(d) Preventing or restricting any dealer or distributor who has dealt in respondent's products from dealing in competitive products after he has discontinued dealing in respondent's products.

2. Entering into, continuing or enforcing, or attempting to enforce, any contract, agreement or understanding with any dealer in or distributor of its products for the purpose or with the effect of establishing or maintaining any merchandising or distribution plan or policy prohibited by paragraph 1 of this order.

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

By the Commission, Commissioner MacIntyre not participating.

IN THE MATTER OF

ALUMINUM COMPANY OF AMERICA

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

Docket 8175. Complaint, Nov. 17, 1960—Decision, Nov. 1, 1961

Consent order requiring a manufacturer of aluminum and aluminum products, including "Alcoa Wrap" aluminum foil, with annual sales exceeding $858,000,000, to cease violating Sec. 2(d) of the Clayton Act by such practices as paying $150 to a retail grocery chain in Burlington, Iowa, for advertising or other services furnished in connection with the sale of its products while not making any comparable payments to the chain's competitors.

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 Aluminum Company of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1501 Alcoa Building, Mellon Square, Pittsburgh, Pennsylvania.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of aluminum and aluminum products, including aluminum foil and aluminum foil containers sold under the trade name "Alcoa Wrap". Respondent sells its products to wholesalers and retailers, including retail chain stores and department stores. Respondent's sales of its products are substantial, exceeding $858,000,000 annually.

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

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

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

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

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondent named in the caption hereof with violation of Section 2(d) of the Clayton Act, as amended by the Robinson-Patman Act, and an agree-

ment by and between respondent and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered.

1. Respondent is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and municipal place of business located at 1501 Alcoa Building, Mellon Square, in the city of Pittsburgh, State of Pennsylvania.

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

ORDER

It is ordered, That respondent Aluminum Company of America, 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 aluminum foil products or aluminum foil containers 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 aluminum foil products or aluminum foil containers, unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products.

It is further 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 this order.

Complaint

IN THE MATTER OF

NUTRI-HEALTH, INC., ET AL.

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

Docket 8178. Complaint, Nov. 21, 1960—Decision, Nov. 4, 1961

Consent order requiring Baltimore distributors of a vitamin product designated "Nutri-Health" to cease representing falsely by radio broadcasts, circulars, and other means that they gave a bottle of their product free to those who responded to their offer and paid the "low introductory price" of $5.00 for one bottle, when $5.00 was their usual price for two.

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 Nutri-Health, Inc., a corporation, and Charles Finkelstein, Morton Kanter and Bernice Freiberg, 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 Nutri-Health, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 2 West 25th Street, Baltimore, Maryland.

Respondents Charles Finkelstein, Morton Kanter and Bernice Freiberg are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of a vitamin product designated "Nutri-Health" to the public. Said product is sold in bottles containing 30 tablets each.

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 Maryland 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 commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents advertise their said product by means of broadcast over radio stations and by means of circulars and other advertising media. Typical, but not all inclusive, of the said advertisements is the following:

Free vitamins! Yes, absolutely *free* * * * $5.00 worth of vitamins * * * without a single penny cost! * * * This offer is to introduce the sensational vitamin formula 'Nutri-Health' in (naming a city) * * * I want to give you $5.00 worth of famous Nutri-Health Vitamin Capsules. * * * Don't send a penny * * * Just send a post card to Vitamins, care of this station or telephone us your name and address. That's all you do * * * and we send you the vitamins *free*. With your free supply we also send an EXTRA month's supply *on approval*. Use the free supply first. * * * if you're not delighted * * * simply *return the extra* supply and you owe nothing. Or, * * * keep the Extra supply and send the Low Introductory price. *The free bottle is yours to keep regardless!* But this offer is limited and may be withdrawn at any time * * * only one supply per family.

PAR. 5. By means of the statements in the aforesaid advertisement and others of similar import not specifically set forth herein, respondents represented, directly or by implication, that $5.00 is a low introductory price for one bottle of their product and that they are offering to give and do give a bottle free to those who respond to their advertisement, both to those who use one bottle and return the second and also to those who use the two bottles and pay respondents the sum of $5.00.

PAR. 6. Said statements and representations were, and are, false, misleading and deceptive. In truth and in fact, $5.00 is not a low or introductory price for one bottle of said product but is respondents' usual and customary price for two bottles. Those persons who elect to return the second bottle do not receive the first bottle free as they are required to pay the postage charges to return the bottle to respondents and those who elect to keep the second bottle and pay $5.00 to respondents do not obtain the first bottle free as its price is included in the $5.00 paid. In addition, in billing the customer for the $5.00, postage of thirty-five cents for sending the two bottles is added.

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

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of

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

PAR. 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. DeWitt T. Puckett supporting the complaint.

Mr. Vincent A. Kleinfeld, of *Bernstein, Kleinfeld and Alpar*, Washington, D.C., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on November 21, 1960. The complaint charged respondents with making false, misleading and deceptive statements and representations in the pricing of vitamins. Said representations were charged to be unfair and deceptive acts and practices and unfair methods of competition within the intent and meaning, and in violation of the Federal Trade Commission Act.

On September 7, 1961, counsel submitted to the undersigned Hearing Examiner an agreement dated August 30, 1961, and executed by 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 Acting Director of the Bureau of Deceptive Practices and by the Chief of the Division concerned.

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 conclusions of law;

(2) Further procedural steps before the Hearing Examiner and the Commission;

(3) Any right to challenge or contest the validity of the order entered in accordance with the agreement.

In addition the agreement contains the following provision: 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, Nutri-Health, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 2 West 25th Street, in the City of Baltimore, State of Maryland.

2. Respondents, Charles Finkelstein, Morton Kanter and Bernice Freiberg, are officers of the corporate respondent. They formulate, direct and control the policies, 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 Nutri-Health, Inc., a corporation, and its officers, and Charles Finkelstein, Morton Kanter and Bernice Freiberg, 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 vitamin products, or any other product, in

commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. The price at which a product is offered constitutes a reduction from respondents' usual and customary price unless it is less than the price at which the product has been usually and customarily sold by respondents in the recent regular course of business.

2. Any amount is respondents' usual and customary price of a product unless it is the price at which respondents have usually and customarily sold the product in the recent regular course of business.

3. Any product is given free when a payment of any nature is required of the recipient, unless the necessity of such payment and the amount thereof are disclosed at the outset.

4. Any product is given free in connection with the purchase of another of the same product or of a different product when the price of the product purchased is in excess of the usual and customary price charged by respondents for such product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall on the 4th day of November, 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

ALBERT F. ROBILIO ET AL. DOING BUSINESS AS ROBILIO & CUNEO

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

Docket 8294. Complaint, Mar. 2, 1961—Decision, Nov. 6, 1961

Consent order requiring the Memphis, Tenn., manufacturer of "Ronco" macaroni, spaghetti, and noodles to cease discriminating among its customers in paying promotional allowances in violation of Sec. 2(d) of the Clayton Act by such practices as making a preferential payment of $250 to a retail grocery chain with headquarters in Jacksonville, Fla., while making no offers of comparable payments to the chain's competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (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. Respondents Albert F. Robilio, John S. Robilio, Jr., Mrs. John S. Robilio, Sr., Rose Ann Robilio, Florence Rita Radogna, Roane Waring, Jr., and Martha Cuneo Reid, are copartners trading and doing business as Robilio & Cuneo, with their office and principal place of business located at 70 Adams Avenue, Memphis, Tennessee.

PAR. 2. Respondents are now and have been engaged in the manufacture, sale, and distribution of food products, including macaroni, spaghetti, and egg noodles under the trade name, "Ronco". Respondents sell and distribute their products to wholesalers and retailers, including retail chain organizations.

PAR. 3. Respondents sell and cause their products to be transported from their principal place of business in the State of Tennessee 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, respondents paid or contracted for the payment of something of value to or for the benefit of some of their 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 respondents, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondents' products.

PAR. 5. For example, in the year 1960, respondents contracted to pay and did pay to Winn-Dixie Stores, Inc., a retail grocery chain with headquaters in Jacksonville, Florida, the amount of $250.00 as compensation or as an allowance for advertising or other services or facilities furnished by or through Winn-Dixie Stores, Inc., in connection with its offering for sale or sale of products sold to it by respondents. Such compensation or allowance was not made available on proportionally equal terms to all other customers competing with Winn-Dixie Stores, Inc., in the sale and distribution of products of like grade and quality purchased from respondents.

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.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, and an agreement signed by all of the respondents [except respondent Roane Waring, Jr.], by respondents' counsel and by counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, and waivers and provisions as required by the Commission's rules, and which agreement further provides for dismissal of the complaint as to respondent Roane Waring, Jr.; and

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides an adequate basis for an appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Individual respondents Albert F. Robilio, John S. Robilio, Jr., Mrs. John S. Robilio, Sr., Rose Ann Robilio, Florence Rita Radogna, Roane Waring, Jr., and Martha Cuneo Reid, are copartners trading and doing business as Robilo & Cuneo, with their office and principal place of business located at 70 Adams Avenue, in the city of Memphis, State of Tennessee.

Roane Waring, Jr. holds no interest in the partnership trading as Robilio & Cuneo other than as executor under the estate of the late Mrs. Zadie S. Cuneo.

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

ORDER

It is ordered, That respondents Albert F. Robilio, John S. Robilio, Jr., Mrs. John S. Robilio, Sr., Rose Ann Robilio, Florence Rita Radogna and Martha Cuneo Reid, individually and as copartners trading as Robilio & Cuneo, or under any other name or device, corporate or otherwise, or through agents, representatives or employees, in connection with the sale of food products in commerce, as

"commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

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

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to Roane Waring, Jr.

It is further ordered, That the respondents named in the order to cease and desist 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 maner and form in which they have complied with this order.

IN THE MATTER OF

STERN & STERN TEXTILES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-16. Complaint, Nov. 6, 1961—Decision, Nov. 6, 1961

Consent order requiring New York City importers to cease violating the Flammable Fabrics Act by furnishing their customers with a false guaranty that certain fabrics were not so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Stern & Stern Textiles, Inc., a corporation, Edwin M. Stern, Jean Pierre Stern and David Grossberg, 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 Flammable Fabrics 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 Stern & Stern Textiles, Inc., is a corporation duly organized, existing and doing business under and by

virtue of the laws of the State of New York. Respondents Edwin M. Stern, Jean Pierre Stern and David Grossberg are President-Treasurer, Executive Vice President, and Secretary, respectively, of Stern & Stern Textiles, Inc. The individual respondents formulate, direct and control the policies, acts and practices of the said corporate respondent. The business address of all respondents is 1359 Broadway, New York, New York.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported, and caused to be transported, in commerce; and have transporated and caused to be transported, after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, fabric, as that term is defined therein, which fabric was, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

PAR. 3. Respondents have furnished their customers with a guaranty with respect to the fabrics, mentioned in Paragraph Two hereof, to the effect that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, show that said fabrics are not, in the form delivered by respondents, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals. There was reason for respondents to believe that the fabrics covered by such guaranty might be introduced, sold, or transported in commerce.

Said guaranty was false in that (1) with respect to some of said fabrics, respondents have not made such reasonable and representative tests, and (2) with respect to other of said fabrics, the tests which were made showed that the fabrics were so highly flammable as to be dangerous when worn by individuals.

PAR. 4. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such 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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, and the respondents having been served with notice of

said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Stern & Stern Textiles, 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 1359 Broadway, New York, New York.

Respondents Edwin M. Stern, Jean Pierre Stern and David Grossberg are officers of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That the respondent Stern & Stern Textiles, Inc., a corporation, and its officers, and respondents Edwin M. Stern, Jean Pierre Stern and David Grossberg, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1.

(a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce,

any fabric, which, under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals;

2. Furnishing to any person a guaranty with respect to any fabric which respondents, or any of them, have reason to believe may be introduced, sold or transported in commerce, which guaranty represents,

contrary to fact, that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations thereunder, show and will show that the fabric, covered by the guaranty, is not, in the form delivered or to be delivered by the guarantor, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals, provided, however, that this prohibition shall not be applicable to a guaranty furnished on the basis of, and in reliance upon, a guaranty to the same effect received by respondents in good faith signed by and containing the name and address of the person by whom the fabric was manufactured or from whom it was received.

It is further 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 this order.

IN THE MATTER OF

HAROLD GREENBERG TRADING AS JOHNSTOWN PRODUCTS

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

Docket C-17. Complaint, Nov. 6, 1961—Decision, Nov. 6, 1961

Consent order requiring an individual in Philadelphia to cease using bait advertising to obtain leads to prospective purchasers of his aluminum storm windows and doors and aluminum patio covers, and false claims that the sale price was half the usual price, that the advertised products were in stock ready for delivery, that the offer was limited to three days, that the advertised products were as pictured with ornamental grills and columns and scalloped valances, and that prices included installation.

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 Harold Greenberg, an individual trading as Johnstown Products, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Harold Greenberg, is an individual,

trading as Johnstown Products, with his office and principal place of business located at 4903 Lancaster Avenue, Philadelphia, Pennsylvania.

PAR. 2. Respondent is now, and for some time past has been, engaged in the advertising, offering for sale, and distribution of various items of merchandise for installation in or on private homes, including aluminum storm windows and doors and aluminum patio covers.

PAR. 3. In the course and conduct of his business, respondent causes, and for some time past has caused, his said products to be shipped from his place of business in the State of Pennsylvania to purchasers thereof located in various states of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his business, and for the purpose of inducing the sale of his aluminum products, respondent has made statements in newspapers of general circulation and through other media, typical of which, but not all inclusive, are the following:

6 TRIPLE TRACK
STORM WINDOWS
INSTALLED

[Picture of 6 storm windows with top half enclosed in glass and bottom half in screens. Underneath this is another picture of a storm door.]

- Genuine Alcoa
- Triple Track
- Draft Free
- Top & Bottom Ventilation
- Warp Proof
- E-Z Slide Type
- Opens in any position

Builders and Contractors Supplied

ANY SIZE
GENUINE ALUMINUM
WELDED STORM
DOOR
$19.50
with the purchase of 6 or more triple track aluminum combination screen-storm windows
WRITE, PHONE
OR VISIT OUR FACTORY SHOWROOMS

ALL 6 FOR
AS LOW AS
$44.50
$1.25 Per week

No Down Payment
Completely Installed

GIMMICKS
NO FREE GIVEAWAYS
FREE STORM DOORS
BONUS OFFERS

Alcoa Aluminum PATIO COVERS
3-DAY SALE
HURRY 1 Week Delivery

[Picture of Patio illustrating patio covers]

BIG 8x6 FEET
Completely Installed
Choice of Color
of Your Home
Increase the Value
RAILS OPTIONAL

INSTALLED
$55.50
No Down Payment
$1.25 A WEEK
1st Payment in July

* * *

WITH
JOHNSTOWN PRODUCTS
[Picture of 6 storm windows]

3	6 TRIPLE TRACK WINDOWS!		3
	*** ***		
D	HALF-PRICE	FOR	D
A	GENUINE ALUMINUM	ONLY	A
Y	WELDED STORM	$49.50	Y
SALE	DOOR $18.50	ANY SIZE	SALE

*** ***

INSTALLED

PAR. 5. By means of the statements in the aforesaid advertisements, and others of the same import not specifically set out herein, respondent represented, directly or by implication, that he was making a bona fide offer to sell the product advertised at the price set out in the advertisement.

