Complaint

IN THE MATTER OF

MILTON OSTROWER ET AL. TRADING AS YANKEE LEATHER GOODS CO., INC.

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

Docket 8298. Complaint, Mar. 2, 1961—Decision, Aug. 5, 1961

Consent order requiring a New York City manufacturer of ladies' and men's belts to cease stamping with the words "Genuine Alligator Grain", belts which were not made from alligator hide or genuine leather but from a material composed of leather fibers bonded together with an adhesive material, and to cease selling such simulated leather belts without any markings to show that they were not genuine leather.

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 Milton Ostrower, Harry Ostrower and Fred Ostrower, individually and trading as Yankee Leather Goods 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 Milton Ostrower, Harry Ostrower and Fred Ostrower are partners trading as Yankee Leather Goods Co. with their principal office and place of business located at 737 Broadway, in the City of New York, State of New York.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the manufacture, offering for sale, sale and distribution of ladies' and men's belts to wholesalers and retailers who resell said belts to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, ladies' and men's belts when sold to be shipped from their place of business in the State of New York to purchasers thereof located in other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said belts in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business done by respondents in said belts in commerce is now, and has been, substantial.

PAR. 4. In the course and conduct of their business, respondents have stamped or imprinted upon some of their belts "Genuine Alligator Grain". Said belts were, when sold by retailers, displayed to the purchasing public with said words affixed thereto or imprinted thereon. Said belts were manufactured from leather fibers which were bonded or pressed together by an adhesive material. These belts simulate leather.

Respondents also sell the above described belts manufactured from leather fibers with no markings thereon.

PAR. 5. There is a preference on the part of many members of the purchasing public for ladies' and men's belts made of genuine leather over belts not composed wholly of leather or belts manufactured from imitation leather.

PAR. 6. In truth and in fact said belts branded "Genuine Alligator Grain" were not manufactured from alligator hides or genuine leather but from a material composed of leather fibers pressed or bonded together with an adhesive material. Also in truth and in fact those belts, which simulate leather and are not branded or marked, are likewise manufactured from a material composed of leather fibers pressed or bonded together with an adhesive material.

PAR. 7. Respondents by means of the aforesaid acts and practices of branding some of their simulated leather belts "Genuine Alligator Grain", and by failure in other instances, to adequately disclose that other simulated leather belts sold by them are not genuine leather, furnished means and instrumentalities to others whereby the public is confused or misled as to the actual composition of said ladies' and men's belts.

PAR. 8. In the course and conduct of their business respondents are in substantial competition in commerce with corporations, firms and individuals engaged in the sale of genuine leather ladies' and men's belts.

PAR. 9. The aforesaid acts and practices of respondents in stamping simulated leather belts as "Genuine Alligator Grain", and their failure to adequately disclose the composition of certain ladies' and men's simulated leather belts sold by them has the capacity and tendency to confuse the public as to their composition and mislead the public into the erroneous and mistaken belief that said belts are wholly genuine leather, and into the purchase thereof by reason of such erroneous and mistaken belief. As a consequence thereof substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and 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. Morton Nesmith for the Commission.
Blackman & Willner, New York, N.Y., for the respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

The complaint in this proceeding, issued March 2, 1961, charged Milton Ostrower, Harry Ostrower and Fred Ostrower, individually and trading as Yankee Leather Goods Co., at 737 Broadway, in the City and State of New York, with violating the Federal Trade Commission Act by offering for sale, selling and distributing in commerce belts which had been misbranded. Prior to issuance of the complaint, the said respondents had caused their said business to be incorporated under the laws of the State of New York and it is now known as Yankee Leather Goods Co., Inc., engaged in business at the same address. They have agreed that any order to be entered herein may run against the corporation as well and that it and they (individually and as officers) be substituted as the respondents herein. Consequently, whenever reference is made herein to the complaint, such reference shall be deemed to include, as though named therein, the corporation, Yankee Leather Goods Co., Inc.

Respondents (with the advice of their attorney), and counsel supporting the complaint have entered into an agreement, containing consent order to cease and desist, disposing of all the issues as to all parties to this proceeding, including Yankee Leather Goods Co., Inc.

