering the entire record at the conclusion of the case in chief, we are of the opinion that the evidence adduced by counsel supporting the complaint at that point in the proceeding, if not rebutted, would be sufficient to sustain the charge that respondent had violated Section 2(c) of the Clayton Act.

The next question presented for our determination, therefore, is whether the showing that respondent's lower prices reflect a saving in sales commission has been overcome or rebutted by evidence adduced by respondent in its defense. This evidence consists primarily of three studies which had been made to determine respondent's costs in dealing with the "J" and "CL" customers. Two of the cost studies were prepared by respondent itself and covered different periods of time, and a third was prepared by an independent accounting firm. The hearing examiner considered only the latter cost study and respondent's own study covering the first six months of 1959. On the basis of this evidence, he found that there are substantial differences in respondent's costs in serving "J" and "CL" customers, aside from the matter of sales commissions, and "that the differences probably approximate the five percent difference in price." He also found as favorable to respondent that "It was resognized by the Commission's accountant that the cost studies do show at least some difference in cost, possibly 1.4 percent."

It is apparent from a review of these findings that the hearing examiner believed that the purpose of the cost studies was merely to corroborate the testimony that respondent regarded its lower price as a volume price and that evidence showing any savings accruing to respondent by reason of the "J" customers' volume purchases would rule out the possibility that the price reduction was based in part on a saving in sales commission. What he has overlooked, however, is that a showing of savings in costs of less than 5% would conclusively establish that the price reduction was not in fact based entirely on savings in costs other than the saving in sales commission.

We agree with counsel supporting the complaint that the record does not support the finding that the difference in respondent's costs in serving the different classes of customers approximates the 5% difference in price. The two cost studies prepared by respondent are completely lacking in probative value. In making these studies, respondent allocated its costs to the different customer classes on an invoice line basis. It computed its total cost over a period of time and divided this amount by the total number of lines on the invoices used during the same period. This figure was then multiplied by the number of additional invoice lines which would have been used if the "J" customers had purchased in the same quantities per invoice line as the "CL" customers. The resulting amount is claimed to be savings due to larger orders of the "J" accounts.

The results of such a procedure are unacceptable for several reasons. In the first place, they do not show actual savings to respondent, but merely an estimate of what respondent's costs would have been if all customers had purchased in the same amounts as the "CL" customers. No showing was made, however, and we have no reason to believe, that under such conditions the additional invoice lines would cost as much per line as the lines actually used. But more important, we believe, is that except for a few expense items, respondent has failed to show any relationship between its costs and the number of invoice lines used. Certainly, there is no reason to believe that respondent's expenses for such items as insurance, pensions, advertising, plant depreciation and taxes would increase or decrease in direct proportion to the number of invoice lines used. These studies are also defective in other respects, but since we are of the opinion that they are invalid for the reasons stated above, a discussion of the other deficiencies is not required.

According to the third cost study which has been prepared by a professional accountant, respondent's costs in serving its "J" customers, aside from the difference in sales commissions, are approxi-

mately 4% less than its costs in serving the "CL" customers. This study, therefore, even when viewed in the light most favorable to respondent, demonstrates that part of the 5% price reduction reflects a saving in sales commission. A more critical examination of the study reveals that many of the major expense items involved have been allocated in such a manner as to exaggerate whatever difference may exist in the costs to respondent in serving the two classes of customers. For example, one of the largest of these items is the expense incurred by respondent in exhibiting its merchandise to retailers at furniture shows held in various markets several times each year. Respondent's officials have testified that these shows are attended predominantly by "J" customers and that most of the sales at these markets are made to "J" customers. According to respondent's own estimate, about three-fourths of the "J" customers' total purchases in 1958 were made at these markets and purchases by this customer class represented approximately 80% of respondent's total sales at the October, 1958, market. Despite the evidence that the shows are primarily for the mutual benefit of respondent and the "J" customers, 90.7% of the expense of these shows was assigned to the "CL" accounts.

Two other major expense items which were improperly allocated by customer class are the cost of designing furniture and the cost of producing samples. Under the facts of this case, both of these expenses are part of respondent's cost of production and should have been allocated to each article of furniture produced. Respondent, however, allocated these items to the customer classes on the basis of estimated attendance at furniture shows and assigned 90.7% of both costs to the "CL" customers.

Counsel supporting the complaint has attacked other aspects of the cost study in question and while there is considerable merit to his arguments, we believe that further discussion of respondent's defense is unnecessary. The evidence introduced by respondent does not support its contention that the price reduction to "J" customers can be accounted for by savings in costs other than the saving in sales commission. Not only does the cost data placed in the record by respondent fail to rebut the case in support of the complaint, but it substantiates the charge that the lower price to favored customers was in fact based, in part at least, on a saving in sales commission.

It is our conclusion, therefore, that respondent has violated subsection (c) of Section 2 of the amended Clayton Act by granting to its "Jobber" accounts a discount or lower price based in part on the saving resulting from the different rates of commission paid

its sales representatives. Consequently, we are issuing our own findings, conclusions and order to cease and desist in lieu of the initial decision of the hearing examiner which is vacated and set aside.

IN THE MATTER OF

THE BALTIMORE LUGGAGE COMPANY ET AL.

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

Docket 7683. Complaint, Dec. 8, 1959—Decision, Mar. 15, 1961

Order requiring the manufacturer of "Lady Baltimore" luggage to cease deceptively pricing its merchandise by preticketing it with price tags $2.00 higher than the prices at which it regularly sold.

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

Mr. Robert L. Sullivan, Jr. and *Mr. William J. Pittler*, of Baltimore, Md., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The Baltimore Luggage Company, a corporation, and Gertrude Holtzman and Samuel J. Holtzman, individually and as officers of said corporation, hereinafter called respondents, are charged with fictitious pricing of luggage in violation of the Federal Trade Commission Act.

Hearings have been held at which oral testimony and documentary evidence was received in support of and in opposition to the allegations set forth in the complaint. Proposed findings of fact, conclusions of law and order have been submitted by respective counsel and oral argument heard thereon. These have been considered. All proposed findings of fact and conclusions of law not specifically found or concluded herein are rejected. Upon the basis of the entire record, the undersigned hearing examiner makes the following findings of fact, conclusion of law and order:

FINDINGS OF FACT

1. The Baltimore Luggage Company is a corporation organized and doing business under the laws of the State of Maryland with its office and principal place of business located at 304 North Smallwood Street, Baltimore, Maryland. The individual respondents Gertrude Holtzman and Samuel J. Holtzman are officers of the corporate respondent and formulate, direct and control the acts

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

2. The respondents are now and for some time past have been engaged in the manufacture, distribution and sale of luggage to retail dealers for resale to the public. In the course and conduct of their business, the respondents now cause, and for some time last past, have caused their luggage, when sold, to be shipped from their place of business in the State of Maryland to purchasers thereof located in the various states of the United States and the District of Columbia. The respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said luggage, in commerce, as "commerce" is defined in the Federal Trade Commission Act. The respondents are now and have been in substantial competition in commerce with corporations, firms and individuals also engaged in the sale of luggage of the same general kind and character as that sold by respondents.

3. Respondents manufacture approximately eight different sizes of luggage in eight colors. The luggage is sold under the trade name "Lady Baltimore." A pre-ticket, matching the color of the luggage, is placed on and attached to each piece of luggage by respondents prior to final inspection in the factory. On the face of each ticket is an amount in large figures purporting to represent the regular and customary retail price of the particular piece of luggage. The luggage is priced according to size. On the reverse side of the ticket, in small figures, is a list showing the purported regular retail price for each of the eight sizes of luggage (CX 1-8). These pre-tickets are on each piece of luggage when it is shipped from respondents' factory to approximatetly 1,276 retail store dealers in cities located in approximately 46 states of the United States and the District of Columbia, and is still attached to the luggage when it is received by the respective retail dealers. The evidence shows and it is found that respondents' luggage is sold in the metropolitan trade areas of New York, New York, Philadelphia, Pennsylvania, and Washington, D. C., at approximately $2.00 per item less than the price shown on the pre-ticket attached to the item of luggage. One witness, Mr. John W. Greene, an attorney-examiner employed by the Federal Trade Commission, testified that he visited two retail department stores in Philadelphia, Pennsylvania, Strawbridge and Clothier and John Wannamaker, and four stores in Washington, D. C., Woodward and Lothrop, Beckers Leather Goods Company, Hecht Company, and Lansburgh's, where respondents' luggage was on display for sale to the public, and respondents' tickets were attached to said luggage. The purported regular retail

price printed on each ticket was approximately $2.00 in excess of the price at which the store was selling the particular item of luggage.

4. In some of the stores which Mr. Greene visited each piece of "Lady Baltimore" luggage also had attached to it a store ticket, in addition to respondents pre-ticket. The price shown on the store ticket was $2.00 less than the price shown on respondents' pre-ticket. Also, in some of these stores, there was a display card which had been furnished to the retail stores by respondents. This display card listed the purported regular retail price of each size of respondent's luggage which corresponded to the prices listed on respondents' pre-tickets attached to each piece of luggage. In some of the stores, there was also a store display card which showed the store's actual retail selling price of each piece of luggage which was $2.00 less than the price shown on respondents' pre-ticket attached to the piece of luggage and respondents' display card on the counter.