PAR. 6. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, the offers set forth in Paragraph Four above were not genuine and bona fide offers, but were made for the purpose of obtaining leads and information as to persons interested in the purchase of respondent's products. After obtaining such leads through response to such advertisements and calling upon such persons, respondent and his salesmen made no effort to sell the advertised products at the advertised prices, but, instead disparaged such products in such a manner as to discourage their purchase and attempted to, and frequently did, sell much higher priced products. Prospective customers who did not purchase certain of respondent's advertised products in many instances were persuaded to purchase more expensive items.

PAR. 7. In the manner aforesaid respondent represented:

1. Through the use of the word "half-price", or similar statements, that the usual and regular price at which said merchandise was sold by it was twice or double that at which the same was being offered:

2. That the advertised products were in stock ready for delivery to any customer who desired to purchase same:

3. That the advertised products were as pictured and included the ornamental grill on the storm door and the ornamental columns and scalloped valances on the patio covers, and that the same would be completely installed at the prices listed;

4. That the sale at the special price listed was for three days only.

PAR. 8. The statements and representations set forth in Paragraph Seven above were false, misleading and deceptive. In truth and in fact:

1. The usual and regular price of respondent's storm door is not double the price at which the same is advertised. The "half price" listed in the advertisement is actually the usual and regular price obtained by respondent if, and when, sold by him.

2. Respondent does not, and did not, stock the advertised product, and would order same only upon a confirmation of the actual sale.

3. The storm door did not include the ornamental grill, as pictured, at the price listed, nor did the patio cover include the ornamental columns and scalloped valances, as pictured in the advertisement, and an installation fee was made therefor.

4. Respondent's sale is not limited to three days, as the product can be purchased after the expiration date listed in the advertisement at the price listed therein.

PAR. 9. In the course and conduct of its business, at all times mentioned herein, respondent has been in substantial competition in commerce with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as those sold by respondent.

PAR. 10. The use by respondent 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 such statements and representations were and are true, and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondent as herein alleged were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Harold Greenberg, is an individual, trading as Johnstown Products with his office and principal place of business located at 4903 Lancaster Avenue in the City of Philadelphia, State of Pennsylvania.

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

ORDER

It is ordered, That Harold Greenberg, an individual trading as Johnstown Products, or under any other name or names, and respondent's representatives, agents and employees, directly, or through any corporate or other device, in connection with the offering for sale, sale or distribution, of aluminum storm windows, storm doors and patios, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that certain merchandise is offered for sale, when such offer is not a bona fide offer to sell the merchandise so offered;

2. The use of any sales plan procedure involving the use of false, deceptive or misleading statements or representations in advertising which are designed to obtain leads or prospects for the sale of other or different merchandise.

3. Using pictorial representations in advertising to represent that respondent's patios, storm doors or other products, contain certain features or construction which are not in fact supplied by respondent for the price advertised;

4. Representing, directly or indirectly, that any amount is respondent's usual and customary price of merchandise when it is in excess of the price at which the merchandise has been usually and customarily sold by respondent in the recent regular course of business in a trade area;

5. Representing through the use of the words "Half Price" that the price at which respondent usually and regularly sells the advertised product is twice the amount set forth in the advertisement; or otherwise representing that any saving is afforded from respondent's usual and customary price of merchandise, unless the price at which it is offered constitutes a reduction from the price at which the merchandise has been usually and customarily sold by respondent in the recent and regular course of business in a trade area;

6. Representing, directly or by implication, that respondent has the advertised product in stock ready for delivery to any purchaser desiring to purchase same, unless such is the fact;

7. Representing, directly or indirectly, that a sale is limited to three days, or any other time, at the price listed, contrary to fact.

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

IN THE MATTER OF

NEW ENGLAND CONFECTIONERY CO.

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

Docket 7732. Complaint, Jan. 6, 1960—Decision, Nov 7, 1961

Consent order requiring a Cambridge, Mass., confectioner to cease charging its "Price Class 2" customers—composed of "Special Retailers" such as drug chains and grocers, grocery co-ops, and department stores—10% less on purchases of its "Candy Cupboard" products than their competitors in the "Price Class 1" category, which include "Regular Retailers" such as independent retail drug and specialty stores and ice cream parlors.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated and is now violating Section 2(a) and Section 2(d) of the amended Clayton Act (U.S.C. Title 15, Section 13), hereby issues its complaint as follows:

COUNT 1

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts with its principal office and place of business located at 254 Massachusetts Avenue, Cambridge, Massachusetts.

PAR. 2. Respondent is engaged in the business of manufacturing, distributing and selling candy and confectionery products. Respondent's total sales for the year 1958 were approximately $17,000,000.

PAR. 3. These candy and confectionery products were sold by respondent for use, consumption, or resale within the United States and respondent causes them to be shipped and transported from the state of location of its principal place of business to purchasers located in states other than the state in which the shipment or transportation originated.

PAR. 4. Respondent maintains a course of trade in commerce, as "commerce" is defined in the amended Clayton Act, in such products described, among and between the States of the United States.

Respondent maintains and operates a manufacturing plant in Cambridge, Massachusetts. From this plant it ships and sells throughout the United States to various purchasers located in the several States of the United States including New York.

PAR. 5. In the course and conduct of its business in commerce, respondent is discriminating in price between different purchasers of its products of like grade and quality by selling to some purchasers at higher and less favorable prices than it sells to other purchasers competitively engaged in the resale of its products with the nonfavored purchasers.

For example, for many years respondent has classified its retail customers in two categories. "Price Class 1" includes the "Regular Retailers" such as independent retail drug stores, specialty stores, and ice cream parlors, which purchase respondent's "Candy Cupboard" products. "Price Class 2" includes the "Special Retailers" such as chain drugs, chain grocers, grocery co-ops, and department stores. "Price Class 2" accounts receive a special price list which is consistently 10% less on "Candy Cupboard" products than the prices quoted for those accounts in "Price Class 1". This 10% price differential is reflected in the prices of all "Candy Cupboard" candies, which comprise the substantial volume of respondent's candy business.

PAR. 6. In the course and conduct of its business in commerce, respondent is competitively engaged with other corporations, individuals, partnerships, and firms in the manufacture, distribution, and sale of its products.

PAR. 7. The effect of respondent's discriminations in price, as alleged, may be substantially to lessen, injure, destroy or prevent such competition as alleged or tend to create a monopoly in the lines of commerce in which respondent and its purchasers are engaged.

PAR. 8. The foregoing acts and practices of the respondent, as alleged, violate Section 2(a) of the amended Clayton Act (U.S.C. Title 15, Section 13).

COUNT 2

PAR. 9. Each of the allegations contained in Paragraphs One through Four are hereby realleged and made part of this Count as fully and with the same effect as though set out in full.

PAR. 10. In the course and conduct of its business in commerce, respondent has been paying advertising and promotion allowances to certain favored customers without making the allowances available on proportionally equal terms to all other customers competing in the distribution and sale of its products.

For example, respondent extends a cooperative advertising allowance amounting to three percent of the previous year's purchases to its customers. In practice, this offer has been made only to accounts such as department stores and selected drug accounts.

Such allowances were not offered or made available on proportionally equal terms by respondent to other customers competing in the resale of respondent's products of like grade and quality with those customers receiving the allowances.

PAR. 11. The acts and practices of respondent, as alleged, violate Section 2(d) of the amended Clayton Act (U.S.C. Title 15, Section 13).

Mr. Franklin A. Snyder for the Commission.

Hicks, Kuhlthau & Nagle, by *Mr. Douglas M. Hicks*, New Brunswick, N.J., for respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On January 6, 1960, the Federal Trade Commission issued its complaint against the above-named respondent charging it with violating the provisions of subsections (a) and (d) of section 2 of the Clayton Act, as amended, in connection with the manufacturing, distributing and selling of candy and confectionery products. On August 16, 1961, the respondent and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint and agrees among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it be-

comes a part of the decision of the Commission, and that it is for settlement purposes only, does not constitute an admission by the respondent that it has violated the law as alleged in the complaint, and that said complaint may be used in construing the terms of the order. 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.

The agreement provides the complaint allegation of "primary line injury", namely, to substantially lessen competition or tend to create a monopoly in the line of commerce in which the respondent is engaged, may be dismissed on the grounds that the evidence in the light of subsequent developments is insufficient to substantiate the allegation. This appears to be an appropriate basis for dismissal.

The agreement further provides that the complaint be dismissed as to Count II of the complaint, involving charged violations of section 2(d) of the Clayton Act, as amended, for the reasons set forth in said agreement, which also appear to be appropriate.

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

1. Respondent, New England Confectionery Co., is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 254 Massachusetts Avenue, in the City of Cambridge, State of Massachusetts.

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 subsections (a) and (d) of section 2 of the Clayton Act, as amended.

ORDER

It is ordered, That respondent, New England Confectionery Co., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale of candy products of like grade and quality in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who in fact competes in the resale and distribution of the respondent's products with the purchaser paying the higher price.

It is further ordered, That the allegation of substantial lessening of competition or tendency toward monopoly in the line of commerce in which respondent is engaged, be dismissed.

It is further ordered, That Count II of the complaint should be, and hereby is, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner filed September 25, 1961, wherein he accepted an agreement containing a consent order to cease and desist theretofore executed by respondent and counsel in support of the complaint; and

It appearing that the word "forthwith" contained in the sixth line of the first paragraph of the order in the aforesaid agreement has been omitted from the order contained in the said initial decision, and that this departure from the agreement of the parties should be corrected:

It is ordered, That the initial decision of the hearing examiner filed September 25, 1961, be, and it hereby is, modified by inserting the word "forthwith" after the word "do" in the sixth line of the first paragraph of the order therein.

It is further ordered, That the initial decision filed September 25, 1961, as so modified, shall, on the 7th day of November 1961, become the decision of the Commission.

It is further 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 its has complied with the order to cease and desist.

IN THE MATTER OF

INTERNATIONAL STAPLE & MACHINE COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 3 OF THE CLAYTON ACT

Docket 8083. Complaint, Aug. 19, 1960—Decision, Nov. 7, 1961

Order requiring one of the nation's largest manufacturers of wide crown carton-closing staples ,staplers, parts, and accessories, to cease violating Sec. 3

of the Clayton Act by such practices as its consistent policy of requiring its independent distributors and dealers to discontinue handling competitive products and to handle only its own; and to cease restricting the persons to whom, and the territories within which, said distributors and dealers might sell its products.

COMPLAINT

The Federal Trade Commission, having reason to believe that the International Staple & Machine Company, a corporation, hereinafter referred to as respondent, has violated the provisions of Section 3 of the Clayton Act (15 U.S.C.A. Sec. 14), and the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C.A. Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondent International Staple & Machine Company, hereinafter referred to as International, is a corporation organized and existing under the laws of the State of Pennsylvania with its principal place of business located at Herrin, Illinois.

PAR. 2. Respondent is now and has been for some years engaged in the manufacture, distribution and sale of industrial carton-closing staples, staplers, parts and accessories. Respondent now sells, and for some years has been selling, such products principally to independent distributors and dealers located throughout the United States who in turn make sales directly to users. Respondent's industrial carton-closing staples, staplers, parts and accessories enjoy wide sales throughout the United States and respondent International is one of the largest manufacturers and distributors of such equipment in the industry. In the past, prior to the advent of staples for this purpose, such carton-closing operation was usually done by means of glue or gummed paper, or similar means not here involved. Respondent International's annual sales of its industrial carton-closing staples, staplers, parts and accessories, are approximately $1,666,000.

PAR. 3. Respondent is now and has been engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act. Respondent causes carton-closing staples, staplers, parts and accessories manufactured by respondent International to be transported from the manufacturing plant located at Herrin, Illinois, to independent distributors and customers located throughout the several states of the United States, and there is now, and has been for some years, a constant current of trade and commerce in said products between and among the various states of the United States, and the District of Columbia.

PAR. 4. In the course and conduct of its business, as herein described, respondent is and has been in substantial competition in the sale and distribution of industrial carton-closing staples, staplers, parts and accessories, in commerce between and among the various states of the United States and the District of Columbia with other persons and corporations.

PAR. 5. In the course and conduct of its business of manufacturing and selling carton-closing staples, staplers, parts and accessories, respondent has made sales and contracts for the sale of such products, and is now making such sales and contracts for the sale of such products on the condition, agreement, or understanding that the purchasers thereof shall not sell, deal or distribute carton-closing staples, staplers, parts and accessories sold or supplied by a competitor or competitors of respondent. Respondent has followed a consistent policy of requiring the independent distributors and dealers to whom it sells its carton-closing staples, staplers, parts and accessories to discontinue handling like or similar products supplied or sold by any competitor or competitors of respondent and not to handle any such products except those sold to such distributors and dealers by respondent.

PAR. 6. Competitors of respondent have been, and now are, unable to make sales of carton-closing staples, staplers, parts and accessories because of the conditions, agreements, understandings and practices described above in Paragraph Five. The distributors and dealers of respondent who purchase and sell respondent's carton-closing staples, staplers, parts and accessories constitute a large and substantial market for such products, and sales by respondent to such distributors and dealers have been, and are now, substantial.

PAR. 7. The effects of the sale and contracts of sale upon such conditions, agreements, and understandings, as described herein, may be to substantially lessen competition with respondent in the sale of carton-closing staples, staplers, parts and accessories, and may be to substantially lessen competition with respondent in such line of commerce, and may tend to create a monopoly in respondent in such line of commerce in which respondent has been, and is now, engaged.

PAR. 8. The aforesaid acts and practices of respondent constitute a violation of the provisions of Section 3 of the Clayton Act and of Section 5 of the Federal Trade Commission Act.

COUNT II

Paragraphs One through Seven, inclusive, of Count I of this complaint are hereby incoroporated into this Count II to the same extent and with the same effect as though fully set out herein.

PAR. 9. Respondent, in the course and conduct of its industrial carton-closing staple business, grants its distributors and dealers the exclusive right to resell such products within assigned geographic territories and restricts and prevents such distributors and dealers from reselling respondent's industrial carton-closing staples, staplers, parts and accessories outside the geographic limits of the territories assigned to them. Respondent has restricted, and attempted to restrict, the persons to whom, and the territories within which, respondent's distributors and dealers may resell respondent's industrial carton-closing staples, staplers, parts and accessories.

PAR. 10. The acts and practices of respondent, as alleged in Paragraph Nine, have the tendency, capacity, and effect of obstructing, hindering, and preventing competition in the marketing and sale of industrial carton-closing staples, staplers, parts and accessories in commerce, within the meaning of the Federal Trade Commission Act, and constitute both in and of themselves, and in conjunction with exclusive dealing practices alleged herein, and under Count I, unfair methods of competition in commerce and unfair acts and practices in commerce, within the intent and meaning of, and in violation of Section 5 of the Federal Trade Commission Act.

Mr. Daniel H. Hanscom supporting the complaint.

Blenko, Hoopes, Leonard & Buell, Pittsburgh, Pa. by *Mr. John H. F. Leonard*, for respondent.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on August 19, 1960, charging it with having made sales and contracts for the sale of its carton-closing staples, staplers, parts and accessories on the condition, agreement or understanding that the distributors and dealers thereof should not use or deal in similar products of a competitor or competitors in violation of Section 3 of the Clayton Act and Section 5 of the Federal Trade Commission Act, and also charging it with having granted its distributors and dealers the exclusive right to resell such products within assigned geographic territories and having restricted such buyers from reselling such products outside the assigned geographic limits and from selling to certain persons within the territories in violation of Section 5 of the Federal Trade Commission Act.

This proceeding is before the hearing examiner for final consideration upon the complaint, answer, testimony and other evidence, proposed findings of fact and conclusions filed by counsel for respondent and by counsel supporting the complaint, and oral argument thereon. Consideration has been given to the proposed findings of fact and

conclusions submitted by both parties, and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are rejected, and the hearing examiner, having considered the entire record herein, makes the following findings as to the facts, conclusions drawn therefrom and order:

FINDINGS AS TO THE FACTS

1. Respondent International Staple & Machine Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located at Herrin, Illinois.

2. Respondent is now, and for some years has been, engaged in the manufacture, distribution and sale of wide crown carton-closing staples, staplers, parts and accessories. Respondent now sells, and for some years has been selling, such products principally to independent distributors located throughout the United States who in turn make sales directly to users.

3. Respondent is now, and has been, engaged in commerce, as "commerce" is defined in the Clayton Act and in the Federal Trade Commission Act. Respondent causes its wide crown carton-closing staples and stapling machines, parts and accessories manufactured by it to be transported from its manufacturing plant located at Herrin, Illinois, to customers located throughout the several states of the United States, and there is now, and for some years has been, a constant current of trade and commerce in such products between and among the various states of the United States.

4. Respondent's line of carton-closing staples and stapling machines is limited to staples which have a crown width of 1¼", or greater, and to stapling machines which apply such staples. Staples with a crown width of 1¼", or greater, were designed specifically for carton closing purposes and are commonly known in the trade as "wide crown" staples.

5. In the course and conduct of its business respondent is, and has been, in substantial competition in the sale and distribution of wide crown carton-closing staples, stapling machines, parts and accessories, in commerce, between and among the various states of the United States and the District of Columbia, with three other corporations.

6. Total annual dollar sales by respondent of wide crown carton-closing staples, stapling machines, parts and accessories, for the fiscal years ending January 31, 1958–1960 to all customers, were as follows:

1958	$1,454,792
1959	$1,663,708
1960	$2,087,994

7. Total annual dollar sales by respondent of wide crown carton-closing staples, stapling machines, parts and accessories, for the fiscal years ending January 31, 1958–1960, to respondent's distributors were as follows:

1958	$1,415,479
1959	$1,626,418
1960	$1,977,328

8. In the conduct of its business of manufacturing and selling wide crown carton-closing staples, stapling machines, parts and accessories, respondent has sold such products to its distributors on the condition, agreement or understanding that they will not sell, deal in, or distribute the wide crown (1¼″ crown, or greater) carton-closing staples, stapling machines for wide crown staples, and parts and accessories for such machines of competitors of respondent. Although respondent does not enter into a uniform written contract with its distributors, the record shows that its policy and practice is to have an understanding with its distributors that they will not deal in competitive products and there is also evidence showing such understandings with several particular distributors. As a part of such understanding, however, it was understood between respondent and its distributors that they were permitted to deal in staples of smaller size than 1¼″ and stapling machines to apply such staples.

9. Respondent has required distributors to whom it sells its wide crown staples, stapling machines, parts and accessories to discontinue handling like products of competitors of respondent. There are only two competitors who sell competitive stapling machines and three competitors who sell wide crown staples.

10. Wide crown carton-closing staples (crown width 1¼″, or greater), and the stapling machines, parts and accessories to apply them, possess peculiar and unique characteristics and uses which make them different and distinct from other staples, glue, tape, wire stitching, steel strapping or other materials used to fasten cartons. Respondent contends that the line of commerce, upon which the effect of respondent's actions should be considered, includes all of these carton-closing materials. A significant fact is that there is a definite market for wide crown staples manufactured by respondent and three other domestic manufacturers. It is true that other means of closing cartons are employed, and it is also true that users may shift from one material and method of carton closing to another. Wide crown staples, however, have sufficient peculiar characteristics to constitute them sufficiently distinct from all other carton-closing materials to make them

a line of commerce within the meaning of the Clayton Act.[1] Wide crown staples which are physically different from other materials and differ from other staples in size have certain advantages for some users over other materials, not the least of which is that they fit the stapling machines owned by many users. One advantage of wide crown staples over smaller staples is that fewer staples are needed to close cartons securely and the total cost of staples and their application is believed to be less. For whatever reasons there is a definite and distinct market for wide crown staples.

11. The annual dollar volume of wide crown carton-closing staples and wide crown stapling machines, manufactured and sold in the United States, was approximately 5½-million dollars for the year 1958 and was approximately 6-million dollars or more for 1959. Respondent's sales accounted for approximately one-third of this total volume, almost all of which was accounted for by respondent and two other competitors. There was a fourth competitor who sought to break into this market who had sales of a few thousand dollars for each year. This latter manufacturer did not manufacture the wide crown stapling machines, but did manufacture wide crown staples. It appears reasonably likely that its sales were limited to some extent by reason of the existence of the understandings respondent had with its distributors referred to in paragraph 8 above.

12. Respondent in the conduct of its wide crown staple and stapling machine business grants each of its distributors the exclusive right to resell respondent's products within specific assigned geographic territories, and has restricted and prevented its distributors from reselling its wide crown staples and stapling machines outside the geographic limits of the territories assigned to them. There are certain exceptions whereby distributors are permitted to sell stapling machines for shipment into another distributor's territory with the profit being split between the distributors, and there were some instances in which more than one distributor sold in the same territory. Respondent had forty distributors selling in thirty-two territories.

13. Respondent has limited the persons to whom its distributors may resell respondent's wide crown staples and stapling machines. Although respondent did in some instances permit a distributor to resell in the geographic area covered by another distributor, there were several instances in which a class of users, or particular named users, were not permitted to be sold by one or the other of the distributors. Respondent had definite understandings with these distributors as to

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[1] See *U.S.* vs. *E. I. duPont de Nemours and Company*, 353 U.S. 587. See also *Tampa Electric Company* vs. *Nashville Coal Company, et al.*, 276 F. 2d 766, 365 U.S. 320; *U.S.* vs. *Bethlehem Steel Corporation*, 168 F. Supp. 576; and *Signode Steel Strapping Co.* vs. *F.T.C.*, 132 F. 2d 48.

whom they should not resell and such understandings between the respondent and these distributors provided for a division of markets between the distributors. In these instances, as well as in the division of geographic territories there was a similar understanding which precluded competition between the distributors, and but for respondent's restrictions and understanding some of its distributors would have competed with each other. There were, however, a few instances where the distributors did attempt to compete despite the understandings they had with respondent. The effects of these understandings were the same as those that would flow from an understanding between the distributors to refrain from competing with each other. The restrictions upon the geographic areas in which respondent's distributors may resell respondent's wide crown staples and machines, and the restrictions upon the customers and classes of customers to whom such distributors were permitted to resell, have had the effect of obstructing, hindering and preventing competition in the marketing of respondent's wide crown staples and machines. One distinction between this case and the Columbus Coated Fabrics Corporation case, Docket No. 6677, is that here there was a definite understanding between respondent and its buyers that the buyers would not sell outside specific areas; whereas, in the Columbus case no such agreement was found to exist.

CONCLUSIONS

1. Respondent has sold its wide crown staples and wide crown stapling machines to its distributors on the condition, agreement or understanding that such distributors would not deal in the wide crown staples and wide crown stapling machines of competitors of respondent.

2. Wide crown staples and wide crown stapling machines possess unique and peculiar characteristics for carton closing purposes, and constitute a line of commerce separate and distinct from small crown staples and small crown stapling machines and separate and distinct from glue and gluing machines, tape and taping machines, wire and wire stitching machines, and wire and steel bands and banding machines.

3. Sales in the United States of wide crown staples and wide crown stapling machines are substantial, and respondent's share of such sales is substantial.

4. Respondent's practice of selling its wide crown staples and wide crown stapling machines to its distributors on the condition, agreement or understanding that such distributors would not deal in the wide crown staples and wide crown stapling machines of competitors of respondent, has been or my be to substantially lessen competition

or tend to create a monopoly in the wide crown staple and wide crown stapling machine line of commerce.

5. Respondent's practice of preventing its distributors from reselling respondent's wide crown staples and wide crown stapling machines outside assigned geographic areas has had the tendency, capacity, or effect of obstructing, hindering and preventing competition in the sale of respondent's wide crown staples and wide crown stapling machines.

6. Respondent's practice of restricting its distributors as to the persons to whom such distributors may resell respondent's wide crown staples and wide crown stapling machines has had the tendency, capacity or effect of obstructing, hindering and preventing competition in the sale of respondent's wide crown staples and machines.

7. The practices of the respondent as herein found constitute violations of the Federal Trade Commission Act and the making of sales on the condition or understanding that the buyer will not deal in competitive products also constitutes a violation of Section 3 of the Clayton Act.

ORDER

It is ordered, That respondent International Staple & Machine Company, a corporation, and its officers, directors, agents, representatives and employees, directly or indirectly, or through any corporate, partnership or other device, in connection with the offering for sale, sale or distribution of carton-closing staples, or stapling machines, parts or accessories, or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or making any contract or agreement for the sale of any such products on any requirement, condition, agreement or understanding which limits or restricts the persons to whom, or the geographic areas within which, the purchasers thereof may resell such products;

2. Enforcing, or continuing in operation or effect any requirement, condition, agreement or understanding with any purchaser which limits or restricts the persons to whom, or the geographic areas within which, such purchaser may resell such products.

It is further ordered, That respondent International Staple & Machine Company, a corporation, and its officers, directors, agents, representatives and employees, directly or indirectly, or through any corporate, partnership or other device, in connection with the offering for sale, sale or distribution of carton-closing staples, or stapling machines, parts or accessories or any other products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Selling or making any contract or agreement for the sale of any such products on the condition, agreement or understanding that the purchaser thereof shall not use, deal in, sell, or distribute products supplied by any other seller;

2. Enforcing, or continuing in operation or effect, any requirement, condition, agreement or understanding with any purchaser which is to the effect that such purchaser shall not use, deal in, sell, or distribute products supplied by any other seller.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 7th day of November, 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

PAXTON AND GALLAGHER CO.

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

Docket 8176. Complaint, Nov. 17, 1960—Decision, Nov. 7, 1961

Order dismissing, due to complete change of ownership and management of respondent corporation since the time of the alleged violations, complaint charging a coffee roaster in Omaha, Nebr., with unlawfully discriminating among competing customers in paying advertising allowances, in violation of Sec. 2(d) of the Clayton Act.

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 it 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 Paxton and Gallagher Co. is a corporation organized, existing and doing business under and by virtue of the

laws of the State of Delaware, with its office and principal place of business located at 8401 W. Dodge Road, Omaha, Nebraska.

PAR. 2. Respondent is now and has been engaged in the roasting, packing, sale and distribution of coffee. Respondent sells and distributes its product to wholesalers and retailers, including retail chain store organizations and grocery co-operatives. Respondent's sales of its products are substantial, exceeding $1,000,000 annually.

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

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

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

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

Mr. John Perry for the Commission.

Mr. Cecil A. Johnson, Omaha, Nebr., and *Mr. W. Buck Arnold*, Houston, Tex., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter, issued November 17, 1960, charged the respondent, Paxton and Gallagher Co., a Delaware corporation having its place of business in Omaha, Nebraska, with violation of

Section 2(d) of the Clayton Act, as amended by the Robinson-Patman Act. On December 8, 1960, respondent filed its answer. No hearings have been held.

A motion to dismiss the complaint has now been filed on behalf of respondent by its counsel, the grounds assigned for the motion being as follows:

1. Since the time of the alleged violations there has been a complete change of ownership of respondent. On August 2, 1961, all of the outstanding capital stock of the company was acquired by Duncan Coffee Company, a Texas corporation, which has its office in Houston, Texas. At the present time respondent is being operated as a wholly owned subsidiary of Duncan Coffee Company, and it is contemplated that respondent will be liquidated into Duncan Coffee Company.

2. Since the time of the alleged violations there has been a major change in the management of respondent. During the period of the alleged violation and until April 15, 1961, the president and executive head of respondent was W. Clarke Swanson, who exercised complete control over all of the company's policies and practices. On April 15, 1961, Mr. Swanson died. The president executive director of respondent is Charles Duncan, who is also president and executive director of Duncan Coffee Company.

Supporting the motion is an affidavit by one of respondent's counsel who has personal knowledge of the matters set forth in the motion.

The motion is not opposed by counsel supporting the complaint.

In view of the circumstances, particularly the circumstance that respondent is to be liquidated and lose its corporate identity, it is concluded that the motion should be granted and the complaint dismissed, the dismissal, however, to be without prejudice to the right of the Commission to take any further action in the matter in the future which may be warranted.

ORDER

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

DECISION OF THE COMMISSION

Pursuant to Section 4.19 of the Commission's Rules of Practice effective July 21, 1961, the initial decision of the hearing examiner shall, on the 7th day of November, 1961, become the decision of the Commission.

IN THE MATTER OF

UNION PENCIL COMPANY, INC., ET AL.

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

Docket 8216. Complaint, Dec. 8, 1960—Decision, Nov. 7, 1961

Consent order requiring three affiliated Yonkers, N.Y., concerns to cease representing falsely in form letters mailed their customers that the addressee could purchase their pens and pencils at a saving because, in filling an order for a firm with a name similar to his, they had pulled the wrong card from a file and had in error imprinted pencils with his name and address; and that they were the manufacturers of Micro-Line Ball Pens.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Union Pencil Company, Inc., a corporation, Unipeco Inc., a corporation and York Pen Corp., a corporation and Max Grossman, Arthur Grossman and Murray Rubenfeld, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of the 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 Union Pencil Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 362 South Broadway, Yonkers, New York.

Respondent Unipeco, 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 at 362 South Broadway, Yonkers, New York.