5. The evidence further shows and the examiner finds that, out of approximately 1,276 sales outlets for respondents' luggage, approximately 387 of these retail stores in at least twelve states regularly and customarily sell respondents' luggage at approximately $2.00 per item less than respondents' pre-ticketed price. RX-1 together with the testimony of Mr. Rivkin, Director of Advertising and Sales for respondent corporation supports this finding. The sales by these retail stores of respondents' luggage represent more than one third and less than one half, i.e., 9/24 of the total dollar sales volume of respondents' luggage. By placing and attaching tickets to their luggage and furnishing retail store customers with display cards which contain prices approximately $2.00 in excess of the price at which the retail store regularly and customarily sells said luggage at retail, respondents thereby represent that the prices shown on said tickets and display cards are the usual and regular retail price for each item of luggage and thereby place in the hands of the retailer the means and instrumentality (the pre-ticket and display card) whereby the retailer may mislead and deceive the public as to the regular and customary retail price of the item of luggage.

6. Counsel for respondents do not deny that in the trading areas of New York, New York, Philadephia, Pennsylvania and Washington, D. C., and also in those areas delineated on RX-1, the retail price at which respondents' luggage is sold in retail stores is approximately $2.00 less than respondents' pre-ticketed price. However, counsel contend that this practice does not extend to every trade area throughout the United States and that, in determining

respondents' "usual and regular retail price," respondents' sales on a national basis should be considered rather than be confined to the trading areas of New York, Philadelphia, and Washington, D.C. In other words, respondents' counsel contend that the words "usual and regular retail price" mean the price at which respondents' customers, taken as a whole, throughout the United States, sell respondents' luggage. Under such a theory, respondents' fictitious pricing practices would have to be followed by their retail store customers in every section of the United States or as counsel contends, in more than 50 percent of the market areas of the country before respondents could be held to be in violation of the Federal Trade Commission Act. Such a contention is absurd on its face.

7. Nevertheless, counsel cite *The Orloff Co., Inc., et al.*, Docket No. 6184; *Newville, Inc., et al.*, Docket No. 6405; and *Ma-Ro Hosiery Company, Inc., et al.*, Docket No. 6436, as authorities for the above proposition. These decisions do not support such a doctrine. In the three cases cited, one of the allegations in the respective complaints, as here, was that respondents misrepresented the usual and regular retail selling price of watches and hosiery by pre-ticketing with false and exaggerated prices. In those cases, as here, the evidence shows that the amounts appearing on the tickets were substantially in excess of the prices at which the watches and hosiery were usually and regularly sold at retail. Here, the evidence shows and it has been found that, respondents knowingly placed tickets on its luggage containing prices approximately $2.00 in excess of the price at which said luggage was then usually and regularly selling for in retail stores located in New York, Philadelphia and Washington, D. C., to say nothing of the additional retail stores located in the trading areas listed on RX-1. It is found, therefore, that this position of counsel is not well taken.

8. Respondents also claim that it is the policy of respondents' customer retail stores in the Philadelphia and Washington trading areas to remove the perforated portion of respondents' pre-ticket containing the pre-ticketed price prior to the time the luggage is placed in the store and in only a few isolated instances is the pre-ticket price permitted to remain attached to the luggage and this is due to the negligence of respondents' retail store customers. Irrespective of the policy of respondents' retail customers, the evidence shows and it has been found that, in the luggage departments of each of the stores which Mr. Greene visited, with one exception, respondents' pre-ticket remained intact on each piece of "Lady Baltimore" luggage. In the case of the one exception, respondents' purported regular retail price figure was shown on the ticket. If

respondents intended that the portion of its pre-ticket containing the purported regular retail price be removed prior to its display for sale to the public, why did respondents place the price tag on the luggage in the first place? Respondents' purpose is self-evident —to make it appear to the store customer that the store was selling the luggage at approximately $2.00 less than the regular retail price and the customer would believe he or she was getting a reduced price. It is apparent that respondent corporation was aware that its price tags were being used for deceptive purposes.

CONCLUSIONS OF LAW

The use by respondents of the aforesaid false, misleading and deceptive representations and practices have had and now have 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' luggage 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, and is being done to competition in commerce. The acts and practices of respondents as found herein were and are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. This proceeding is in the public interest.

ORDER

It is ordered, That respondents, The Baltimore Luggage Company, a corporation, and its officers and Gertrude Holtzman and Samuel J. Holtzman, individually and as officers of the said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of luggage 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 means of pre-ticketing or in any other manner, that any amount is the usual and regular retail price of merchandise when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail in the trade area or areas where the representations are made.

2. Furnishing to others any means or instrumentality by or through which the public may be misled as to the usual and customery prices of respondents' merchandise.

3. Putting any plan into operation through the use of which retailers or others may misrepresent the usual and regular retail price of merchandise.

OPINION OF THE COMMISSION

By Secrest, Commissioner:

The complaint in this matter charges respondents with violation of the Federal Trade Commission Act. The hearing examiner in his initial decision held that the allegations of the complaint were sustained by the evidence and ordered respondents to cease and desist from the practices found to be unlawful. Respondents have appealed from this decision.

Respondents are engaged in the manufacture of luggage which they sell to retail dealers located throughout the United States. This luggage, sold under the trade name "Lady Baltimore", is made in eight sizes and in eight colors. Each piece of luggage, when shipped by respondents, has attached to it a tag or ticket which sets forth the size and color of the article and an amount in dollars and cents opposite the word "Price". On the back of the ticket the various sizes of luggage manufactured by respondents are listed and opposite the name or designation of each size is an amount which purports to be the price of that particular size. The hearing examiner found and respondents conceded that the luggage in question is usually and regularly sold at retail in the New York, Philadelphia and Washington trade areas for approximately $2.00 less per article than the amount printed on the ticket attached to the article. The hearing examiner further found that items of respondents' luggage bearing these tickets were displayed for sale to the public by retailers in the aforementioned trade areas. He held, therefore, that respondents had falsely represented that the amounts shown on the tickets were the usual and regular retail prices of their luggage in those trade areas and further that respondents had placed in the hands of retailers the means and instrumentality by which the public could be misled as to the usual and regular prices of respondents' merchandise.

We will consider first respondents' argument that the evidence does not support the hearing examiner's finding that pieces of their luggage had the price tickets attached to them when displayed by retailers. This finding is based on the testimony of the Commission's investigator who stated that he had seen the tickets on luggage displayed in retail stores in Philadelphia and Washington. Respondents claim that this testimony is rebutted by the testimony of luggage buyers for two of the stores visited by the investigator. One of the

buyers testified that at the time of the investigator's visit respondents' tickets were displayed on only three or four pieces of luggage and had been removed from the remainder. The other buyer testified, in effect, that respondents' luggage would sometimes "get on the floor without the ticket being torn off." We think this testimony tends to corroborate rather than contradict that of the investigator. Respondents' further statement that they had advised retailers to remove the portion of the ticket showing the "price" of the article cannot overcome the direct evidence that retailers had failed to do so. Respondents' argument on this point is, therefore, rejected.

Respondents next object to the hearing examiner's finding that the "prices" preticketed on their luggage were not the usual and regular prices of such luggage in certain trade areas. They contend that their entire national retail market, rather than specific trade areas, is the proper basis for determining the usual and regular prices of their luggage. They also point out in this connection that approximately 70% of their retail customers, located in 34 states and reprsenting about 62.5% of respondents' total dollar volume of sales, sell the luggage at the preticketed prices. In making this argument, respondents cite as authority for their position the Commission's decisions in the matters of *The Orloff Company, Inc.*, Docket No. 6184; *Neuville, Inc.*, Docket No. 6405; *Ma-Ro Hosiery Company, Inc.*, Docket No. 6436; and *Sam S. Goldstein*, Docket No. 7414.

We held in the cases cited by respondents that the preticketing of merchandise with an amount in excess of the price at which such merchandise is usually and regularly sold at retail is an unfair trade practice. The issue of whether the usual and regular retail price should be determined on the basis of a national retail market as opposed to a local retail market was not raised, however. Moreover, we did not hold in those cases, nor have we held in any decision, that it is necessary to consider all retail sales of a product on a nationwide basis in determining whether a certain amount is the usual and regular retail price of that product. Nor have we held that a showing that a pre-ticketed price is the usual and regular price of a product in some sections of the country is sufficient to establish that that price is the usual and regular price of the product throughout the country, including those sections in which it is not the usual and regular price.

Members of the purchasing public in the aforementioned trade areas may well believe that the preticketed product is being sold at a reduced price by the store in which the article is offered for sale and that the higher amount marked on the ticket is the prevailing price for the product elsewhere in the same trade area, not necessarily in some other trade area. Although such a person may be interested in knowing the usual and regular price of merchandise in other

sections of the country, he is particularly interested in knowing whether he is getting a bargain in the trade area in which he is making his purchase. It is our opinion that respondents' price tickets have the capacity and tendency to mislead him in that respect.

Respondents finally contend that there is no evidence to support the hearing examiner's conclusion that their preticketing practices have the capacity to mislead members of the purchasing public into the purchase of substantial quantities of their luggage. This argument must also be rejected. Since it has been repeatedly held that a claim that a product is being offered for sale at a reduced price is an important factor in effecting the sale of that product, we believe that the hearing examiner's conclusion is amply supported by the showing that respondents have misrepresented the usual and regular prices of their products in certain trade areas. Evidence that members of the purchasing public have actually purchased respondents' product as a result of the preticketing practices is not required.

Respondents' appeal is denied, and the initial decision will be adopted as the decision of the Commission.

FINAL ORDER

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

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

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

In The Matter Of

WREN SALES COMPANY, INC., ET AL.