Respondent York Pen Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 362 South Broadway, Yonkers, New York.

Individual respondents Max Grossman, Arthur Grossman and Murray Rubenfeld are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as the corporate respondents.

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

merchandise by direct mail to business concerns located throughout the United States.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in the 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 merchandise 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 purchase of their product, it has been and is the practice of the respondents to mail letters to prospective customers located in various States of the United States. Typical, but not all inclusive, of the statements contained in said letters are the following:

UNIPECO, division of the union pencil company inc. . . .

June 7, 1960

Dear Sir:

Recently, we received an order for pencils from a firm similar in name to yours.

In error, we pulled your name and address from our inactive file and ran an order of 576 printed wood pencils.

Should you be able to use these pencils we will bill you at the price of .04 each and include a free Timex watch for your cooperation.

We repeat, this error was entirely ours and you are under no obligation to buy. However, if you wish us to ship the pencils, indicate your OK below and we will comply.

Very truly yours

P.S. The pencils are white and have your name and address imprinted in blue on 2 lines.

* * *

York Manufacturers of the Micro-Line Ball Pens Pen Corp.

June 3, 1960

Re: Your lot of PA–1 pens;
100 @ .29 each;
printed 5/27/60

Recently, we received an order from a firm similar in name to yours.

In error, we pulled your name and address from our inactive file and ran an order of 100 printed Ventura Micro-Line pens.

Should you be able to use these pens, we will bill you at the price of .29 each and include a free Timex watch for your cooperation.

We repeat—this error was entirely ours and you are under no obligation to buy. However, if you wish us to ship the above pens, indicate your OK below and we will comply.

Very truly yours

P.S. The pens are black with gold color trim and have your name and address imprinted in gold on 3 lines.

PAR. 5. Through and by means of the aforesaid statements and others of similar import and meaning not specifically set forth herein, respondents have represented directly or by implication that:

1. Orders for pencils or pens had been received from firms with names similar to the addresses of said letters.

2. The addressees names and addresses were pulled from an inactive file and were imprinted on 576 wood pencils or 100 pens.

3. Because of the error in names the price of .04 per pencil and .29 per pen represents a saving from respondents' regular price.

4. Respondent York Pen Corp. is the manufacturer of Micro-Line Ball Pens.

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

1. No orders were received from firms with names similar to those to whom the letters were addressed.

2. The names of the addressees of said letters were not pulled from an inactive or any other file.

3. No pencils or pens were imprinted with the names and addresses of addressees until orders were received from the prospective customers.

4. The price of .04 per pencil or .29 per pen does not represent a saving due to the respondents' error from the regular selling price of the respondents.

5. Respondent, York Pen Corp., is not the manufacturer of Micro-Line Ball pens or any other pens, but only imprints the name and address of the customer on a pen, made by a manufacturer, other than the respondents.

PAR. 7. 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 imprinted pencils and merchandise of the same general kind and nature as that sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents merchandise 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. Anthony J. Kennedy, Jr., for the Commission.
Mr. George I. Cohen, New York, N.Y., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On December 8, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with offering for sale, sale and distribution of general merchandise. On August 29, 1961, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

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

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

1. Respondent Union Pencil Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of

the State of New York, with its office and principal place of business located at 362 South Broadway, in the City of Yonkers, State of New York.

Respondent Unipeco, 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 362 South Broadway, in the City of Yonkers, State of New York.

Respondent York Pen Corp., 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 businesss located at 362 South Broadway, in the City of Yonkers, State of New York.

Individual respondents, Max Grossman, Arthur Grossman and Murray Rubenfeld are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents. Their address 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 Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents, Union Pencil Company, Inc., a corporation, Unipeco, Inc., a corporation, and York Pen Corp., a corporation, their offices, and Max Grossman, Arthur Grossman and Murray Rubenfeld, individually and as officers of the said corporations, 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 imprinted pencils, pens, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication:

(a) That respondents have received orders for imprinted pencils or pens from firms with names similar to the names of prospective customers when in fact no such orders have been received by respondents.

(b) That because of error, or for any other reason, the prospective customers' names and addresses have been imprinted on pencils or pens when in fact no such imprinting was made prior to the solicitation of orders from the prospective customers.

(c) That any saving is afforded in the purchase of merchandise from respondents' usual and customary selling price, unless the price at which the merchandise is offered constitutes a reduction from the

price at which respondents usually and customarily sell the merchandise in the recent regular course of business.

(d) That respondent York Pen Corp. is the manufacturer of the Micro-Line Ball Pens or that respondents, or any of them, manufacture any other product unless they own and operate or directly and absolutely control the plant where such product is manufactured.

2. Misrepresenting, in any manner, the amount of savings available to purchasers of respondents' merchandise or the amount by which the price of their merchandise is reduced from the price at which it is usually and customarily sold by respondents in the recent regular course of business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 7th day of November, 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

ALBERT H. BERKOWITZ ET AL. DOING BUSINESS AS ROSE SMELTING & REFINING CO.

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

Docket C-18. Complaint, Nov. 7, 1961—Decision, Nov. 7, 1961

Consent order requiring Chicago partners to cease representing falsely in advertising in newspapers, trade journals and magazines, form letters, and other media, and by use of the words "Smelting" and "Refining" in their trade names, that they were smelters and refiners of precious metals and paid sellers the highest prices obtainable for old gold, jewelry, and other precious metals.

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 Albert H. Berkowitz and Shirley J. Berkowitz, individually and as partners doing business as Rose Smelting & Refining 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 Albert H. Berkowitz and Shirley J. Berkowitz are individuals and partners doing business as Rose Smelting & Refining Co., with their office and principal place of business located at 29 East Madison Street, Chicago 2, Illinois. Respondents also use the trade names Rose Refining Co. and Rose Refiners.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the purchasing of gold, silver and other precious metals by mail, and at all times mentioned herein have maintained a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the sale of gold, silver and other precious metals to them by the public, respondents have made certain statements and representations in newspapers of interstate circulation, in trade journals and magazines of national circulation, in form letters circulated by said respondents, and in other advertising media. Among and typical, but not all inclusive, of the statements and representations so made are the following:

We will allow you 100% full value on all merchandise sent us, and you can be assured of honest and highest prices. Our check for full value is mailed to you on the same day your package reaches us.

Highest Cash Paid for old gold, jewelry, gold teeth, watches, rings, . . . eyeglasses, silver, platinum, mercury.

Highest Cash for Old Gold, * * *

Top Prices No Deductions.

PAR. 4. Through the use of the aforesaid statements and representations, and others similar thereto, and by the use of the words "Smelting", "Refining" and "Refiners" in their trade names, the respondents represent, and have represented, directly or by implication, that:

1. Respondents are smelters and refiners of gold and other precious metals, and that they own or control the smeltery and refinery where the gold and other precious metals sold to them are smelted and refined.

2. Respondents pay the full and highest price obtainable by sellers for their gold and other precious metals.

PAR. 5. The said statements and representations, as hereinbefore set forth, are false, misleading and deceptive. In truth and in fact:

1. Respondents are not smelters or refiners of precious metals, nor do they own, control or operate a smeltery or refinery.

2. Respondents do not pay the full and highest price obtainable to sellers for their gold and other precious metals.

PAR. 6. There is a preference on the part of a substantial portion of persons, having precious metals to sell, to deal direct with a smeltery or refinery, in the belief that by the elimination of middlemen the seller will obtain and receive a higher price and other advantages.

PAR. 7. Respondents, in the course and conduct of their business, are engaged in competition with other individuals and with firms and corporations who are likewise engaged in the purchasing of gold and other precious metals in commerce.

PAR. 8. The use by respondents of the aforementioned 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 selling to respondents products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agree-

ment, makes the following jurisdictional findings, and enters the following order:

1. Respondents Albert H. Berkowitz and Shirley J. Berkowitz are individuals and partners doing business as Rose Smelting & Refining Co., with their office and principal place of business located at 29 East Madison Street, Chicago 2, Illinois. Respondents also use the trade names Rose Refining Co. and Rose Refiners.

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

ORDER

It is ordered, That respondents Albert H. Berkowitz and Shirley J. Berkowitz, individually and as partners trading and doing business as Rose Smelting & Refining Co., or under any other name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering to purchase or purchasing of precious metals, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Smelting", "Refining" and "Refiners", or any other word of similar import, in any trade or corporate name, or representing in any other manner that respondents are smelters or refiners, or that they own, control or operate a smeltery or refinery.

2. Representing, directly or by implication, that they pay sellers of precious metals the full and highest obtainable prices therefor.

It is further 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 this order.

IN THE MATTER OF

MARC GOTHEIL ET AL. TRADING AS GELMOR TRADING COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION, FLAMMABLE FABRICS, AND TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket C-19. Complaint, Nov. 7, 1961—Decision, Nov. 7, 1961

Consent order requiring New York City importers to cease violating the Flammable Fabrics Act by importing and selling fabric so highly flammable

as to be dangerous when worn; and to cease violating the Textile Fiber Products Identification Act by furnishing their customers with false guaranties that certain of their textile fiber products were not misbranded or falsely invoiced.

COMPLAINT

Pursuant to the Federal Trade Commission Act, the Flammable Fabrics Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Marc Gotheil, Leo B. Elson and Joseph B. Morgens, individually and as copartners, trading as Gelmor Trading Company, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Flammable Fabrics Act and the Textile Fiber Products Identification 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 Marc Gotheil, Leo B. Elson and Joseph B. Morgens are individuals trading as Gelmor Trading Company, a partnership. The business address of all respondents is 151 West 40th Street, New York, New York.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported, and caused to be transported, in commerce; and have transported and caused to be transported, after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, fabric, as that term is defined therein, which fabric was, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

PAR. 3. Respondents, subsequent to March 3, 1960, the effective date of the Textile Fiber Products Identification Act, have been and are now engaged in the introduction, delivery for introduction, sale, advertising or offering for sale, in commerce, and in the transportation or causing to be transported in commerce, or the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported or caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported or caused to be transported, after shipment in commerce, textile fiber products, either in their original state or which were made of other textile products so

shipped in commerce; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 4. Respondents have furnished their customers with false guaranties that certain of their textile fiber products were not misbranded or falsely invoiced by falsely representing in writing on invoices that respondents had filed a continuing guaranty under the Textile Fiber Products Identification Act with the Federal Trade Commission, in violation of Rule 38(d) of the Rules and Regulations under said Act and Section 10(b) of such Act.

PAR. 5. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, the Textile Fiber Products Identification Act, and the Rules and Regulations promulgated under said Acts, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Flammable Fabrics Act and the Textile Fiber Products Identification Act and the Rules and Regulations promulgated under said Acts, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents Marc Gotheil, Leo B. Elson and Joseph B. Morgens are individuals trading as Gelmor Trading Company, a partnership. The business address of all respondents is 151 West 40th Street, New York, New York.

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

ORDER

It is ordered, That respondents Marc Gotheil, Leo B. Elson and Joseph B. Morgens, individually and as copartners trading as Gelmor Trading Company, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1.

(a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported for the purpose of sale or delivery after sale in commerce;

any fabric, which, under the provisions of Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals;

It is further ordered, That respondents Marc Gotheil, Leo B. Elson and Joseph B. Morgens, individually and as copartners trading as Gelmor Trading Company, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported, in commerce, or the importation into the United States of textile fiber products; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of textile fiber products which have been advertised or offered for sale in commerce; or in connection with sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of textile fiber products, whether in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from;

Furnishing false guaranties that textile fiber products are not misbranded or falsely invoiced, under the provisions of the Textile Fiber Products Identification Act.

It is further 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 this order.

IN THE MATTER OF

INTERNATIONAL SHOE COMPANY

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

Docket C-20. Complaint, Nov. 7, 1961—Decision, Nov. 7, 1961

Consent order requiring a St. Louis shoe manufacturer to cease representing falsely in advertising in catalogs, circulars, form letters, etc., that its stock shoes would keep children's feet healthy and strong, correct and prevent disorders and abnormalities of the feet, and were made on "nature's lasts".

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 International Shoe Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent International Shoe Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1509 Washington Avenue, St. Louis, Missouri.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale of shoes, including shoes for infants and juveniles, to dealers, including individuals, firms and corporations, located throughout the United States. Respondent causes, and has caused, said merchandise, when sold, to be transported from its place of business in the State of Missouri to purchasers thereof located in various other States of the United States, and at all times mentioned herein has maintained a course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent's volume of such business in commerce is, and has been, substantial. Respondent, in the course and conduct of its business, is engaged in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale and distribution of shoes.

PAR. 3. Respondent, in the course and conduct of its business and for the purpose of inducing the purchase of its merchandise, has advertised the same by means of catalogs, circulars, form letters and other printed matter circulated and disseminated, by and through the United States mails and by other means, in various states other than the State of Missouri.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its shoes, respondent has made various statements and representations concerning the nature and usefulness of said shoes. Among and typical of such statements and representations with respect to its Weather-Bird shoes are the following:

YOUR CHILDREN'S HEALTH AND HAPPINESS START AT THEIR FEET * * * THAT'S WHY IT'S SMART * * * (to) Specify Weather-Bird * * * "Featurized" shoes * * *.

* * * It's your (and our) responsibility that your child's footwear is so properly fitted to insure healthy development of his growing feet * * * remember . . . it pays to buy "Featurized" Weather-Bird shoes * * *.

* * * Weather-Bird Shoes * * * made on nature's lasts according to the shape of baby's foot * * *.

Weather-Bird Shoes * * * help young feet grow healthy and strong.

Many children, today, have established or incipient disorders of the feet caused from ill fitting or improper shoes. Though orthopedic conditions in many cases may need special correction, in many others the treatment recommended may be simply wearing sensible footwear. The steel shank, all leather insole, full inner lining, retan all leather outsole, all leather extended counter, tru-guide heel in these shoes may very well be the answer for the many who do not need special correction. * * * In-stock service provides needs for your increase volume.

PAR. 5. Through the use of the above statements and representations, respondent represents, directly or by implication, with respect to its Weather-Bird shoes that:

1. The use of said shoes will keep the feet of children healthy and insure healthy development of their feet.

2. Said shoes are made on "nature's lasts" according to the shape of babies' feet.

3. The use of said shoes will cause children's feet to be healthy and strong.

4. The use of said shoes will help correct or prevent defects, disorders, deformities or abnormalities of the feet.

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

1. The wearing of respondent's said shoes will not insure the healthy development of growing feet or keep the feet of children healthy.

2. Respondent's said shoes are stock shoes and are not made in the shape of all babies' feet.

3. The use of respondent's said shoes will not cause children's feet to grow healthy or strong.

4. Respondent's said shoes will not cure or prevent defects, disorders, deformities or abnormalities of the feet. They will not have any significant beneficial effect on foot health or on foot development other than that of affording protection, which is common to shoes in general.

PAR. 7. By means of the aforesaid practices, respondent places in the hands of its dealers means and instrumentalities by and through which said dealers may misrepresent the nature and usefulness of respondent's said shoes.

PAR. 8. The use by respondent of the foregoing false, deceptive and misleading statements and representations with respect to its said shoes has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said shoes.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement makes the following jurisdictional findings, and enters the following order:

1. Respondent, International Shoe Cpmpany, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1509 Washington Avenue, in the City of St. Louis, State of Missouri.

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

ORDER

It is ordered, That respondent International Shoe 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 its Weather-Bird shoes, or any other shoes of substantially the same construction, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that:

(a) The wearing of said shoes will keep the feet healthy or assure healthy development of the feet.

(b) Said shoes are made on nature's lasts, or are made according to any particular contour or shape other than that of a child's foot generally.

(c) The wearing of said shoes will make children's feet healthy or strong.

(d) The wearing of said shoes will aid or help to correct or prevent defects, disorders, deformities or abnormalities of the feet.

2. Furnishing or otherwise placing in the hands of retailers or dealers in said shoes 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.

It is further 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 this order.

IN THE MATTER OF

JULIAN LEVY AND HOWARD ABRAMS TRADING AS LEVY-ABRAMS CO., AND AS CALMOOR COATS

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

Docket C-21. Complaint, Nov. 7, 1961—Decision, Nov. 7, 1961

Consent order requiring San Francisco manufacturing furriers to cease violating the Fur Products Labeling Act by failing to show on labels and invoices the true animal name of the fur used in fur products, the country of origin of imported furs, and that furs were dyed when such was the case; failing to label fur products with name of the manufacturer, etc.; and failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Julian Levy and Howard Abrams, individually and as co-partners trading as Levy-Abrams Co., and as Calmoor Coats, 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. Respondents Julian Levy and Howard Abrams are co-partners trading as Levy-Abrams Co., and as Calmoor Coats, with their office and principal place of business at 154 Sutter Street, San Francisco, California.

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 for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce as the terms "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act.

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

Among such misbranded fur products, but not limited thereto, were fur products without labels and with labels which failed:

(1) To show the true animal name of the fur used in the fur product;

(2) To disclose that the fur contained in the fur product was dyed, when such was the fact;

(3) To show the name, or other identification issued and registered by the Commission, of one or more of the persons who manufacture such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(4) To show the country of origin of imported furs used in the fur product.

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

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

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

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

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed:

(1) To show the true animal name of the fur used in the fur product;

(2) To show that the fur contained in the fur product was dyed, when such was the fact;

(3) To show the country of origin of imported furs used in the fur product.

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

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

PAR. 7. The acts and practices, as set forth above, were and are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents Julian Levy and Howard Abrams are co-partners trading as Levy-Abrams Co., and as Calmoor Coats, with their office and principal place of business located at 154 Sutter Street, in the city of San Francisco, State of California.

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

ORDER

It is ordered, That respondents Julian Levy and Howard Abrams individually and as co-partners trading as Levy-Abrams Co. and as Calmoor Coats or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, in commerce, or the sale, advertising or offering for sale, 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:

A. Misbranding fur products by:

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

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

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

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

B. Falsely and deceptively invoicing fur products by:

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

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

It is further 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 this order.

IN THE MATTER OF

PERFECT-FIT PRODUCTS MANUFACTURING CO. ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket C-22. Complaint, Nov 7, 1961—Decision, Nov. 7, 1961

Consent order requiring textile fiber products manufacturers in New York City and Monroe, N.C., to cease violating the Textile Fiber Products Identification Act by such practices as labeling mattress pads as "75% nylon, 25% acetate" when they contained substantially less nylon than thus indicated; failing to show the true percentage of nylon and acetate fibers present, by weight, in textile products and to disclose the true generic names of constituent fibers; and failing to maintain proper records showing the fiber content of their products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Perfect-Fit Products Manufacturing Co., a corporation and Ephraim F. Bloch, Alvin L. Levine, Albert Bloch, and Alexander Gross, individually and as officers of said corporation, and Carolina Textiles, Inc., a corporation and Manuel Fisher, Joseph Vitali, Joseph Pettigrew, and the same said Ephraim F. Bloch, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations under the Textile Fiber Products Identification 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 Perfect-Fit Products Manufacturing Co., is a corpuoration organized, existing and doing business under and and by virtue of the laws of the Commonwealth of Pennsylvania with its principal place of business located at 310 Fifth Avenue, New York, New York.

Individual respondents Ephraim F. Bloch, Alvin L. Levine, Albert Bloch and Alexander Gross are officers of corporate respondent Perfect-Fit Products Manufacturing Co. They formulate, direct, and control the acts, practices and policies of said corporate respondent. Their address is the same as that of the corporate respondent.

PAR. 2. Respondednt Carolina Textiles, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina with its principal place of business located at 516 Miller Street, Monroe, North Carolina.

Individual respondents Manuel Fisher, Joseph Vitali, Joseph Pettigrew and Ephraim F. Bloch are officers of corporate respondent Carolina Textiles, Inc. They formulate, direct and control the acts, practices and policies of said corporate respondent. With the exception of Ephraim F. Bloch, whose address is 310 Fifth Avenue, New York, New York, all other officers' addresses is the same as corporate respondent.

PAR. 3. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been and are now engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported, and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, transported, and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile products, as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

PAR. 4. Certain of said Textile Fiber Products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations thereunder, in that they were falsely and deceptively tagged, or labeled, invoiced, advertised or otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such textile fiber products, but not limited thereto, were mattress pads labeled by respondents as "75% nylon, 25% acetate", whereas in truth and in fact such mattress pads contained substantially less nylon than represented.

PAR. 5. Certain of said textile fiber products were further misbranded by respondents in that they were not stamped, tagged, or labeled as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under said act.

Among such misbranded textile fiber products but not limited

thereto, were textile fiber products namely, mattress pads, with labels which:

(a) Failed to show the true percentage of nylon and acetate fibers present, by weight.

(b) Failed to disclose the true generic names of the fibers present.

PAR. 6. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them, in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

PAR. 7. The acts and practices of respondents, as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law had been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Perfect-Fit Products Manufacturing Co., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 310 5th Avenue, in the city of New York, State of New York.

Respondents Ephraim F. Bloch, Alvin L. Levine, Albert Bloch, and Alexander Gross are officers of Perfect-Fit Products Manufacturing Co. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

2. Respondent, Carolina Textiles, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its office and principal place of business located at 516 Miller Street, in the city of Monroe, State of North Carolina.

Respondents Manuel Fisher, Joseph Vitali, Joseph Pettigrew and Ephraim F. Bloch are officers of Carolina Textiles, Inc. They formulate, direct and control the policies, acts and practices of said corporation. With the exception of Ephraim F. Bloch, whose address is 310 Fifth Avenue, New York, New York, all other officers of Carolina Textiles, Inc. have the same addresses as said corporation.

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

ORDER

It is ordered, That respondents Perfect-Fit Products Manufacturing Co., a corporation and its officers and Ephraim F. Bloch, Alvin L. Levine, Albert Bloch and Alexander Gross, individually and as officers of said corporation, and Carolina Textiles, Inc., a corporation and its officers and Manuel Fisher, Joseph Vitali, Joseph Pettigrew and the same said Ephraim F. Bloch, 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, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of textile fiber products; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, textile fiber products, which have been advertised or offered for sale in commerce; or in the connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of textile fiber products, whether in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forwith cease and desist from:

A. Misbranding textile fiber products by:

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

2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Failing to maintain records of fiber content of textile fiber products manufactured by them, as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

It is further 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 this order.

IN THE MATTER OF

BILL THE DISTRIBUTOR, INC., ET AL.

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

Docket 7379. Complaint, Jan. 27, 1959—Decision, Nov. 13, 1961

Order requiring four affiliated concerns—two wholesale food distributors in Jackson, Miss., and two food brokers in New Orleans, La.—to cease accepting unlawful brokerage payments on purchases of food products, effectuated by the individual who was president of three and in control of the fourth, and who used the two brokerage concerns as intermediaries in obtaining brokerage fees from suppliers on purchases for the two wholesalers.

COMPLAINT

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

PARAGRAPH 1. Respondent Bill the Distributor, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Mississippi, with its principal place of business located at 431 South West Street, Jackson, Mississippi.

Respondent Winter Garden Sales Company, Inc., is a corporation organized, existing and doing business under and by virtue of the

laws of the State of Mississippi, with its principal place of business located at 431 South West Street, Jackson, Mississippi.

Respondent Food Marketers, Inc. of Mississippi, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, with its principal place of business located at 3900 Tchoupitoulas Street, New Orleans, Louisiana.

Respondent Mid-South Food Products, Inc., also doing business under the name Food Marketers, Inc., of Louisiana, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal place of business located at 431 South West Street, Jackson, Mississippi.

Respondent William Thomas Hogg, an individual, is President of and majority shareholder in respondents Bill the Distributor, Inc., Winter Garden Sales Company, Inc., and Food Marketers, Inc. of Mississippi. His principal place of business is located at 431 South West Street, Jackson, Mississippi. As an officer of said corporate respondents, the individual respondent, acting for and through the corporate respondents, exercises authority and control over all of the corporate respondents' business operations, including their sales and distribution policies. Respondent William Thomas Hogg, while not an officer of nor shareholder in respondent Mid-South Food Products, Inc., exercises control over its policies and business operations.

PAR. 2. Respondents Bill the Distributor, Inc., and Winter Garden Sales Company, Inc., are wholesale food distributors, engaged, among other things, in the purchase and sale of canned goods, condiments, frozen foods and other food products. For the twelve month period ending June 30, 1957, the sales of respondent Bill the Distributor, Inc., constituted approximately $1,501,651.00 while the sales of respondent Winter Garden Sales Company, Inc., for the year 1957, were approximately $618,907.00

PAR. 3. Respondents Food Marketers, Inc., of Mississippi, and Mid-South Food Products, Inc., are brokers acting as intermediaries in the sale of food products from food suppliers to buyers thereof. As such, the food suppliers of food products pay to broker respondents for their services, a commission or brokerage fee which varies according to the food supplier and type product involved.

PAR. 4. In the course and conduct of the business as aforesaid, all the respondents named herein, directly or indirectly, cause said food products, when purchased, to be transported from the state of origin to destinations in another state. There had been at all times mentioned herein a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act, in said food

products across state lines between said respondents and the sellers of said food products.

PAR. 5. In the course and conduct of their said business in commerce respondents are receiving and accepting something of value as a commission, brokerage or other compensation paid by said food suppliers to the other party to the transaction, or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of a party to the transaction other than the person by whom such compensation is so granted or paid.

PAR. 6. For example, during the years 1957 and 1958, respondents Bill the Distributor, Inc., and Winter Garden Sales Company, Inc., have made substantial purchases of food products from their suppliers through their controlled intermediaries respondents Food Marketers, Inc., of Mississippi, and Mid-South Food Products, Inc., on which purchases said respondents and respondent William Thomas Hogg have received something of value as a commission, brokerage or other compensation, or allowance or discount in lieu thereof. In these transactions respondents Food Marketers, Inc. of Mississippi and Mid-South Food Products, Inc., received and accepted payments of brokerage from said suppliers as independent brokers, whereas, said respondents were acting, in fact, for or on behalf of the buyer respondents Bill the Distributor, Inc., and Winter Garden Sales Company, Inc., or were subject to the direct or indirect control of said buyer respondents through respondent William Thomas Hogg.

PAR. 7. The acts and practices of respondents Bill the Distributor, Inc., Winter Garden Sales Company, Inc., Food Marketers, Inc., of Mississippi, and Mid-South Food Products, Inc., and the individual respondent, acting through said corporate respondents, in paying, receiving, or accepting something of value as a commission, brokerage, or other compensation, or allowance or discounts in lieu thereof, as herein alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Section 13).

Mr. Cecil G. Miles for the Commission.

Mr. Vardaman S. Dunn, Jackson, Miss., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

PRELIMINARY STATEMENT

On January 27, 1959, the Commission issued its complaint against the parties named in the above caption, Docket No. 7379, charging

each respondent with a violation of subsection (c) of Section 2 of the Clayton Act, as amended.

The complaint charged respondents, Bill the Distributor, Inc. and Winter Garden Sales Company, Inc., sometimes hereinafter referred to as Winter Garden, both located at 431 South West Street, Jackson, Mississippi, as being corporations organized under the laws of the State of Mississippi, wholesale food distributors, engaged, among other things, in the purchase and sale of canned goods, frozen foods and other food products.

The complaint also charged respondent Food Marketers, Inc. (erroneously described in the complaint as Food Marketers, Inc. of Mississippi) and Mid-South Food Products, Inc. hereinafter sometimes referred to as Mid-South, with being engaged in business as brokers, acting as intermediaries in the sale of food products from food suppliers to the buyers thereof; that as such, the food suppliers of food products paid to said broker respondents for their services a commission or brokerage fee.

The complaint further charged that respondent William Thomas Hogg, sometimes hereinafter referred to as respondent Hogg, was an individual who was President of, and majority stockholder in, respondents Bill the Distributor, Inc., Winter Garden Sales Company, Inc. and Food Marketers, Inc., with his principal place of business located at 431 South West Street, Jackson, Mississippi; that as an officer and majority stockholder in these three corporate respondents, acting for and through said corporate respondents, he exercised authority and control over their business operations, including their sales and distribution policies; that although he owned no stock in or was he an officer of respondent Mid-South, he exercised control over its policies and business operations.

The complaint further charged that all the respondents named herein, directly or indirectly, caused food products, when purchased, to be transported from the state of origin to a destination in another state, and that there had been at all times therein mentioned a continuous course of trade in commerce, as "commerce" is defined in the Clayton Act, in food products across state lines between the sellers of said food products and the respondents.

It was further alleged that in the course and conduct of their said businesses in commerce, respondents were receiving and accepting something of value as a commission, brokerage or other compensation paid by food suppliers to an agent, representative or other intermediary who, in fact, is acting for or in behalf of a party to the transaction other than the person by whom such compensation was so granted or paid. It was specifically alleged in this connection that

during the years 1957 and 1958, respondents, Bill the Distributor, Inc. and Winter Garden, had made substantial purchases of food products from their suppliers through their controlled intermediaries, respondents Food Marketers, Inc. and Mid-South, on which purchases said respondents and individual respondent Hogg had received something of value as a brokerage or other compensation or allowance in lieu thereof; that in these transactions, respondents, Food Marketers, Inc. and Mid-South, received and accepted payments of brokerage from said suppliers as independent brokers, whereas they were acting, in fact, on behalf of the buyer respondents, Bill the Distributor, Inc. and Winter Garden, or were subject to the direct or indirect control of said buyer respondents through individual respondent Hogg.