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

Docket 7731. Complaint, Jan. 6, 1960—Decision, Mar. 15, 1961

Order requiring Chicago distributors of toys, cameras, electrical appliances, and other merchandise, to cease furnishing operators and members of the public with push cards and descriptive matter for use in the sale of their said merchandise by games of chance or lottery schemes.

Mr. William A. Somers for the Commission.

Bass & Friend, of New York, N.Y., by *Mr. Edwin Kaplan*, for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is based upon a complaint brought under Section 5 of the Federal Trade Commission Act, charging the respondents with violation of the Federal Trade Commission Act through the use of lottery schemes or games of chance in the sale and distribution of their merchandise.

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

1. Respondent Wren Sales Company, Inc., is an Illinois corporation located at 537 South Dearborn Street, Chicago, Illinois. Respondents Julius Rosenstein, Eleanor Rosenstein and Celia Seiden are individuals and officers of the corporate respondent and have dominant control of the policies and sales activities of the corporate respondent.

2. Respondents are engaged in the sale and distribution in interstate commerce of toys, cameras, electric appliances and other items of merchandise through the use of a plan of merchandising which involves the operation of games of chance or lottery schemes when such merchandise is sold and distributed to the purchasing public. There is no controversy as to the facts in this proceeding. The respondents mailed push cards to members of the public, together with instructions and circulars explaining respondents' plan of selling and distributing their merchandise through the use of said push cards. For example, one of respondents' said push cards contains 37 partially perforated discs, each bearing a different feminine name. Concealed in each disc is the price to be paid by the person selecting the particular name. The names of the purchasers are noted on the reverse of the card in the space provided, opposite the feminine name appearing on the disc. The push card also has a large master seal within which is concealed one of the feminine

names appearing on the disc. The person selecting the name corresponding with the one under the master seal receives a doll or other item of merchandise allotted to said card. The recipient of the card, after selling the chances, remits the money collected to the respondents and receives both the prize to which the winner is entitled and a duplicate item as compensation for services in selling the chances on the card. The cost of the chances ranges from 1¢ to 39¢. The amount of money the purchaser pays for said chance and whether a purchaser receives an article of merchandise or nothing for the amount paid is thus determined wholly by lot or chance. The articles of merchandise have a value substantially greater than the price paid for each chance or push. In forwarding the prizes to the parties selling the card the respondent generally forwards additional push cards, covering other items of merchandise, to be disposed of in the same manner.

3. The persons to whom respondents furnish said push cards use the same in selling and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting games of chance, gift enterprises or lottery schemes in the sale of respondents' merchandise.

CONCLUSIONS

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

2. The law is now firmly established that the practice of selling goods through the use of sales plans or methods which involve a game of chance, gift enterprise or lottery, including the use of push cards as in the present case, is contrary to the established public policy of the United States, and the sale and distribution of such devices designed for the purpose of selling merchandise by games of chance or lottery is violative of the Federal Trade Commission Act.[1]

[1] *F.T.C.* v. *R. F. Keppel & Bro., Inc.*, 291 U.S. 304; *Walter H. Johnson* v. *F.T.C.* (C.C.A.7) 78 F. 2d 717; *Hofeller* v. *F.T.C.*, (C.C.A.7) 82 F. 2d 647; *F.T.C.* v. *F. A. Martoccio Co.*, (C.C.A.8) 87 F. 2d 561; *F.T.C.* v. *A. McLean & Son, et al.*, (C.C.A.7) 84 F. 2d 910; *Chicago Silk Co.* v. *F.T.C.*, (C.C.A.7) 90 F. 2d 689; *Minter Brothers, et al.*, v. *F.T.C.*, (C.C.A.3) 102 F. 2d 69; *Helen Ardelle, Inc., et al.*, v. *F.T.C.*, (C.C.A.9) 101 F. 2d 718; *Bunte Brothers, Inc.*, v. *F.T.C.*, (C.C.A.7) 104 F. 2d 996; *National Candy Co., et al.*, v. *F.T.C.*, (C.C.A.7) 104 F. 2d 999; *Ostler Candy Co., et al.*, v. *F.T.C.*, (C.C.A.10) 106 F. 2d 962; *Benjamin Jaffe* v. *F.T.C.*, (C.C.A.7) 123 F. 2d 814; *McAfee Candy Co., et al.*, v. *F.T.C.*, (C.C.A.5) 124 F. 2d 104; *David Kritzik t/a General Merchandise Co.* v. *F.T.C.*, (C.C.A.7) 125 F. 2d 351; *Douglas Candy Co.* v. *F.T.C.*, (C.C.A.8) 125 F. 2d 665; *Philip Harry Koolish, et al., t/a Standard Distributing Co.*, v. *F.T.C.*, (C.C.A.7) 129 F. 2d 64; *Louis Keller, et al., d/b/a Casey Concession Company* v. *F.T.C.*,

3. In a number of cases in which the facts were identical with the facts in the present case, the Circuit Courts of Appeal have condemned the sale of merchandise by means of a game of chance or lottery as being in violation of the Federal Trade Commission Act: *Chicago Silk Co.* v. *F.T.C.*, (C.C.A.7) 90 F. 2d 689; *Benjamin Jaffe* v. *F.T.C.*, (C.C.A.7) 123 F. 2d 814; *David Kritzik t/a General Merchandise Co.*, v. *F.T.C.*, (C.C.A.7) 125 F. 2d 351; *Philip Harry Koolish, et al., t/a Standard Distribution Co.*, v. *F.T.C.*, (C.C.A.7) 129 F. 2d 64; *Seymour Sales Co.*, v. *F.T.C.*, (C.C.A.D.C.) 216 F. 2d 633, 635.

4. The contention of the respondents that prior decisions were based to a great extent upon the fact that children were involved, is without merit. The same contention was raised in Hofeller v. F.T.C., (C.C.A.7) 82 F. 2d 647 in which the Court held:

> It cannot be denied that the persuasive argument in the *Keppel* case was based on the fact that the customers of the candy were, in the main, children. We are not satisfied, however, that the conclusion there reached is not here applicable. It will be noted that the Supreme Court emphasized the factor of lottery and chance in determining what constituted an unfair method of competition, and it spoke in general terms, at times without limitation to instances where the consumers were children.
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> It is quite impossible to escape the conclusion that where a competitive method employs a device whereby the amount of the return is made to depend upon chance, such method is condemned as being contrary to public policy.

In addition, it must be noted that the respondents have overlooked that portion of the present record which shows that in many instances the prizes involved were dolls or toys which appealed to children, and that push cards and other material were actually sent through the mail to a 13-year-old girl, indicating respondents were using a mailing list not confined to adults.

5. The respondents offered the testimony of two psychiatrists to show that a casual gambler was not a psychopathic personality, and

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(C.C.A.7) 132 F. 2d 59; *Wolf* v. *F.T.C.*, (C.C.A.7) 135 F. 2d 564; *Jaffe* v. *F.T.C.*, (C.C.A.7) 139 F. 2d 112; *Lee Boyer's Candy* v. *F.T.C.*, (C.C.A.9) 128 F. 2d 261; *Sweets Company of America, Inc.*, v. *F.T.C.*, (C.C.A.2) 109 F. 2d 296; *Deer, et al.*, v. *F.T.C.*, (C.C.A.2) 152 F. 2d 65; *Modernistic Candies, Inc., et al.*, v. *F.T.C.*, (C.C.A.7) 145 F. 2d 454; *Chas. A. Brewer & Sons* v. *F.T.C.*, (C.C.A.6) 158 F. 2d 74; *Consolidated Mfg. Co., et al.*, v. *F.T.C.*, (C.C.A.4) 199 F. 2d 417; *Globe Cardboard Novelty Co., Inc., et al.*, v. *F.T.C.*, (C.C.A.3) 192 F. 2d 444; *Esther Zitserman t/a J. M. Howard Co.*, v. *F.T.C.*, (C.C.A.8) 200 F. 2d 519; *Bernice Feitler, et al., t/a Gardner & Company* v. *F.T.C.*, (C.C.A.9) 201 F. 2d 790; *Gay Games Inc., et al.*, v. *F.T.C.*, (C.C.A.10) 204 F. 2d 197; *Seymour Sales Co., et al.*, v. *F.T.C.*, (C.C.A.D.C.) 216 F. 2d 633; *Hamilton Mfg. Co.* v. *F.T.C.*, (C.C.A.D.C.) 194 F. 2d 346; *Lichtenstein, et al.*, v. *F.T.C.*, (C.C.A.9) 194 F. 2d 607; *Bork Mfg. Co., Inc., et al.* v. *F.T.C.*, (C.C.A.9) 194 F. 2d 611; *U.S. Printing & Novelty Co., Inc., et al.*, v. *F.T.C.*, (C.C.A.D.C.) 204 F. 2d 737; *Surf Sales Co., et al.*, v. *F.T.C.*, (C.C.A.7) 259 F. 2d 744.

offered the testimony of a former City Magistrate of New York, who had presided in the so-called Gambler's Court, to show that casual gambling was not contrary to public policy. Under the decisions hereinbefore referred to, this proffered testimony is not relevant or material to the issues in this proceeding. Testimony of witnesses as to how, in their opinion, the question should be determined would be useless and improper. "The Supreme Court has, in the *Keppel* case, declared the law on this subject, not for one State or one Circuit only, but for the entire United States, . . ." *Helen Ardelle, Inc., et al.*, v. *F.T.C.*, (C.C.A.9) 101 F. 2d 718, 720.

ORDER

It is ordered, That the respondents Wren Sales Company, Inc., a corporation, and its officers, and Julius Rosenstein, Eleanor Rosenstein and Celia Seiden, individually and as officers of said corporation, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of toys, cameras, electrical appliances and other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade CommissionAct, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of others, push cards or any other lottery device, either with merchandise or separately, which are designed or intended to be used in the sale of respondents' merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Selling or otherwise disposing of any merchandise, wares or goods by means of a game of chance, gift enterprise, or lottery scheme.

OPINION OF THE COMMISSION

By Anderson, Commissioner:

The complaint in this matter charges respondents with violation of the Federal Trade Commission Act by selling and distributing merchandise through use of sales plans involving the operation of games of chance, gift enterprises or lottery schemes. The hearing examiner held in his initial decision that the allegations of the complaint were sustained by the evidence and ordered respondents to cease and desist from the practices found to be unlawful. Respondents have appealed from that decision.

The principal argument presented on this appeal is that a distinction should be made between "casual" gambling and "professional" gambling in matters involving the sale of merchandise by a game of

chance or lottery scheme. Respondents argue in this connection that "casual" gambling, as distinguished from "professional" gambling, is not contrary to public policy and that a sales scheme which involves only the former is not an unfair trade practice. They then contend that the sale of their merchandise by use of push cards does not constitute "professional" gambling since the push card is not designed for exposure to the general public and since the seller of the chances does not expect to make a profit.

Respondents' argument ignores both the facts of record and the established law on the subject of lottery merchandising. In the first place, the record clearly discloses that respondents distribute their push cards to the general public and that the seller of the chances does expect to make a profit and is, in fact, compensated for his efforts. In the second place, it makes no difference whether the sale of respondents' merchandise through use of push cards may be characterized as "'casual" gambling or "professional" gambling. The unfairness of the method lies in the fact that it employs the element of chance as a factor in the sale of merchandise to the public. This method of selling, as well as the practice of furnishing to others devices designed or intended to be used in the sale of merchandise to the public by chance or lottery, have been repeatedly and consistently condemned by the courts during the past 27 years. *Federal Trade Commission* v. *R. F. Keppel & Bro., Inc.*, 291 U.S. 304 (1934); *Federal Trade Commission* v. *F. A. Martoccio Co.*, 87 F. 2d 561 (8th Cir. 1937); *Benjamin Jaffe* v. *Federal Trade Commission*, 123 F. 2d 814 (7th Cir. 1941); *Lichtenstein* v. *Federal Trade Commission*, 194 F. 2d 607 (9th Cir. 1952); *Gay Games, Inc.* v. *Federal Trade Commission*, 204 F. 2d 197 (10th Cir. 1953); *Bernard Rosten* v. *Federal Trade Commission*, 263 F. 2d 620 (2d Cir. 1959). Respondents' argument on this point is, therefore, rejected.

We have considered the other arguments advanced by respondents and are of the opinion that they are also without merit. Having examined the entire record, we find no error in the ruling made by the hearing examiner during the course of this proceeding, and we are in complete accord with his findings of fact and conclusions of law as set forth in the initial decision.

Respondents' appeal is denied and the initial decision is adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition

thereto; and the Commission having rendered its decision denying the appeal and adopting the initial decision:

It is ordered, That respondents 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

KAISER STEEL CORPORATION

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

Docket 8027. Complaint, June 27, 1960—Order, Mar. 16, 1961

Order dismissing without prejudice complaint charging the second largest producer of steel in the western States with violation of Sec. 7, Clayton Act, by acquisition of 45% of the voting stock of a substantial competitor.

Before *Mr. Edward L. Creel*, hearing examiner.

Mr. R. D. Young and *Mr. M. E. Richardson* for the Commission.

Thelen, Marrin, Johnson & Bridges, of San Francisco, Calif., for respondent.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

This matter having come on for hearing by the Commission upon its own motion, and the Commission having determined that the public interest will be better served by instituting a new proceeding under a different form of complaint and that the complaint in this matter should therefore be dismissed without prejudice:

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

IN THE MATTER OF

MERCURY TUBE CORPORATION ET AL.

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

Docket 8155. Complaint, Oct. 24, 1960—Decision, Mar. 16, 1961

Consent order requiring a Newark, N. J., manufacturer of rebuilt television picture tubes containing used parts, to cease selling such tubes with no disclosure on the tubes themselves or on invoices, and without any

adequate notice on the cartons in which they were packed, that they were rebuilt and contained used parts.

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 Mercury Tube Corporation, a corporation, and Joseph Weckstein, 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 Mercury Tube Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 173 Newark Street, Newark, New Jersey.

Respondent Joseph Weckstein is an individual and an officer of said corporation. He formulates, controls and directs the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, offering for sale, sale and distribution of rebuilt television picture tubes containing used parts to radio and television repair shops and distributors for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of New Jersey to purchasers thereof located in various other States of the United States, and maintained, 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. The television picture tubes sold by respondents are rebuilt and contain used parts. Respondents do not disclose on the tubes, or on invoices, or in an adequate manner on the cartons in which they were packed, or in any other manner, that said television picture tubes are rebuilt and contain used parts.

PAR. 5. When television picture tubes are rebuilt containing used parts, in the absence of any disclosure to the contrary, or in the

absence of an adequate disclosure, such tubes are understood to be and are readily accepted by the public as new tubes.

PAR. 6. By failing to disclose the facts as set forth in Paragraph Four, respondents place in the hands of uninformed or unscrupulous dealers means and instrumentalities whereby they may mislead and deceive the public as to the nature of their said television picture tubes.

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

PAR. 8. The failure of respondents to disclose on their television picture tubes, on invoices, or in an adequate manner on the cartons in which they are packed, or in any other manner, that they are rebuilt containing used parts, had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said picture tubes are new in their entirety and into the purchase of substantial quantities of said tubes 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. 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. Michael J. Vitale supporting the complaint.
Mr. Herman B. J. Weckstein, of Newark N.J., for Respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on October 24, 1960 charging them with unfair and deceptive acts and practices in the sale in commerce of rebuilt television tubes within the intent and meaning and in violation of the Federal Trade Commission Act.

On December 28, 1960 counsel submitted to the undersigned hearing examiner an agreement dated December 21, 1960 among respondents, counsel representing them and counsel supporting the complaint, providing for the entry without further notice of a consent order.

The agreement was duly approved by the Director, the Assistant Director and the Associate Director of the Bureau of Litigation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by all the respondent parties thereto of jurisdictional facts:

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing:

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

(4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusion of law;

(2) Further procedural steps before the hearing examiner and the Commission.

In addition the agreement contains the following permissive provisions: A waiver by the respondents of any right to challenge or contest the validity of the order entered in accordance with the agreement, and a statement that 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.

Having considered said agreement including the proposed order and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent Mercury Tube Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 173 Newark Street, in the City of Newark, State of New Jersey.

2. Respondent Joseph Weckstein is an individual and an officer of said corporation. His address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondent Mercury Tube Corporation a corporation, and its officers, and Joseph Weckstein, individually and as an officer of said corporation, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of rebuilt television picture tubes containing used parts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 16th day of March, 1961, 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

LOUIS HIRSCHFIELD TRADING AS L. HIRSCHFIELD

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

Docket 8168. Complaint, Nov. 8, 1960—Decision, Mar. 16, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by false identification in invoices of animals producing the fur in certain fur products, and by failing in other respects to comply with 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 Louis Hirschfield, an individual trading as L. Hirschfield, 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. Louis Hirschfield is an individual trading as L. Hirschfield with his office and principal place of business located at 259 West 30th Street, New York, New York.

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 as the terms "commerce" and "fur" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur was falsely and deceptively invoiced in that such fur was 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. 4. Certain of said fur was falsely and deceptively invoiced or otherwise falsely or deceptively identified with respect to the name or names of the animal or animals that produced the fur in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 5. Certain of said fur was falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that such fur was not invoiced in accordance with the Rules and Regulations promulgated thereunder in that information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form in violation of Rule 4 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. Charles S. Cox for the Commission.
Mr. Louis Hirschfield for the respondent.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent November 8, 1960 charging him 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 invoicing of certain fur products.

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

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

1. Respondent Louis Hirschfield is an individual trading as L. Hirschfield with his office and principal place of business located at 259 West 30th Street in the City of New York, State of New York.

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

ORDER

It is ordered, That Louis Hirschfield, an individual trading as L. Hirschfield, or under any other trade name, and respondent's repre-

sentatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, sale, advertising or offering for sale, in commerce, or the transportation or distribution, in commerce, of fur, as "commerce" and "fur" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively invoicing fur by:

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

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 16th day of March, 1961, become the decision of the Commission; and, accordingly:

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

In The Matter Of

S. C. JOHNSON & SON, INC.

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

Docket 8177. Complaint, Nov. 17, 1960—Decision, Mar. 16, 1961

Consent order requiring a Racine, Wis., manufacturer of floor waxes, furniture polishes, automotive waxes and polishes, and other chemical specialties, with annual sales in excess of $50,000,000, to cease violating Sec. 2(d) of the Clayton Act by making payments for services or facilities furnished in connection with the sale of its products to some of its customers but not on proportionally equal terms to their competitors, such as a payment of $350 for advertising to a retail grocery chain with headquarters in Burlington, Iowa.