The complaint further alleged that the acts and practices of said corporate respondents and the individual respondent, acting through said corporate respondents, in paying, receiving or accepting something of value as a commission, brokerage or other compensation, or allowance or discount in lieu thereof, as therein alleged, were in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

All respondents named in the complaint filed separate answers, in which they admitted the allegations with respect to their organization, business and location, and the further fact that the individual respondent, William Thomas Hogg, was President of, and a majority stockholder in, respondents, Winter Garden Sales Company, Inc., Bill the Distributor, Inc. and Food Marketers, Inc. Said respondents denied all the other material allegations of the complaint, including the jurisdiction of the Commission over their activities.

Hearings were held in this matter, at which oral testimony and other evidence were received in support of the allegations of the complaint, including a stipulation of facts dated May 12, 1960, with respect to the testimony of certain witnesses in Chicago, Illinois. Counsel for respondents waived the taking of testimony in opposition to the allegations of the complaint in a letter dated July 16, 1960. Proposed findings and conclusions were filed by counsel supporting the complaint on August 31, 1960. Counsel for respondents, in a letter dated November 4, 1960, advised the Hearing Examiner that he did not intend to file proposed findings and consented to the closing of the record.

Each of the proposed findings which has been accepted has been, in substance, incorporated into this initial decision. All proposed findings not so incorporated are hereby rejected.

Consideration having been given by the undersigned Hearing Examiner to all the reliable, probative and substantial evidence in the record upon all material issues of fact, law or discretion, his findings, conclusions and order are hereinafter set forth.

FINDINGS OF FACT

I. Description of Respondents

A. Respondent Bill the Distributor, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, engaged in the wholesale distribution of food products, including canned goods and frozen foods, with its office and principal place of business located at 431 South West Street, Jackson, Mississippi.

B. Respondent Winter Garden Sales Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, also engaged in the wholesale distribution of food products, with its office and principal place of business located at 431 South West Street, Jackson, Mississippi.

C. Respondent Food Marketers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi, engaged in the business of acting as a broker, or intermediary, in the sale of food products from food suppliers to buyers thereof, collecting a brokerage fee therefor from the suppliers, with its office and principal place of business presently located at 124 Airline Highway, Metairie, Louisiana, Post Office address, Box 4102, New Orleans, Louisiana.

D. Respondent Mid-South Food Products, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business presently located at the residence of its Secretary, Mary Eola Hogg, 8000 Nelson Street, New Orleans, Louisiana, and engaged as a broker, or an intermediary, in the sale of food products from food suppliers to buyers thereof, collecting a brokerage fee therefor from the suppliers. This respondent was originally incorporated about 1946 under the name of Bill the Distributor, Inc. of Louisiana by respondent Hogg, when he was doing business in New Orleans, Louisiana, before he moved to Jackson, Mississippi. In May 1954, the name was changed to Mid-South Food Products, Inc., but the corporation was inactive after respondent Hogg moved to Mississippi, until about February 1, 1958, when it was reactivated to take over the brokerage business conducted by one W. J. Biggs, an employee of respondent Bill the Distributor, Inc., which

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hereinafter will be more fully discussed. This business was conducted during the year 1958 out of the office of Bill the Distributor, Inc., Jackson, Mississippi, under the trade name Food Marketers, Inc. of Louisiana. An attempt was made in October 1958 to legally change the corporate name Mid-South to Food Marketers, Inc. of Louisiana, but this application was denied by the Secretary of the State because of the fact that respondent Food Marketers, Inc., a Mississippi corporation, was already doing business in the State of Louisiana.

At a meeting of the Board of Directors of the new corporation, held on February 1, 1958, at the office of respondent Bill the Distributor, Inc., in Jackson, Mississippi, Edward D. Hogg, a brother of respondent William Thomas Hogg, was elected President and his sister, Mary Eola Hogg, was elected Secretary. On February 11, 1958, suppliers of the W. J. Biggs Brokerage Company were notified, in a letter written by an employee of respondent Bill the Distributor, Inc., that "As of, February 1, 1958, W. J. Biggs Brokerage Company was incorporated under the new firm name 'Food Marketers, Inc.,' Jackson, Mississippi." (CX 87.)

On January 28, 1959, suppliers of the new "Food Marketers, Inc." were notified, in a letter written on a letterhead bearing that name, by an employee of respondent Bill the Distributor, Inc., who signed the name of the President, Edward D. Hogg, that:

> Effective February 1st our brokerage firm doing business as Food Marketers, Inc., Jackson, Mississippi will change its name as follows:
>
> Mid-South Food Products, Inc.
>
> P.O. Box 553
>
> Jackson 5, Mississippi
>
> Please change your records accordingly and address future payments and correspondence to the new firm name. (CX 55.)

Sometime in April 1959, the principal office and place of business was moved from Jackson, Mississippi, to New Orleans, Louisiana, where it is now operated, as hereinbefore stated, from the home of its Secretary, Mary Eola Hogg, a sister of respondent William Thomas Hogg, who notified the same suppliers on April 29, 1959, on letterhead of "Mid-South Products, Inc." that "our street address is 8000 Nelson Street, New Orleans, Louisiana." (CX 47.)

E. Respondent William Thomas Hogg is President of, and majority stockholder in, respondents Bill the Distributor, Inc., Winter Garden Sales Company, Inc. and Food Marketers, Inc., with his principal office and place of business located at 431 South West Street, Jackson, Mississippi. As principal stockholder and officer of said corporate respondents, said individual respondent Hogg ex-

ercised authority and control over the corporate respondents' business operations, including their purchasing, sales and distribution policies. At the time testimony was taken in this case, he was President and owned 60% of the capital stock of Bill the Distributor, Inc.; he was President and owned 80% of the capital stock of respondent Winter Garden Sales Company, Inc.; and was President of and owned 90% of the capital stock of respondent Food Marketers, Inc. While not an officer or stockholder of record of respondent Mid-South Food Products, Inc., said respondent Hogg has exercised control from the beginning over said respondent corporation, as hereinafter set forth.

Respondent Hogg began business as a wholesaler and jobber of food products in New Orleans, Louisiana, about 1946 or 1947. He moved to Jackson, Mississippi, about 1954, where he continued his business as a wholesaler and jobber of food products under the name of Bill the Distributor, Inc. and since that time he has organized and operated respondent Winter Garden Sales Company, Inc. as a jobber and wholesaler of canned goods and frozen food products and also respondent Food Marketers, Inc. as a broker. This last named company is operated under the management of one Earl Graham, with its principal office in New Orleans, Louisiana. As the business of the two corporate respondent wholesalers and jobbers, Bill the Distributor, Inc. and Winter Garden, is operated by respondent Hogg, during the past few years at least, in buying through respondent Food Marketers, Inc. as a broker, on purchases of respondent Winter Garden of products sold in Louisiana, respondent Food Marketers Inc. gets the brokerage. Although some purchases are made by respondent Bill the Distributor, Inc. from suppliers through respondent Food Marketers, Inc., it is against the present avowed policy of respondent Hogg to place such orders and he testified that very few of such purchases were made and only through error.

The record contains evidence, however, that respondent Hogg had solicited accounts of suppliers as a representative of respondent Food Marketers, Inc. for the two respondent wholesalers, Bill the Distributor, Inc. and Winter Garden, and that respondent Food Marketers, Inc. received brokerage on purchases from such suppliers as early as 1955 and continuing on through 1956 and 1957, and it was not until after 1957 that an effort was made by respondent Hogg to require respondent Bill the Distributor, Inc. not to purchase through respondent Food Marketers, Inc. from such suppliers, and orders to such suppliers were placed through the new broker respondent Mid-South, as hereinafter set forth.

II. Interstate Commerce

Although all respondents in their answers denied that any of them were engaged in commerce as "commerce" is defined in the Clayton Act, as amended, the evidence in the record of shipments of food products from the suppliers of Bill the Distributor, Inc. and Winter Garden Sales Company, Inc., is quite conclusive that not only were the respondent wholesaler corporations engaged in commerce, the brokerage firms likewise were so engaged. For example, the record shows that respondent Bill the Distributor, Inc. made numerous purchases from Fox Deluxe Foods, Inc., Chicago, Illinois, through broker respondent Food Marketers, Inc. from approximately March 1955, when the original agreement was entered into, through 1958, and that a brokerage of 5% was allowed Food Marketers, Inc. on such purchases until September 1957, when the brokerage fee was then paid to W. J. Biggs Brokerage Company, hereinbefore mentioned as having operated out of the office of respondent Bill the Distributor, Inc. during the Fall of 1957.

Another supplier of respondent Winter Garden who paid brokerage to respondent Food Marketers, Inc. on purchases by these two wholesalers was The Winter Garden Freezer Co., Inc. of Bells, Tennessee, and shipments of such merchandise were made to respondents in Mississippi, or these respondents picked up the merchandise at Bells, Tennessee, and transported the same to Jackson, Mississippi, or to their customers located in other places within the State of Mississippi.

Another supplier of both respondents Bill the Distributor, Inc. and Winter Garden was the Coldwater Seafood Corporation, New York, New York, which entered into a brokerage contract with Food Marketers, Inc., signed by respondent Hogg, in November 1956 and revised through 1959. This firm sold and shipped food products to respondents Bill the Distributor, Inc. and Winter Garden from 1957 through 1959 and remitted brokerage on such sales to the respondent Food Marketers, Inc. as late as November 1959, when it discontinued making sales to both respondents Bill the Distributor, Inc. and Winter Garden and discontinued its relationship with respondent Food Marketers, Inc. as a broker.

There is also evidence in the record of suppliers located in states other than the State of Mississippi selling and shipping food products to respondent Bill the Distributor, Inc. in Jackson, Mississippi, through respondent Mid-South Food Products, Inc. as a broker and brokerage fees being paid to this respondent on such purchases.

III. The Brokerage Companies Organized and Controlled by Respondent William T. Hogg

In the course and conduct of their said businesses in commerce as herein described, respondent brokers Food Marketers, Inc. and Mid-South Food Products, Inc., and its predecessor, W. J. Biggs Brokerage Company, since about the year 1956 in some instances and certainly from 1957 through 1959, had been receiving and accepting something of value as a commission, brokerage or other compensation paid by food suppliers, during which time said respondents were acting as intermediary in behalf of, or subject to the direct or indirect control of, respondent Hogg, the principal stockholder of respondents Bill the Distributor, Inc. and Winter Garden.

There is substantial evidence in the record that respondent Winter Garden, acting through its principal stockholder, respondent Hogg, made purchases through respondent Food Marketers, Inc., upon which purchases the latter respondent received brokerage payments from the sellers. At the time of such transactions, respondent Hogg was in control of both respondents Winter Garden and Food Marketers, Inc. Also, despite the testimony of respondent Hogg that it was against his present policy to pay brokerage to Food Marketers, Inc. on purchases made from suppliers by respondent Bill the Distributor, Inc. through that company, there is evidence in the record to contradict such testimony in the form of an agreement which the respondent Hogg entered into, representing respondent Food Marketers, Inc., with a large supplier in 1955, pursuant to which agreement brokerage fees were paid to respondent Food Marketers, Inc. on purchases made by respondent Bill the Distributor, Inc. from that supplier.

Furthermore, under this same contract, W. J. Biggs, an employee of respondent Bill the Distributor, Inc., operating as the W. J. Biggs Brokerage Company, and which operated out of the office of respondent Bill the Distributor, Inc. in the latter part of 1957, was paid a brokerage fee by this supplier on purchases made beginning in September 1957 and continuing throughout the remainder of that year. This arrangement was made by respondent Hogg, who, while ostensibly allowing Mr. Biggs, his employee, to conduct an independent brokerage business, was, in fact, in control of the whole operation. This is indicated also by the fact that throughout the entire year of 1958, Mr. Biggs managed the operation of this business for respondent Hogg in the office of respondent Bill the Distributor, Inc. under the name Food Marketers, Inc. (of Louisiana). An employee of respondent Bill the Distributor, Inc. kept the records of all

brokerage transactions of this company operating under both names, in 1957 and 1958.

Respondent Hogg, in his apparent attempt to avoid responsibility for the conduct and operation of respondent Mid-South, transferred the capital stock of that company to his brother, Edward D. Hogg, and his sisters, Mary Eola Hogg and Mary Clair Hogg, all living in New Orleans, Louisiana, as of February 1, 1958, for a nominal consideration of $100 each. However, as hereinbefore indicated, the records of the business were not transferred to New Orleans until April 1959. In the meantime, during the year 1958, the business of the company continued to be managed by Mr. W. J. Biggs, who was at that time an employee of respondent Bill the Distributor, Inc. At the end of the year the books of the company being kept by an employee of respondent Bill the Distributor, Inc. showed that a profit of approximately $4500 had been realized from the brokerage business and a check for $4000 was sent to Mr. Edward D. Hogg, who was a stockholder and President of the corporation, although he had done nothing with respect to the affairs of respondent Mid-South during that year and considered it as a gift. It is also significant that neither Edward D. Hogg nor his sister, Mary Eola Hogg, Secretary, has any knowledge of the details of the business of the company and they do not give much time to such business since both of them are employed full time in other occupations in the City of New Orleans. At the beginning of the year 1959, Mary Eola Hogg was given a set of accounts by the employee of respondent Bill the Distributor, Inc. who had been keeping the records of the company, as hereinbefore indicated, and since that time Miss Hogg has kept the records at her home and the only duties performed in connection with the business is for her to transmit orders received from respondent Bill the Distributor, Inc. and respondent Winter Garden to the suppliers of the food products from whom purchases are made, and to write an occasional letter advising the suppliers of brokerage due or when Mid-South was overcharged for samples.

Although Mr. Edward D. Hogg, President, is referred to by respondent Hogg as the Manager of the business of respondent Mid-South, he has done nothing since he became owner of the stock and President of the corporation in the way of management or operation of the business, either while it was being operated in Jackson, Mississippi, out of the office of respondent Bill the Distributor, Inc., or since the office has been transferred to the home of his sister in New Orleans. He has made no attempt to contact any of the suppliers, nor any of the customers except respondent Bill the Dis-

tributor, Inc. and then only through his brother, respondent Hogg. It is estimated by the latter that 90 to 95 percent of the sales by respondent Mid-South since January 1959 has been to respondent Bill the Distributor, Inc. Miss Mary Eola Hogg concurs in this estimate and also has estimated that from 2 to 3 percent of the sales was to respondent Winter Garden and less than one percent to National Sales, Inc., another affiliated company owned by respondent Hogg.

From the foregoing facts, it is concluded that even though the capital stock of the respondent Mid-South is owned by the brother and sisters of respondent Hogg, the actual operation of the company is still subject to the latter's control and any brokerage payments received by that company will be in the same category as the brokerage payments to respondent Food Marketers, Inc., no service having been rendered by respondent Mid-South to the suppliers since it is under the control of respondent Hogg, who, as hereinbefore indicated, is the principal stockholder and in control of respondents Bill the Distributor, Inc. and Winter Garden, the principal customers of these suppliers. Furthermore, the account of at least one supplier was solicited and obtained in 1955 by respondent Hogg, representing respondent Food Marketers, Inc. Since that time this company, Fox Deluxe Foods, Inc., Chicago, Illinois, has paid brokerage to respondents Food Marketers, Inc., W. J. Biggs Brokerage Company, Food Marketers, Inc. of Louisiana and respondent Mid-South Food Products, Inc. all pursuant to the original contract negotiated by respondent Hogg.

CONCLUSION

The acts and practices of respondents Bill the Distributor, Inc., Winter Garden Sales Company, Inc., Food Marketers, Inc. and Mid-South Food Products, Inc. and the individual respondent, William Thomas Hogg, acting through said corporate respondents, in receiving or accepting something of value as a commission, brokerage or other compensation, or allowances in lieu thereof, as hereinabove found, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended, which provides:

(c) 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, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct of indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

It is now well-established by decisions of the United States Courts of Appeals and the United States Supreme Court, in the interpretation of Section 2(c) of the Clayton Act, as amended, that it is unlawful for a buyer to receive brokerage on his own purchases. Likewise, it has been held by numerous cases that where both the brokerage concern and the buying organization are owned by the same person, or where an alleged broker is acting for or in behalf of the buyer or is under the control of the buyer and receives brokerage payments from the seller, Section 2(c) of the Clayton Act, as amended, is violated. For instance, in the case of *Great Atlantic & Pacific Tea Company* v. *F.T.C.*, 106 F.2d 667, 674, *certiorari denied*, 308 U.S. 625, the Court said:

> At each stage of its enactment, paragraph (c) was declared to be an absolute prohibition of the payment of brokerage to buyers or buyers' representatives or agents. Such is the plain intent of the Congress and thus we construe the statute. Any other result would frustrate the intent of Congress.

The Court in this same decision pointed out that it was the intention of Congress to prevent dual representation by agents purporting to deal on behalf of both buyer and seller:

> The phrase "except for services rendered" is employed by Congress to indicate that if there be compensation to an agent, it must be for bona fide brokerage, viz, for actual services rendered to his principal by the agent. The agent cannot serve two masters, simultaneously rendering services in an arm's length transaction to both. While the phrase "for services rendered" does not prohibit payment by the seller to his broker for bona fide brokerage services, it requires that such service be rendered by the broker to the person who has engaged him. In short, a buying and selling service cannot be combined in one person.

In a case in which the facts were somewhat similar to the present case, the Commission's order to cease and desist "from accepting or receiving from sellers any fees or commissions or brokerage or any allowance in lieu thereof" was upheld by the United States Court of Appeals for the Fifth Circuit. In that case,[1] The Webb-Crawford Company was a corporation owned by three individuals, Ed D. Wier, E. L. Wier and Carter W. Daniel, who also operated a brokerage company as partners known as the Daniel Brokerage Company. Ed D. Wier was the corporation's President and salesman; E. L. Wier was its Vice-President and buyer; and Carter W. Daniel was Secretary and Treasurer and Financial Manager. These three men constituted the Board of Directors and completely controlled the corporation. The brokerage partnership was managed by one C. R. Daniel, brother of Carter W. Daniel, and a minor stockholder in the corporation. His brokerage office

[1] *The Webb-Crawford Company, et al.* v. *F.T.C.*, 109 F. 2d 268.

was in the warehouse of the corporation for which rent was paid. The brokerage partnership represented only the sellers of commodities and was paid brokerage by them. It had many other customers besides the corporation and the corporation bought not over 10 percent of its goods through the brokerage partnership. The Court found that the partners could and did control the corporation. The corporation did not get any of the brokerage fees.

The important factor upon which the Court decided the case was that one of the brothers, E. L. Wier, as Vice-President of The Webb-Crawford Company, did all of its buying, and at the same time he was one of the brokers and received one-fourth of the commission paid by the seller. Another brother, Ed D. Wier, who sold the purchased goods for the corporation and had a voice in determining what should be bought, also got one-fourth of the commission. Carter W. Daniel, the third partner who checked the bills and paid them, got the remainder of the commission. The Court said (at p. 270; see footnote 1):

> * * * Without reflecting on the faithfulness or honesty of anyone here concerned, it is evident that the tendency and general results are precisely the same as if The Webb-Crawford Company, the buyer, had gotten the commissions. And the law equally condemns both things. Omitting the inapplicable alternatives, we quote from subsection (c): "It shall be unlawful for any person * * * to pay or grant, or to receive or accept, anything of value as a commission * * * in connection with the sale or purchase of goods * * *, either *to the other party* to such transaction [The Webb-Crawford Co.,] *or to an agent*, [or] *representative*, [E. L. Wier, Ed D. Wier, Carter W. Daniel] * * * of any party to such transaction other than the person by whom such compensation is so granted or paid." Sellers who sell to The Webb-Crawford Company cannot pay brokers' commissions to these men who in fact act for and represent the buyer in making the purchases. The interposition of C. R. Daniel as manager for the brokers does not change the fact that the commissions are paid to his principals who are the officers and representatives of the buyer.

Applying the principle of the foregoing decision to the facts in this case, the individual respondent, William Thomas Hogg, corresponds to the three partners who were in control of the operations of The Webb-Crawford Company and the statements made by the Court to the effect that the tendency and general results are precisely the same as if The Webb-Crawford Company, the buyer, had gotten the commissions, would apply with equal force to the respondent corporations Bill the Distributor, Inc. and Winter Garden Sales Company, Inc., in the present case. Substituting the names of these two buying corporations controlled by respondent Hogg for the buying corporation in the Webb-Crawford decision, it follows that the sellers who sell to those companies cannot lawfully pay brokerage

commissions to the brokerage companies under their control, that is, Food Marketers, Inc. and Mid-South Food Products, Inc. The attempt on the part of respondent Hogg to set up a situation which would change the relationship created by him when he first negotiated the contract between respondent Food Marketers, Inc. and suppliers, and which brokerage business he later transferred to the newly-created respondent Mid-South, was not successful for the reason that the newly-created Mid-South is equally under his control even though the capital stock is owned by his brother and sister.

It is therefore, concluded that under the circumstances disclosed herein, as shown by the evidence in the record, respondent Food Marketers, Inc. and respondent Mid-South Food Products, Inc. were created by the individual respondent, William Thomas Hogg, and used by him to obtain brokerage from the suppliers of the buyer-respondent corporations, Bill the Distributor, Inc. and Winter Garden Sales Company, Inc. for and in behalf of the said respondent-buyer corporations in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

ORDERED

It is ordered, That respondent's Bill the Distributor, Inc., a corporation, and its officers, Winter Garden Sales Company, Inc., a corporation, and its officers, and William Thomas Hogg, individually and as an officer of said corporate respondents, and respondents' agents, representatives and employees, directly or through any corporate, partnership, or other device, in connection with the purchase of food products or other commodities in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with the purchase of food products, or other commodities for their own account, or on purchases made through broker respondents, Food Marketers, Inc. or Mid-South Food Products, Inc., so long as any relationship exists either through ownership, control or management between the broker respondents, the buyer respondents, and the individual respondent, named herein.

It is further ordered, That respondent Food Marketers, Inc., a corporation, and its officers, doing business under this or any other name, and William Thomas Hogg, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate, partnership, or other device, in connection with the purchase or sale of food products or

other commodities in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of food products or other commodities for their own account, or by or for the account of either respondents Bill the Distributor, Inc., Winter Garden Sales Company, Inc., or any other company or corporation owned in whole or in part by respondent William Thomas Hogg, so long as any relationship exists either through ownership, control or management between the said buyer respondents and the said broker respondents, through the individual respondent, William Thomas Hogg, or otherwise, or on any other purchases where the said broker respondent or respondent William Thomas Hogg individually are acting for or on behalf of any buyer as an intermediary, representative, or agent, or are subject to the direct or indirect control of such buyer.

It is further ordered, That respondent Mid-South Food Products, Inc., a corporation, and its officers, doing business under this or any other name, and respondent's agents, representatives and employees, directly or through any corporate, partnership, or other device, in connection with the purchase or sale of food products or other commodities in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of food products or other commodities for its own account, or by or for the account of respondents Bill the Distributor, Inc. or Winter Garden Sales Company, Inc., or any other company or corporation owned in whole or in part by respondent William Thomas Hogg, so long as any relationship exists, either through control or management between respondent Mid-South Food Products, Inc., and the buyer corporation or the individual respondent, William Thomas Hogg, or any other officer thereof, or on any other purchases where respondent Mid-South is acting for or in behalf of any buyer as an intermediary, representative or agent, or is subject to the direct or indirect control of such buyer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision, filed on July 26,

1961, and the Commission having determined that said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the aforesaid initial decision 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

STONE & THOMAS, INC.

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

Docket C-23. Complaint, Nov. 14, 1961—Decision, Nov. 14, 1961

Consent order requiring furriers in Wheeling, W. Va., to cease violating the Fur Products Labeling Act by failing to disclose on labels and invoices and in newspaper advertising the true animal name of the fur used in fur products, to disclose on labels and invoices the country of origin of imported furs, to show on labels and in advertising when products were dyed, and to show the name of the manufacturer, etc., on labels; by advertising in which the term "blended" was used improperly and which falsely represented the percentage reduction from usual prices of fur products; and by failing to comply in other respects with requirements of the Act.

COMPLAINT

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

PARAGRAPH 1. Stone & Thomas, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia with its office and principal place of business located at 1030 Main Street, Wheeling, West Virginia.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now

engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

Among such misbranded fur products, but not limited thereto, were fur products without labels and with labels which failed:

1. to show the true animal name of the fur used in the fur product.

2. to disclose that the fur contained in the fur product was dyed when such was the fact.

3. to show the name or other identification issued and registered by the Commission, of one or more of the persons who manufacture such fur product for introduction into commerce, introduce it into commerce, sell it in commerce, advertise or offer it for sale in commerce, or transport or distribute it in commerce.

4. to show the name of the country of origin of imported furs used in the fur product.

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

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

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

was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

(e) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

(f) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

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

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

Among such falsely and deceptively invoiced fur products but not limited thereto were invoices pertaining to fur products which failed:

1. To show the true animal name of the fur used in the fur product.

2. To show the country of origin of imported fur used in the fur product.

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

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

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

PAR. 7. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondent caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertise-

ments were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 8. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondent which appeared in issues of the Wheeling Intelligencer and the Wheeling News Register, newspapers published in the city of Wheeling, State of West Virginia, and having a wide circulation in said State and various other States of the United States.

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

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

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

(c) Used the term "blended" as part of the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs, in violation of Rule 19(f) of said Rules and Regulations.

(d) Represented through such statements as "fur trimmed coat sale limited time only at 15% off" that the regular and usual prices of fur products were reduced in direct proportion to the percentage of savings stated when such was not the fact in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 9. Respondent in advertising fur products for sale as aforesaid made claims and representations respecting prices and values of fur products. Said representations were of the type covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur products Labeling Act. Respondent in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 10. 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 con-

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

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Stone & Thomas, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia with its office and principal place of business located at 1030 Main Street, Wheeling, West Virginia.

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

1. Misbrading fur products by:

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

B. Setting forth on labels affixed to fur products:

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

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

(3) 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 all the information required under Section 4(2) of the Fur Products Lbeling Act, and the Rules and Regulations promulgated thereunder on one side of such labels.

D. Failing to set forth the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the required sequence.

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

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

2. Falsely or deceptively invoicing fur products by:

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

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

C. Failing to set forth the item number or mark assigned to a fur product.

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

A. Fails to disclose:

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

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

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

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

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

4. Making claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims and representations are based.

It is further 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 it has complied with this order.

IN THE MATTER OF

AMANDA COLTON ET AL. TRADING AS AMANDA & REGGIE COLTON

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

Docket C-24. Complaint, Nov. 14, 1961—Decision, Nov. 14, 1961

Consent order requiring New York City distributors to cease violating the Wool Products Labeling Act, the Fur Products Labeling Act, and the Textile Fiber Products Identification Act by failing to label wool, fur, and textile products as required.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939, the Fur Products Labeling Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commis-

sion, having reason to believe that Amanda Colton and Reggie Colton, individually and as copartners trading as Amanda & Reggie Colton, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, the Fur Products Labeling Act and the Textile Fiber Products Identification 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 Amanda Colton and Reggie Colton are individuals trading and doing business as Amanda & Reggie Colton, a partnership. Their office and principal place of business is located at 37 West 57th Street, New York City, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since July 1960, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded by respondents in that they were not stamped, tagged or labeled with any of the information required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

PAR. 4. The acts and practices of the respondents as set forth in Paragraphs TWO and THREE, were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. Subsequent to the effective date of the Fur Products Labeling Act, August 9, 1952, respondents have been, and are now engaged in the introduction into commerce, and in the sale, advertising and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 6. Certain of said fur products were misbranded in that they were not labeled with any of the information required under the pro-

visions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced with any of the information required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations thereunder.

PAR. 8. The acts and practices of the respondents, as set forth in Paragraphs FIVE, SIX AND SEVEN, were and are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 9. Subsequent to the effective date of the Textile Fiber Products Identification Act, March 3, 1960, respondents have been and are now engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, or the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported or caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported or caused to be transported, after shipment in commerce, textile fiber products, either in their original state or which were made of other textile products so shipped in commerce; as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

PAR. 10. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged or labeled with any of the information required under Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

PAR. 11. The acts and practices of the respondents, as set forth in Paragraphs NINE AND TEN, were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated under said Acts, 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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, the Textile Fiber Products Identification Act, the Wool Products Labeling Act of 1939 and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents Amanda Colton and Reggie Colton are individuals trading and doing business as Amanda & Reggie Colton, a partnership. Their office and principal place of business is located at 37 West 57th 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 respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Amanda Colton and Reggie Colton, individually and as copartners, trading as Amanda & Reggie Colton or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or offering for sale, sale, transportation or distribution in commerce of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

Failing to affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Amanda Colton and Reggie Colton, individually and as copartners, trading as Amanda & Reggie Colton or under any other name or names, 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 product; or in connection with the sale, advertising, offering for sale, transportation, or distribution, of any fur product which is 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 failing to affix labels to fur products showing in words and figures plainly legible all the information required to be disclosed by each of the sub-sections of Section 4(2) of the Fur Products Labeling Act.

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

It is further ordered, That respondents Amanda Colton and Reggie Colton, individually and as copartners, trading as Amanda & Reggie Colton or under any other name or names, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce", and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

Misbranding textile fiber products by failing to affix labels to such products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further 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 this order.