COMPLAINT

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

PARAGRAPH 1. Respondent S. C. Johnson & Son, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 1525 Howe Street, Racine, Wisconsin.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of chemical specialties for household, commercial and industrial uses, such as floor waxes, furniture polishes, automotive waxes and polishes and insecticides and space deodorants. Respondent sells and distributes its products to wholesalers and retailers, including retail chain store organizations. Respondent's sales of its products are substantial, exceeding $50,000,000 annually.

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

PAR. 4. In the course and conduct of its business in commerce, and particularly since 1958, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, in the year 1959, respondent contracted to pay and did pay to Benner Tea Company, a retail grocery chain with headquarters in Burlington, Iowa, the amount of $350.00 as compensation or as an allowance for advertising or other services or facilities furnished by or through Benner Tea Company in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not made avail-

able on proportionally equal terms to all other customers competing with Benner Tea Company in the sale and distribution of products of like grade and quality purchased from respondent.

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

Mr. John Perechinsky for the Commission.
Mr. George J. Kuehnl, of Racine, Wis., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of Section 2(d) of the Clayton Act, as amended. An agreement for disposition of the matter by means of a consent order has now been entered into by respondent and its counsel and counsel supporting the complaint. The agreement provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

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

1. Respondent S. C. Johnson & Son, Inc., is a Wisconsin corporation with its office and principal place of business located at 1525 Howe Street, Racine, Wisconsin.

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

ORDER

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 16th day of March, 1961, 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

J. M. HOLSTEIN, INC., ET AL.

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

Docket 8157. Complaint, Oct. 27, 1960—Decision, Mar. 17, 1961

Consent order requiring Newark, N. J., furriers to cease violating the Fur Products Labeling Act by invoicing which falsely identified the animals producing certain furs, failed to set forth the terms "Persian Lamb" and "Dyed Broadtail processed Lamb" as required, and failed in other respects to comply with invoicing requirements of the Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority

vested in it by said Acts, the Federal Trade Commission, having reason to believe that J. M. Holstein, Inc., a corporation, and Arthur S. Holstein and Frances E. Holstein, 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. J. M. Holstein, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 53 Bank Street, Newark, New Jersey.

Arthur S. Holstein is President and Frances E. Holstein is Secretary-Treasurer of the said corporate respondent. These individuals control, formulate and direct the acts, practices and policies of the corporate respondent. 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 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. 4. Certain of said fur products were falsely and deceptively invoiced or otherwise falsely and deceptively identified with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 5. 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) 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 the said Regulations.

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

(c) Required item numbers were not set forth in invoices in violation of Rule 40 of the said Rules and Regulations.

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

Mr. Michael P. Hughes for the Commission.
Mr. Louis M. Weber, of New York, N. Y., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this matter charges the respondents, J. M. Holstein, Inc., a corporation, and Arthur S. Holstein and Frances E. Holstein, individually and as officers of said corporation, with use of unfair and deceptive practices in inter-state 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.

An agreement for disposition of this proceeding by means of a consent order has now been executed by respondents and their counsel and counsel supporting the complaint, and submitted to the hearing examiner for his consideration.

The agreement 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 the agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, 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 the 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, J. M. Holstein, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 53 Bank Street, in the City of Newark, State of New Jersey. Respondents, Arthur S. Holstein and Frances E. Holstein, are officers of said corporation.

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

ORDER

It is ordered, That J. M. Holstein, Inc., a corporation, and its officers, and Arthur S. Holstein and Frances E. Holstein, 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 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 are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively invoicing fur products by:

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

(b) Failing to set forth the term "Persian Lamb" where an election is made to use that term instead of the word "Lamb".

(c) Failing to set forth the term "Dyed Broadtail Processed Lamb" where an election is made to use that term instead of the term "Dyed Lamb".

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of March, 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

UNITED CONTACT LENS CORPORATION ET AL.

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

Docket 8165. Complaint, Nov. 8, 1960—Decision, Mar. 17, 1961

Consent order requiring New York City distributors of contact lenses to opticians for resale to the public, to cease representing falsely in advertising brochures and otherwise that their contact lenses would correct all defects in vision and could be worn successfully by all in need of visual correction, that the lenses protected the eye, and that they were unbreakable.

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 United Contact Lens Corporation, a corporation, and Martin Weinberger, individually and as an officer of said corporation, and Roland Hirsch and Jack Krakower, individually, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. United Contact Lens Corporation 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 76 Madison Avenue, New York, New York. Martin Weinberger is an officer of said corporation. He presently formulates, directs and controls the policies of the corporate respondent. His address is the same as the corporate respondent.

Ronald Hirsch and Jack Krakower were formerly officers of the corporate respondent, at which time they cooperated in formulating, directing and controlling the policies of said corporation in connection with the acts and practices set forth herein. Their address is 7 West 44th Street, New York, New York.

PAR. 2. Corporate respondent United Contact Lens Corporation and Martin Weinberger, an officer of said corporation, are engaged in the sale of corneal contact lenses to opticians who sell them to the public. Respondents Ronald Hirsch and Jack Krakower, formerly officers of the corporate respondent, have in the past engaged in the business described herein and have participated in the acts and practices herein described.

The corporate respondent also sells and distributes, and has sold and distributed, to sellers of corneal lenses, various types of advertising literature and brochures designed to assist in the sale of their said lenses. Corneal contact lenses are designed to correct errors and deficiencies in the vision of the wearer and are devices, as "device" is defined in the Federal Trade Commission Act.

PAR. 3. Respondents cause, and have caused, their said contact lenses, when sold, to be transported from their place of business in New York, New York, to purchasers thereof located in various other states of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said contact lenses in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such conmmerce has been and is substantial.

PAR. 4. In the course and conduct of their business, respondents have disseminated, and have caused the dissemination of, advertisements concerning their said devices 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 advertising brochures, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said devices; and respondents have also disseminated, and caused the dissemination of, advertisements concerning their said devices, including but not

limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said devices, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

Contact lenses actually afford protection to the eye.

Anyone who wears glasses no matter how slight the correction can wear contact lenses.

* * * They are unbreakable.

Many people wear their contact lenses all day with no thought or concern about them.

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

1. All persons in need of visual correction can successfully wear respondents' contact lenses.
2. Respondents' lenses will correct all defects in vision.
3. Many persons wear said lenses all day.
4. Said lenses afford protection to the eye of the wearer.
5. Said lenses are unbreakable.

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

1. A significant number of persons in need of visual correction cannot successfully wear respondents' contact lenses.
2. Said lenses will not correct all defects in vision.
3. Persons cannot wear respondents' lenses all day until they have become fully adjusted thereto because of the discomfort that exists.
4. Respondents' contact lenses cover only a small portion of the eye and afford protection only to the portion of the eye that is covered.
5. Said lenses are breakable.

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

Mr. Garland S. Ferguson supporting the complaint.

Bernstein and Steyer by *Mr. Murray Steyer*, of New York, N.Y., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on November 8, 1960. The complaint charged respondents with falsely advertising the effectiveness of contact lenses. The Commission also charged that said advertisements constituted unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

On January 12, 1961, counsel submitted to the undersigned hearing examiner an agreement dated January 6, 1961 among respondents, counsel representing them and counsel supporting the complaint, providing for the entry without further notice of a consent order. The agreement was duly approved by the Director, the Assistant Director and the Associate Director of the Bureau of Litigation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by all the respondent parties thereto of jurisdictional facts;

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

(4) The entire record of which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusion of law;

(2) Further procedural steps before the hearing examiner and the Commission.

In addition the agreement contains the following permissive provisions: A waiver by the respondents of any right to challenge or contest the validity of the order entered in accordance with the agreement, and a statement that 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.

Having considered said agreement including the proposed order and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Corporate respondent United Contact Lens Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 76 Madison Avenue, New York, New York. Individual respondent Martin Weinberger is an officer of said corporation. He formulates, directs and controls the practices of the corporate respondent. Individual respondents Ronald Hirsch and Jack Krakower were formerly officers of the corporate respondent, at which time they cooperated in formulating, directing and controlling the policies of said corporation in connection with the acts and practices as set forth in the complaint.

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

ORDER

It is ordered, That respondents United Contact Lens Corporation, a corporation, and its officers, and Martin Weinberger, individually and as an officer of said corporation, and Ronald Hirsch and Jack Krakower, individually, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the sale 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, indirectly or by implication, that:

(a) All persons in need of visual correction can successfully wear respondents' contact lenses.

(b) Said lenses will correct all defects in vision.

(c) A person can wear said lenses all day unless it is clearly disclosed that this is possible only after such person has been fully adjusted thereto.

(d) Said contact lenses afford protection to the eye of the wearer, unless limited to the small portion covered thereby.

(e) 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said contact lenses, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 17th day of March, 1961, 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

CONSOLIDATED FELT 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 8174. Complaint, Nov. 14, 1960—Decision, Mar. 17, 1961

Consent order requiring two affiliated manufacturing concerns in Kearny, N.J., and their common officer to cease violating the Wool Products Labeling Act by labeling wool batting as "80% reused wool, 20% undetermined fibers" and labeling quilted interlining material as "80% reused wool, 20% other fibers" when both products contained substantially less than 80% reused wool.

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 Consolidated Felt Company, Inc., a

corporation, and Zenith Quilting Corporation, a corporation, and Peter Miller, individually and as an officer of said corporations, 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 Consolidated Felt Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Zenith Quilting Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondent Peter Miller is president and secretary of both corporate respondents. Said individual respondent formulates, directs and controls, the acts, practices and policies of said corporate respondents. Respondents' office and principal place of business is located at 1342 Inwood Avenue, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since April of 1959, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, or offered for sale in commerce, as "commerce" is defined in said Act, wool products, as "wool products" are defined therein.

PAR.3. Certain of said wool products were misbranded by respondents within the intent and meaning of Section 4(a)(1) of said 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 was wool batting labeled or tagged by respondent Consolidated Felt Company, Inc., as consisting of "80% reused wool, 20% undetermined fibers" and quilted interlining material labeled or tagged by respondent Zenith Quilting Corporation as consisting of "80% reused wool, 20% other fibers", whereas in truth and in fact, said products contained substantially less reused wool than was indicated by the foregoing labels or tags affixed thereto.

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

Products Labeling Act of 1939, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. Respondents in the course and conduct of their business, as aforesaid, were and are in substantial competition in commerce with corporations, firms and individuals likewise engaged in the manufacture and sale of wool products, including wool batting and quilting interlining material.

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

Mr. Michael P. Hughes supporting the complaint.
Respondents, *pro se.*

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on November 14, 1960, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products. After being served with said complaint, respondents appeared and entered into an agreement containing consent order to cease and desist, dated January 16, 1961, purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents and by counsel supporting the complaint, and approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

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

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to 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 Consolidated Felt Company, Inc. and Zenith Quilting Corporation are corporations existing and doing business under and by virtue of the laws of the State of New York. Formerly the principal place of business was 1342 Inwood Avenue, in the City of New York, State of New York; at present the principal place of business is 60 Passaic Avenue, Kearny, New Jersey.

Individual respondent Peter Miller is president and secretary of both corporate respondents. His office is the same as the corporate respondents.

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

ORDER

It is ordered, That respondents Consolidated Felt Company, Inc., a corporation, and its officers, and Zenith Quilting Corporation, a corporation, and its officers, and Peter Miller, individually and as an officer of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution, in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of wool batting or interlining material, 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 such elements of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of March 1961, 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

LAST WOOL STOCK CORPORATION ET AL.

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

Docket 8050. Complaint, July 19, 1960—Decision, Mar. 18, 1961

Consent order requiring New York City sellers of woolen waste in the form of woven clips and knitted clips to woolen mills, to cease falsely invoicing as "100% Reprocessed Camel hair", products which contained quantities of wool, mohair, nylon, and substantially less than 100% camel hair.

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 Last Wool Stock Corporation, a corporation, and Martko Last and Jacob Last, 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 Last Wool Stock Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 113 Spring Street, in the City of New York, State of New York.

PAR. 2. Respondents Martko Last, President, and Jacob Last, Secretary-Treasurer, 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. 3. Respondents are now, and for some time last past have been, engaged in offering for sale, sale and distribution of woolen waste in the form of woven clips and knitted clips, including camel hair clips, to woolen mills and others.

PAR. 4. Respondents in the course and conduct of their business, now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York 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. 5. In the course and conduct of their business as aforesaid, respondents have made representations concerning their said products on sales invoices. Among and typical of these representations was the following:

"*100% Reprocessed Camel hair*"

PAR. 6. The aforesaid representations were false, misleading and deceptive whereas, in truth and in fact, said products contained quantities of wool, mohair, nylon and substantially less camel hair than was represented.

PAR. 7. The acts and practices set out above have had and now have the tendency and capacity to mislead and deceive purchasers of said products as to the true fiber content, and cause such purchasers to misbrand and misrepresent products manufactured by them in which said materials were used.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competion, in commerce, with corporations, firms and individuals in the sale of woolen waste of the same general kind and nature as that sold by respondents.

PAR. 9. The acts and practices of the respondents set out above 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, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Michael P. Hughes and *Mr. Charles W. O'Connell* supporting the complaint.

Engelman and Hart by *Mr. Myron Engelman* of New York, N.Y., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Commission issued its complaint July 19, 1960 against respondents charging them with false representations in invoices of wool products. The complaint further charged that said representatives constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Counsel presented to the undersigned hearing examiner on January 16, 1961 an agreement dated December 29, 1960 among respondents, Last Wool Stock Corporation, Martko Last and Jacob Last, counsel for respondents, and counsel supporting the complaint providing for the entry without further notice of a cease and desist order. Said agreement has been duly approved by the Director, the Assistant Director and the Associate Director of the Bureau of Litigation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by all the respondent parties thereto of jurisdictional facts;

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

(4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusion of law;

(2) Further procedural steps before the hearing examiner and the Commission.

In addition the agreement contains the following permissive provisions: A waiver by the respondents of any right to challenge or contest the validity of the order entered in accordance with the agreement, and a statement that 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.

Having considered said agreement including the proposed order and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent Last Wool Stock Corporation 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 113 Spring Street, in the City of New York, State of New York.

2. Respondents Martko Last and Jacob Last are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Last Wool Stock Corporation, a corporation, and its officers, and Martko Last and Jacob Last, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of woolen waste or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly, misrepresenting the constituent fibers of which their products are composed

or the percentages or amounts thereof, in sales invoices, shipping memoranda, or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 18th day of March, 1961, 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

LIBERTY ELECTRONICS, INC., ET AL.

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

Docket 8089. Complaint, Aug. 24, 1960—Decision, Mar. 21, 1961

Consent order requiring a Union, N. J., manufacturer of rebuilt television picture tubes containing used parts, to cease making, on labels on such rebuilt tubes and by other media, such statements as "This Is a Fully Guaranteed NEW Tube", ". . . a Brand New . . . Electronic World TV Picture Tube", and representing falsely thereby that the tubes were new in their entirety; and to disclose clearly, on the tubes themselves and on cartons and invoices and in advertising, that such tubes were rebuilt and contained used parts.

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 Liberty Electronics, Inc., a corporation and Mary Garrubbo, 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 Liberty Electronics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 2436 Morris Avenue, Union, New Jersey.

Respondent Mary Garrubbo is an individual and an officer of said corporation. She formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Her 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 manufacturing, offering for sale, sale and distribution of rebuilt television picture tubes containing used parts to distributors who in turn sell to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New Jersey to purchasers thereof who are 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 products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their products, respondents made certain statements concerning their products on labels and by other media. Among and typical of such statements are the following:

This Is a
Fully Guaranteed
NEW Tube
This is a Brand New . . . . Electronic
World TV Picture Tube

PAR. 5. Through the use of the aforesaid statements, respondents represented that certain of their picture tubes were new in their entirety.

PAR. 6. Said statements and representations were false, misleading and deceptive. In truth and in fact the television picture tubes represented as being "new" were not new in their entirety.

PAR. 7. The television picture tubes sold by respondents are rebuilt and contain used parts. Respondents do not disclose on the tubes, or on the cartons in which they are packed, or on invoices, or in any other manner that said television picture tubes are rebuilt and contain used parts.

When television picture tubes are rebuilt containing used parts, in the absence of a disclosure to the contrary, such tubes are understood to be and are readily accepted by the public as new tubes.

PAR. 8. By failing to disclose the facts as set forth in Paragraph Seven, respondents place in the hands of uninformed or unscrupulous dealers means and instrumentalities whereby they may mislead and

deceive the public as to the nature of their said television picture tubes.

PAR. 9. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of television picture tubes.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements and representations and the failure of respondents to disclose on their television picture tubes, and on the cartons in which they are packed, on invoices, or in any other manner that they are rebuilt containing used parts, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said picture tubes are new in their entirety and into the purchase of substantial quantities of respondents' said tubes 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. 11. 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. Michael J. Vitale for the Commission.
Mr. Franklin C. Phifer, of East Orange, N. J., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on August 24, 1960, issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act, and the respondents were duly served with process.

On November 14, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondents and the attorneys for the respective parties, under date of November 1, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord

with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Liberty Electronics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 2436 Morris Avenue, Union, New Jersey.

Respondent Mary Garrubbo is an officer of said corporate respondent. She formulates, directs and controls the acts and practices of said corporate respondent. Her address is the same as the corporate respondent.

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

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

4. Respondents waive:

(a) Any further procedural steps before the Hearing Examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

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

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

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

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

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

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission

has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act, against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That respondents Liberty Electronics, Inc., a corporation, and its officers, and Mary Garrubbo, 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 distribuiton of rebuilt television picture tubes containing used parts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that said television picture tubes are new;

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed November 17, 1960, accepting an agreement containing a consent order to cease and desist, theretofore executed by the respondents and counsel in support of the complaint; and

It appearing that the order contained in said initial decision departs from the proposed order set forth in the agreement of the parties in that a comma was omitted from paragraph 2, creating an ambiguity in the order which should be corrected; and, accordingly

It is ordered, That paragraph 2 of the order contained in the initial decision be, and it hereby is, revised to read:

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

It is further ordered, That the intial decision, as so modified, shall, on the 21st day of March 1961, become the decision of the Commission.

It is further ordered, That the respondents, Liberty Electronics Inc., a corporation, and Mary Garrubbo, 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 contained in the aforesaid initial decision, as modified.

IN THE MATTER OF

JOHN BACALL

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

Docket 8133. Complaint, Oct. 7, 1960—Decision, Mar. 23, 1961

Consent order requiring a seller in Los Angeles to cease violating the Wool Products Labeling Act by falsely labeling woolen fabrics as "100% Virgin Wool" and by failing to comply with other labeling requirements.

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 John Bacall, an individual, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under said 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, John Bacall, is an individual whose office and principal place of business is at 704 South Spring Street, Los Angeles, California.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since September 1, 1958, respondent has introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool products" are defined therein.