IN THE MATTER OF

MANKO FABRICS CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-25. Complaint, Nov. 14, 1961—Decision, Nov. 14, 1961

Consent order requiring New York City distributors to cease importing into the United States silk scarves and fabrics so highly flammable as to be dangerous when worn, and to cease manufacturing and selling scarves made from such fabrics.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that the Manko Fabrics Co., Inc., a corporation, and Sidney Manko and Muriel Manko, individually and as officers of said corporation, and Norman Manko, individually and as an officer of said corporation, and doing business as Normandy Scarf Co., hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics 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 charge in that respect as follows:

PARAGRAPH 1. Respondent, Manko Fabrics Co., Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Sidney Manko, Muriel Manko and Norman Manko are President-Treasurer, Vice President, and Secretary, respectively, of Manko Fabrics Co., Inc. Respondents Sidney Manko and Muriel Manko formulate the policies of the said corporate respondent, and respondents Sidney Manko, Muriel Manko and Norman Manko direct and control the acts and practices of respondent corporation. The business address of all respondents is 49 West 38th Street, New York, New York.

In addition thereto, individual respondent Norman Manko, as an individual, does business as Normandy Scarf Co., the address of which is 110 West 42nd Street, New York, New York.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have imported into the United States articles of wearing apparel as the term "article of wearing apparel" is defined in the Flammable Fabrics Act; respondents have sold, offered for sale, introduced, delivered for introduction and transported and caused to be transported in commerce, as "commerce" is defined in the Flammable Fabrics Act, articles of wearing apparel, and respondents have transported and caused to be transported articles of wearing apparel for the purpose of sale and delivery after sale in commerce; which articles of wearing apparel under the provisions of Section 4 of said Act, as amended, were so highly flammable as to be dangerous when worn by individuals.

Among the articles of wearing apparel mentioned herein above were silk scarves manufactured in Japan.

PAR. 3. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have imported into the United States, offered for sale in commerce, and have introduced, delivered for introduction, transported or caused to be transported in commerce, and have transported or caused to be transported after sale in commerce, as "commerce" is defined in the Flammable Fabrics Act, as amended, fabric as the term "fabric" is defined therein which was, under the provisions of Section 4 of the aforesaid Act, as amended, so highly flammable as to be dangerous when worn by individuals.

PAR. 4. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold and offered for sale, articles of wearing apparel made of fabric which was, under Section 4 of the Act, as amended, so highly flammable as to be dangerous when worn by individuals, and which fabric has been shipped and received in commerce.

Among the articles of wearing apparel mentioned above were scarves.

PAR. 5. The acts and practices of respondents herein alleged were and are in violation of the Flammable Fabrics Act and of the Rules and Regulations promulgated thereunder and as such 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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commis-

sion intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional finding, and enters the following order:

1. Respondent, Manko Fabrics Co., Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Sidney Manko, Muriel Manko and Norman Manko are officers of the corporate respondent. The business address of all respondents is 49 West 38th Street, New York, New York.

Respondent Norman Manko, as an individual, also does business as Normandy Scarf Co., the address of which is 110 West 42nd Street, New York, New York.

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

ORDER

It is ordered, That the respondent Manko Fabrics Co., Inc., a corporation, and its officers, and respondents Sidney Manko and Muriel Manko, individually and as officers of said corporation, and Norman Manko as an officer of corporate respondent, and individually, doing business under the name of Normandy Scarf Co., or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device do forthwith cease and desist from:

1.

(a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce,

any article of wearing apparel which, under the provisions of Section 4

of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals:

2.

(a) Importing into the United States; or

(b) Offering for sale, introducing, delivering for introduction, transporting or causing to be transported in commerce, as the term "commerce" is defined in the Flammable Fabrics Act; or

(c) Selling or delivering after sale in commerce,

fabrics which under the provisions of Section 4 of said Flammable Fabrics Act, as amended, are so highly flammable as to be dangerous when worn by individuals;

3. Manufacturing for sale, selling, or offering for sale any article of wearing apparel made of fabric which fabric has been shipped or received in commerce and which under Section 4 of the Act, as amended, was so highly flammable as to be dangerous when worn by individuals.

It is further 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 this order.

IN THE MATTER OF

LOOMBEST FABRICS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket C-26. Complaint, Nov. 14, 1961—Decision, Nov. 14, 1961

Consent order requiring New York City importers of textile fiber products to cease violating the Textile Fiber Products Identification Act by labeling as "70% Rayon, 30% Silk", fabrics which contained substantially less silk than thus represented, and by failing to show on labels on such products the true percentage of rayon and silk fibers present, by weight, and the name of the country from which they were imported.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Loombest Fabrics, Inc., a corporation, and Joseph Smukler and Abraham Nearon, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of such Acts and the Rules

and Regulations under the Textile Fiber Products Identification 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 Loombest Fabrics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal place of business at 1412 Broadway, New York, New York.

Respondents Joseph Smukler and Abraham Nearon are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the corporate respondent. Their address is the same as that of the corporate respondent.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been and are now engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile products so shipped in commerce; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively tagged or labeled, invoiced, advertised or otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such textile fiber products, but not limited thereto, were fabrics labeled and invoiced by respondents as "70% Rayon, 30% Silk", whereas in truth and in fact such fabrics contained substantially less silk than represented.

PAR. 4. Certain of said textile fiber products were further misbranded by respondents in that they were not stamped, tagged, or labeled as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products namely, fabrics, with labels which:

(a) Failed to show the true percentage of rayon and silk fibers present, by weight.

(b) Failed to show the name of the country from which such textile fiber products were imported.

PAR. 5. Respondents have furnished false guaranties that certain of their textile fiber products were not misbranded or falsely invoiced, in violation of Section 10 of the Textile Fiber Products Identification Act.

PAR. 6. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constitutes 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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law had been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Loombest Fabrics, 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 1412 Broadway, in the city of New York, State of New York.

Respondent Joseph Smukler and Abraham Nearon are officers of said corporation, and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Loombest Fabrics, Inc., a corporation, and its officers and Joseph Smukler and Abraham Nearon, 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, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United State, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce", and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

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

2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Furnishing false guaranties that textile fiber products are not misbranded or falsely invoiced under the provisions of the Textile Fiber Products Identification Act.

It is further 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 this order.

IN THE MATTER OF

TILE CITY, INC. OF PITTSBURGH, PENNSYLVANIA, ET AL.

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

Docket C-27. Complaint, Nov. 14, 1961—Decision, Nov. 14, 1961

Consent order requiring five affiliated retailers of rubber and asphalt tile, floor covering, and paint in as many Pennsylvania cities, to cease representing falsely in newspaper advertising that they offered Kentile Tile in "A" colors at 3½¢ each when they had not stocked the tile for some time and it was not available; that their "solid Vinyl tile" was composed wholly of vinyl; and that purchasers of one gallon of Rubber Tuff Wall Paint would receive a second can "free" when they were required to pay for one gallon the usual price for two; and to cease representing falsely through use of higher amounts in connection with the words "Reg." and "Sold for", that said amounts were the usual prices for their merchandise.

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 Tile City, Inc. of Pittsburgh, Pennsylvania, a corporation; Tile City, Inc. of New Kensington, Pennsylvania, a corporation; Tile City, Inc. of Ambridge, Pennsylvania, a corporation; Tile City, Inc. of Irwin, Pennsylvania, a corporation; Tile City, Inc. of Charleroi, Pennsylvania, a corporation; and Robert Solomon and Irving Germaise, individually and as officers of said corporations and as co-partners trading under the name Tile City Company of Steubenville, Ohio, 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 in respect thereof stating its charges in that respect as follows:

PAR. 1. Respondent Tile City, Inc. of Pittsburgh, Pennsylvania, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its principal office and place of business located at 1501 5th Avenue, Pittsburgh, Pennsylvania.

Respondent Tile City, Inc. of New Kensington, Pennsylvania, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office

and place of business located at 333 10 Street, New Kensington, Pennsylvania.

Respondent Tile City, Inc. of Ambridge, Pennsylvania, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 801 Merchant Street, Ambridge, Pennsylvania.

Respondent Tile City, Inc. of Irwin, Pennsylvania, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located on Route 30, west of Irwin, Pennsylvania.

Respondent Tile City, Inc. of Charleroi, Pennsylvania, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 626 McKean Avenue, Charleroi, Pennsylvania.

Respondents Robert Solomon and Irving Germaise are officers of all of the corporate respondents and are co-partners trading under the name of Tile City Company of Steubenville, Ohio. They formulate, direct and control the acts and practices hereinafter set forth. The address of Robert Solomon is 1911 5th Avenue, McKeesport, Pennsylvania. The address of Irving Germaise is 501 5th Avenue, Pittsburgh, Pennsylvania.

PAR. 2. Respondents are now and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of rubber and asphalt tile, floor covering and paint at retail to the consuming public.

PAR. 3. In the course and conduct of their business, respondents have been and are engaged in disseminating and causing to be disseminated in newspapers of interstate circulation, advertisements designed and intended to induce sales of their merchandise.

In the further course and conduct of their business respondents are now, and for some time last past have been, transmitting and receiving by the United States mails and by order means checks, sales memoranda, and other written documents to and from respondents' various places of business in the United States and all respondents have been and are engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical but not all-inclusive of the statements appearing in the advertisements described in Paragraph Three are the following:

Kentile
9 x 9 x ⅛–1st quality
Color goes clear thru
Guaranteed for Life
"A" colors—3½¢ ea.
* * *
Solid Vinyl Tile at 10¢
* * *
Tile City 2 For 1
Rubber Tuff Wall Paint
Paint Deal
6.95 per gallon
2 For 1 Sale
Buy 1 Gallon
2nd Gallon Free
* * *
Plaster Paint
Reg. 5.95
3.89 per gallon
* * *
Rubber Tuff Wall Paint
3.89
Sold for 6.99 Gal.

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import not specifically set out herein respondents have represented that:

1. They are making a bona fide offer to sell Kentile Tile in "A" colors.

2. The tile offered for sale and described as "solid Vinyl tile" was composed wholly of vinyl.

3. If one gallon of Rubber Tuff Wall Paint is purchased at the advertised price a second can will be given "free", that is, as a gift or gratuity without cost to the purchaser.

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

1. The offer to sell Kentile Tile in "A" colors was not a genuine or bona fide offer to sell said tile. In truth and in fact, none of the respondents had stocked said tile for some time prior to the time of the advertisements and same was not available for sale.

2. The tile described as solid vinyl tile was not composed wholly of vinyl.

3. Purchasers do not receive one gallon of paint free for the reason that they are required to pay $6.95 or $6.99 which amount is the usual and customary charge for two gallons.

PAR. 7. Through the use of the higher amounts in connection with the words "Reg." and "Sold For" the respondents represented that said amounts were the prices at which they had usually and cus-

tomarily sold the merchandise referred to in the recent and regular course of business and that the differences between said prices and the lesser amounts represented savings from the prices at which the merchandise referred to had been usually and customarily sold by respondents in the recent regular course of their business.

PAR. 8. The aforesaid representations were and are false, misleading and deceptive. In truth and in fact the amounts set out in connection with the words "Reg." and "Sold For" were in excess of the prices at which the merchandise referred to had been sold by respondents in the recent regular course of their business and the differences between said amounts and the lesser amounts did not represent savings from the prices at which the merchandise had been sold by respondents in the recent regular course of their business.

PAR. 9. At all times mentioned herein, respondents have been, and are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of rubber and asphalt tile and floor coverings and paint 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 and representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the mistaken and erroneous belief that said statements and representations are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and the injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the

complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law had been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Tile City, Inc. of Pittsburgh, Pennsylvania, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1501 5th Avenue, in the City of Pittsburgh, State of Pennsylvania.

Respondent, Tile City, Inc. of New Kensington, Pennsylvania, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 333 10th Street, New Kensington, Pennsylvania.

Respondent, Tile City, Inc. of Ambridge, Pennsylvania, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 801 Merchant Street, Ambridge, Pennslyvania.

Respondent, Tile City, Inc. of Irwin, Pennsylvania, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located on Route 30, west of Irwin, Pennsylvania.

Respondent, Tile City, Inc. of Charleroi, Pennslyvania, is a corporation organized, existing and doing business under and by virtue of the laws of the States of Pennsylvania, with its principal office and place of business located at 626 McKean Avenue, Charleroi, Pennsylvania.

Respondents Robert Solomon and Irving Germaise are officers of all of the corporate respondents and are copartners trading under the name of Tile City Company of Steubenville, Ohio. The address of Robert Solomon is 1911 5th Avenue, McKeesport, Pennsylvania. The address of Irving Germaise is 501 5th Avenue, Pittsburgh, Pennsylvania.

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

ORDER

It is ordered, That respondents Tile City, Inc. of Pittsburgh, Pennsylvania, a corporation, Tile City, Inc. of New Kensington, Pennsylvania, a corporation, Tile City, Inc. of Ambridge, Pennsylvania, a corporation, Tile City, Inc. of Irwin, Pennsylvania, a corporation, Tile City, Inc. of Charleroi, Pennsylvania, a corporation, and their officers, and Robert Solomon and Irving Germaise, individually and as officers of said corporations, and as co-partners trading under the name of Tile City Company of Steubenville, Ohio, or under any other trade name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of tile, paint, or any other merchandise, 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 merchandise is offered for sale when such offer is not a bona fide offer to sell such merchandise.

2. Representing, directly or by implication:

(a) That tile not compounded wholly of Vinyl is a solid Vinyl tile or misrepresenting in any manner the composition of a product.

(b) That merchandise is given free or without charge in connection with the purchase of other merchandise when the price charged for the merchandise purchased includes the price of the other merchandise.

(c) That any amount is respondents' usual and customary price of merchandise when it is in excess of the price at which the merchandise has been usually and customarily sold by respondents in the recent regular course of business.

(d) That any saving is afforded from respondents' usual and customary price of merchandise unless the price at which it is offered constitutes a reduction from the price at which the merchandise has been usually and customarily sold by respondents in the recent regular course of business.

3. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise or the amount by which the price of merchandise has been reduced from the price at which it has usually and customarily been sold by respondents in the recent regular course of business.

4. Using the terms "Reg." or "Sold For", or any other words or terms of the same import, to refer to respondents' usual and customary price of merchandise, unless the amount so designated

is the price at which respondents have usually and customarily sold the merchandise in the recent regular course of business.

It is further 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 this order.

IN THE MATTER OF

CARLSON PHARMACEUTICALS, INC., ET AL.

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

Docket 8432. Complaint, June 16, 1961—Decision, Nov. 16, 1961

Order issued in default requiring Detroit distributors to cease representing falsely in advertising that their drug preparation "ARTH-RITE" was an effective treatment and cure for all kinds of arthritis and rheumatism and contained sleep-inducing ingredients.

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 Carlson Pharmaceuticals, Inc., a corporation, and Frank Handler, Jr., Eugene Graye and Frank Handler, Sr., 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 Carlson Pharmaceuticals, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 4121 Puritan Avenue, in the City of Detroit, State of Michigan.

Respondent Frank Handler, Jr., Eugene Graye and Frank Handler, Sr. are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the sale and distribution of a preparation