PAR. 3. Certain of said wool products, namely woolen fabrics, were misbranded by respondent within the intent and meaning of Section

4(a)(1) of said 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 woolen fabrics labeled or tagged by respondent as consisting of "100% Virgin Wool", whereas, in truth and in fact, said woolen fabrics in each instance contained substantially less than 100% wool.

PAR. 4. Certain of said wool products were further misbranded by respondent 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 in the manner and form as prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. The respondent in the course and conduct of his business, as aforesaid, was and is in substantial competition in commerce with firms and individuals likewise engaged in the sale of said wool products of the same general nature as those sold by respondent.

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

Mr. DeWitt T. Puckett supporting the complaint.
Mr. John Bacall, respondent in person.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Commission issued its complaint October 7, 1960 against respondent charging him with misbranding Wool Products in violation of the Wool Products Labeling Act of 1939.

Counsel submitted to the undersigned hearing examiner on January 19, 1961 an agreement dated January 17, 1961 between the respondent in person and DeWitt T. Puckett, counsel supporting the complaint, providing for the entry without further notice of a cease and desist order. Said agreement has been duly approved by the Director, the Assistant Director and the Associate Director of the Bureau of Litigation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by respondent of all jurisdictional facts alleged in the complaint.

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

(4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders.

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusion of law;

(2) Further procedural steps before the hearing examiner and the Commission.

In addition the agreement contains the following permissive provisions: A waiver by the respondent of any right to challenge or contest the validity of the order entered in accordance with the agreement, and a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

Having considered said agreement including the proposed order and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent John Bacall is an individual whose principal place of business is located at 704 South Spring Street, in the City of Los Angeles, State of California.

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

ORDER

It is ordered, That the respondent John Bacall, an individual, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal

Trade Commission Act and the Wool Products Labeling Act of 1939 of wool 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:

A. Misbranding of such products by:

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

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

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 23rd day of March, 1961, become the decision of the Commission; and, accordingly:

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

In The Matter Of

PORTIS STYLE INDUSTRIES CO. ET AL.

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

Docket 8171. Complaint, Nov. 14, 1960—Decision, Mar. 25, 1961

Consent order requiring Chicago furriers to cease violating the Fur Products Labeling Act by deceptively identifying the animals producing certain furs on invoices and in advertising, by failing to disclose the name of the particular fur-producing animal on advertising cards, and by failing to observe other 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 Portis Style Industries Co., a corporation, and Henry R. Portis, an individual and as an officer of said corporation, hereinafter referred to as respondents, have violated the pro-

visions 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. Portis Style Industries Co. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 320 West Ohio Street, Chicago, Illinois.

Henry R. Portis is Chairman of the Board of the said corporate respondent and controls, directs and formulates the acts, practices and policies of the said corporate respondent. His office and principal place of business is the same as that of the said corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been 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 as the term "fur" and "commerce" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said furs were falsely and deceptively invoiced by the 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. 4. Certain of said furs were falsely and deceptively invoiced in that they were falsely and deceptively identified with respect to the name or names of the animal or animals that produced the fur in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 5. Certain of said furs 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 advertisements concerning said furs which were not in accordance with the provisions of Section 5(a)(1) of the said Act and the Rules and Regulations promulgated thereunder and which advertisements were intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of said furs.

PAR. 6. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared on cards that were distributed in commerce.

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

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

B. Falsely or deceptively identified the fur with respect to the name or names of the animal or animals that produced the fur in violation of Section 5(a)(5) of the Fur Products Labeling Act.

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. Michael P. Hughes and *Mr. Charles W. O'Connell* for the Commission.

Mr. Hyland J. Paullin, of Chicago, Ill., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on November 14, 1960, charging Respondents with violation of the Federal Trade Commission Act and of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, by falsely and deceptively invoicing and advertising certain of their furs.

Thereafter, on January 6, 1961, 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, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter, on January 18, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Portis Style Industries Co. as an Illinois corporation, with its office and principal place of business located at 320 West Ohio Street, Chicago, Illinois, and Respondent Henry R. Portis as chairman of the Board of said corporate Respondent, his office and principal place of business 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.

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; and that the agreement is for settlement purposes only and does not constitute an admission by the Respondents that they have violated the law as alleged in the complaint.

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 Portis Style Industries Co., a corporation, and its officers, and Henry R. Portis, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the introduction into commerce or the sale, advertising, or offering for sale, in commerce, or the transportation or distribution in commerce of any fur, as "fur" and "commerce" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively invoicing fur by:

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

B. Falsely or deceptively identifying fur with respect to the name or names of the animal or animals that produced the fur;

2. Falsely or deceptively advertising fur 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 furs and which:

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

B. Falsely or deceptively identifies any such fur as to the name or names of the animal or animals that produced the fur.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 25th day of March 1961, become the decision of the Commission; and, accordingly:

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

In The Matter Of

CHELSEA LEATHER GOODS CO., INC., ET AL.

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

Docket 8196. Complaint, Nov. 29, 1960—Decision, Mar. 25, 1961

Consent order requiring New York City manufacturers of billfolds and wallets to cease such misleading practices as stamping products largely made of non-leather materials with the words "Top grain genuine leather", "Top grain genuine cowhide", and "Cowhide split leather", and marking non-leather products with the words "Pig Grain"; and requiring them to disclose clearly when their products having the texture, feel, and appearance of leather are made of non-leather materials.

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 Chelsea Leather Goods Co., Inc., a corporation, and Joseph Weiss, 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 Chelsea Leather Goods Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office

and place of business located at 109-11 Spring Street, in the City of New York, State of New York.

Respondent Joseph Weiss is an individual and 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 manufacturing, advertising, offering for sale, sale and distribution of billfolds and wallets to distributors and jobbers and to retailers for resale to the public.

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

PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing the sale of said products, respondents have engaged in certain acts and practices as follows:

1. Certain of the said products are stamped with words such as "Top grain genuine leather", "Top grain genuine cowhide", "Cowhide split leather", and other similar terms and expressions.

2. Certain of said products are made of non-leather materials which simulate leather and are stamped with the words "Pig Grain".

3. Certain of said products are manufactured of non-leather materials having the texture, feel and appearance of leather.

PAR. 5. Through the use of the aforesaid statements and representations and materials in the manner aforesaid, respondents have represented, directly or indirectly:

1. That the said products marked with the expressions "Top grain genuine leather", "Top grain genuine cowhide", "Cowhide split leather", and other similar terms and expressions are made entirely of leather, with the exception of the necessary fittings and trimmings.

2. That the products made of non-leather materials which simulate leather and stamped with the expression "Pig Grain" are made of leather.

3. That the products made of non-leather materials which have the texture, feel and appearance of leather are made of leather.

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

1. The said products bearing the markings "Top grain genuine leather", "Top grain genuine cowhide", "Cowhide split leather", and other similar terms and expressions are not made entirely of leather with the exception of the necessary fittings and trimmings. Substantial portions of said products, such as the backing and stays, and other significant portions thereof, are made of non-leather products.

2. Said products made of non-leather materials which simulate leather and marked with the expression "Pig Grain" are not made of leather. Said products are made of a non-leather materials.

3. Said products made of non-leather materials which simulate in texture, feel and appearance leather materials, mislead and deceive the purchasing public. The degree of simulation is such that the general public is unable by a reasonably prudent examination of the product to determine that said product of a non-leather material.

PAR. 7. By the aforesaid acts and practices, respondents place in the hands of retailers and dealers the means and instrumentalities by which they may mislead the public as to the quality and composition of said products.

PAR. 8. There is a preference on the part of a substantial portion of the purchasing public for billfolds and wallets made of leather.

PAR. 9. 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 billfolds and wallets of the same general kind and nature as those sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of substantial quantities of respondents' products by reason of such erroneous and mistaken belief. As a consequence thereof, substantial trade in said 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. 11. 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. Terral A. Jordan for the Commission.
Respondents, *pro se*.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on November 29, 1960, charging them with misrepresenting the materials contained in leather and simulated leather products in violation of the Federal Trade Commission Act.

On February 1, 1961, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

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

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

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

1. Respondent Chelsea Leather Goods Co., Inc., is a New York corporation with its office and principal place of business located at 109-11 Spring Street, New York, New York.

Respondent Joseph Weiss is an individual and is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent and has the same address.[1]

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.

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[1] On Feb. 21, 1961 the hearing examiner amended the initial decision by adding this paragraph to Finding 1.

ORDER

It is ordered, That respondents, Chelsea Leather Goods Co., Inc., a corporation, and its officers, and Joseph Weiss, 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 billfolds or wallets, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. (a) Using the expressions, "Top grain genuine leather", "Top grain genuine cowhide", "Cowhide split leather" or any other words or terms of similar import or meaning to describe any of said products not made wholly of the kind of leather so stated, without conspicuously identifying the parts thereof simulating leather or made of leather other than the kind so represented and disclosing that such parts are made of other materials or other kinds of leather.

(b) Using the expression "Pig Grain" or any other words, terms or expressions which, directly or indirectly, represent that the product is leather to describe a product made of non-leather material.

(c) Offering for sale or selling said products made of non-leather material which simulates leather unless said products have attached thereto or affixed thereon in such manner that it cannot readily be removed, and of such nature as to remain on the product until it reaches the ultimate purchaser, a mark, tag or label, which clearly and conspicuously discloses that the product is not made of leather.

2. Furnishing or otherwise placing in the hands of retailers or dealers in said products the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove inhibited.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 25th day of March 1961, 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

AMERICAN FUR COAT CO., INC., ET AL.

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

Docket 7991. Complaint, June 24, 1960—Decision, Mar. 30, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing to set forth the term "Dyed Mouton processed Lamb" as required on labels and invoices, by failing to disclose on invoices when fur products were composed of gills, and by failing to comply with labeling and invoicing requirements in other respects.

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 American Fur Coat Co., Inc., a corporation, Benjamin Dretel and Martha Dretel, individually and as officers of said corporation, and Bert Arak, individually and as manager in charge of business operations, 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. American Fur Coat Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 245 West 27th Street, New York, New York. Benjamin Dretel and Martha Dretel are president and secretary-treasurer, respectively, of the said corporate respondent. Bert Arak is manager in charge of business operations. 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 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) The term "Dyed Mouton 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 9 of the said Rules and Regulations.

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

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

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

PAR. 4. 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. 5. 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) The term "Dyed Mouton 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 9 of the said Rules and Regulations.

(b) Failed to disclose that fur products are composed in whole or substantially of gills when such is the fact, in violation of Rule 20 of said Rules and Regulations.

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

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

and deceptive acts and practices in commerce under the Federal Trade Commission Act.

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

George Herbert Goodrich, Esq., of *Guggenheimer, Untermyer & Goodrich*, of Washington, D. C., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On June 24, 1960, the Federal Trade Commission issued a complaint against the above-named respondents, in which they were charged with violating the Federal Trade Commission Act, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder by, among other things, misbranding by failing to label, affixing labels which fail to comply with minimum size requirements, mingling required with non-required information, failing to set out completely on one side of a label information required by the law and rules and regulations promulgated thereunder, setting forth required information in smaller type than is permitted by law, and falsely and deceptively invoicing fur products sold by respondents in interstate commerce. A true and correct copy of the complaint was served upon the respondents and each and all of them, as required by law. Thereafter respondents appeared by counsel and agreed to dispose of this proceeding without a formal hearing pursuant to the terms of an agreement dated January 16, 1961, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on January 27, 1961, in accordance with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The agreement purports to dispose of this proceeding as to the respondents and each and all of them and contains the form of a consent cease-and-desist order which the parties have represented is dispositive of the issues involved in this proceeding. The agreement has been signed by the corporate respondent by its president, by the individual respondents individually and as officers and/or business manager of said corporation, by the attorney for the respondents, by counsel supporting the complaint, and has been approved by the Assistant Director, Associate Director and Acting Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement respondents admit all of the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the respondents waive: (a) any further procedural steps before the hearing examiner and the Commission; (b) the making

of findings of fact or conclusions of law; and (c) all rights respondents may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The parties further agree, in said agreement, that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Federal Trade Commission; that the order to cease and desist entered in this proceeding by the Commission may be entered without further notice to the respondents, and when so entered such order will have the same force and effect as if entered after a full hearing. Said order may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

The parties have covenanted that the said agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of January 16, 1961, containing consent order, and it appearing that the order which is approved in and by said agreement disposes of all the issues presented by the complaint as to all of the parties involved, said agreement is hereby accepted and approved as complying with §§3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The undersigned hearing examiner, having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, makes the following findings and issues the following order:

FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding, and this proceeding is in the public interest;

2. Respondent American Fur Coat Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 245 West 27th Street, in the City of New York, State of New York;

3. Individual respondents Benjamin Dretel and Martha Dretel are officers of the corporate respondent and Bert Arak is manager in charge of business operations. These individuals control, formu-

late and direct the acts, practices and policies of the said corporate respondent, and their office and principal place of business is the same as that of the said corporate respondent.

4. Respondents are engaged in commerce as "commerce" is defined in the pertinent statutes which are invoked by the complaint filed herein. Now, therefore,

It is ordered, That American Fur Coat Co., Inc., a corporation, and its officers, and Benjamin Dretel and Martha Dretel, individually and as officers of said corporation, and Bert Arak, individually and as manager in charge of business operations, 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. Misbranding fur products by:

A. Failing to set forth the term "Dyed Mouton processed Lamb" where an election is made to use that term instead of Dyed Lamb;

B. Setting forth on labels affixed to fur products:

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

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

C. 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 invoices showing all the information required to be disclosed by each of the subsections of §5(b)(1) of the Fur Products Labeling Act;

B. Failing to set forth the term "Dyed Mouton processed Lamb" where an election is made to use that term instead of Dyed Lamb;

C. Failing to disclose that fur products are composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces, or waste furs, when such is the fact;

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed February 14, 1961, accepting an agreement containing a consent order theretofore executed by the respondents and counsel in support of the complaint; and

It appearing that the hearing examiner's statement in the first sentence of the initial decision purporting to set forth the alleged violations of law involved in this proceeding includes certain allegations not contained in the complaint; and

The Commission being of the opinion that this erroneous summation of the allegations of the complaint should be corrected:

It is ordered, That the initial decision be, and it hereby is, amended by substituting for the first sentence thereof the following:

The Federal Trade Commission issued its complaint against respondents on June 24, 1960, charging them with having violated the Fur Products Labeling Act and the rules and regulations promulgated thereunder by misbranding and falsely and deceptively invoicing certain fur products.

It is further ordered, That the initial decision, as so amended, shall, on the 30th day of March 1961, become 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 contained in the aforesaid initial decision, as amended.

IN THE MATTER OF

FABER BROTHERS, INC.

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

Docket 8062. Complaint, July 29, 1960—Decision, Mar. 30, 1961

Consent order requiring Chicago distributors of sporting goods in the five-State area of Illinois, Wisconsin, Indiana, Michigan, and Iowa, with annual sales in excess of $2,000,000, to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by such practices as selling to its customers classified as "Favorite Sports Stores" on the basis of cost plus 10% while charging their competitors cost plus 33%.

681-237—63——34

COMPLAINT

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

PARAGRAPH 1. Respondent Faber Brothers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 350 West Ontario Street, Chicago, Illinois.

PAR. 2. Respondent is now and has been engaged in the business of selling and distributing sporting goods. Respondent sells its products of like grade and quality to a large number of retailers, including sporting goods stores, hardware stores, hobby shops and department stores, in a five state area of Illinois, Wisconsin, Indiana, Michigan and Iowa, for use, consumption or resale therein. Respondent's sales of its products are substantial, exceeding $2,000,000 annually.

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

PAR. 4. In the course and conduct of its business in commerce, respondent is in substantial competition with other corporations, partnerships, individuals and firms engaged in the sale and distribution of sporting goods.

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

PAR. 5. In the course and conduct of its business, and particularly since 1958, respondent is now and has been discriminating in price between different purchasers of its products by selling said products to some purchasers at substantially higher prices than the prices charged competing purchasers for such products of like grade and quality.

PAR. 6. For example, respondent classifies certain of its customers "Favorite Sports Stores". Respondent sells goods of like grade and quality to customers not so designated and who compete with the "Favorite Sports Stores" in the resale of respondent's products. Respondent sells to customers designated "Favorite Sports Stores"

on the basis of cost plus 10%. Customers not designated "Favorite Sports Stores" pay the usual price of respondent, which is approximately cost plus 33%.

PAR. 7. The effect of such discriminations in price made by respondent, as hereinbefore set forth, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its purchasers are respectively engaged, or to injure, destroy or prevent competition with respondent and with purchasers of respondent who receive the lower prices.

PAR. 8. The discriminations in price, as hereinbefore alleged, are in violation of the provisions of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John Perechinsky supporting the complaint.
Mr. Sidney M. Libit, of Chicago, Ill., for respondent.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on July 29, 1960, charging it with having violated Section 2(a) of the Clayton Act, as amended. After being served with said complaint, respondent entered into an agreement, dated January 19, 1961, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by respondent, by counsel for said respondent and by counsel supporting the complaint, and approved by the Director and Associate 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 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 of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to 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. Respondent Faber Brothers, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 350 West Ontario Street, in the City of Chicago, State of Illinois.

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 provisions of the Clayton Act.

ORDER

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

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

2. By selling such products to any purchaser at a price which is lower than the price charged any other purchaser at the same level of trade, where such lower price undercuts the price at which the purchaser charged the lower price may purchase such products of like grade and quality from another seller.

3. By granting or allowing any secret rebate, discount, allowance or other consideration to any purchaser while not granting or allowing an equivalent rebate, discount, allowance or other consideration to any other purchaser who competes in the resale or

distribution of such products with the purchaser who is granted or allowed the secret rebate, discount, allowance or other consideration.

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 March 1961, become the decision of the Commission; and, accordingly:

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

In The Matter Of

SMITH-FISHER CORPORATION ET AL.

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

Docket 8169. Complaint, Nov. 8, 1960—Decision, Mar. 30, 1961

Consent order requiring Owosso, Mich., manufacturers of electric fence chargers designed to prevent farm animals from straying, to cease representing falsely in advertisements in trade journals and newspapers and otherwise, that their "Super-Atom Fence Charger" would confine farm animals under all conditions without the use of insulators; would charge 50 miles of fence without insulators; was 20 times more short resistant than all other chargers and would not be shorted by green grass or brush, rain, or ice; adjusted automatically to climatic conditions; and was guaranteed for two years.

On July 25, 1961 (59 F. T. C. —), this matter was disposed of by separate consent order as to the remaining individual.

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 the Smith-Fisher Corporation, a corporation, and Jack D. Smith and Frank Fisher, 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 Smith-Fisher Corporation is a corporation organized, existing and doing business under and by virtue of