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

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

By said agreement, the parties expressly waived any further procedural steps before the Hearing Examiner and the Commission:

the making of findings of fact or conclusions of law; and all rights they may have to challenge or contest the validity of the order to cease and desist to be entered in accordance therewith.

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

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

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

ORDER

It is ordered, That respondents Yankee Leather Goods Co., Inc., a corporation and its officers, and Milton Ostrower, Harry Ostrower and Fred Ostrower, individually and as officers of said corporation, and respondents' representatives, agents or employees, directly or through any corporate or other device, in connection with the manufacturing, offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of ladies' and men's belts, or other merchandise, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) A product which is not made from the hide of an animal is leather.

(b) A product is made of leather if the product is made of leather fibers bonded together with an adhesive, provided, however, that this provision shall not be construed as preventing the representation that such product is composed of leather fibers and an adhesive.

2. Offering for sale or selling a product composed of leather fibers and an adhesive, which has the appearance of leather, unless

it is clearly stated that said product is not leather, or such disclosure made that will clearly show that it is not leather, provided, however, that this provision shall not be construed as preventing the representation that the product is composed of leather fibers and an adhesive.

3. Using the term "Genuine Alligator Grain" in connection with a product that is not made from alligator hide, or misrepresenting in any manner the animal hide from which a product is made.

4. Furnishing means and instrumentalities to others whereby the public may be misled as to any of the matters prohibited in Paragraphs 1, 2, and 3 above.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the Hearing Examiner shall, on the 5th day of August 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

MINKRAFT, LTD., ET AL.

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

Docket 8373. Complaint, Apr. 21, 1961—Decision, Aug. 5, 1961

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by labeling and invoicing artificially colored fur as natural, and by failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Minkraft, Ltd., a corporation, and Abraham Dattner, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under

the 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. Minkraft, Ltd. 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 363 Seventh Avenue, New York, New York.

Abraham Dattner is an officer of the said corporate respondent and controls, directs and formulates the acts, practices and policies of the said corporate respondent. His office and principal place of business is the same as that of the said corporate respondent.

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

PAR. 3. Certain of said fur products were misbranded or otherwise falsely or deceptively labeled in that said fur products were labeled to show that the fur contained therein was natural when in fact such fur was bleached, dyed or otherwise artificially colored in violation of Section 4(1) of the Fur Products Labeling Act.

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

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

(a) All the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth on one side of such labels in violation of Rule 29(a) of said Rules and Regulations.

(b) The item numbers or marks assigned to fur products were not set forth on labels in violation of Rule 40 of said Rules and Regulations.

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

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural when in fact such fur was bleached, dyed or otherwise artificially colored in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

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

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

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

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

basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Minkraft, Ltd., is a New York corporation with its office and principal place of business located at 363 Seventh Avenue, New York, New York.

Abraham Dattner is an officer of said corporate respondent and formulates, directs and controls the policies, acts and practices of the said respondent. His office and principal place of business 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 Minkraft, Ltd., a corporation, and its officers, and Abraham Dattner, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce of fur products; or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Representing, directly or by implication, on labels that the fur in such products is natural, when such is not the fact.

B. 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.

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

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

2. Falsely or deceptively invoicing fur products by:

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

B. Representing, directly or by implication, on invoices that the fur in such products is natural, when such is not the fact.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 5th day of August 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

ROULETTE RECORDS, INC., ET AL.

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

Docket 7710. Complaint, Dec. 30, 1959—Decision, Aug. 8, 1961

Order—following enactment of specific statutes which afford adequate protection to the public against the challenged practices—dismissing complaint charging New York City manufacturers of phonograph records with giving illegal "payola" to radio and television disc jockeys.

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 Roulette Records, Inc., a corporation, and Morris Levy, Morris Gurlek, Philip Kohl and Joseph L. Kolsky, 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 Roulette Records, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 659 10th Avenue, New York, New York.

Respondents Morris Levy, Morris Gurlek, Philip Kohl and Joseph L. Kolsky are president, treasurer, vice president, and executive vice president and secretary, respectively, of the corporate respondent. The individual respondents formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices herein set out. The address of the individual respondents is the same as that of said corporate respondent.

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

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

PAR. 3. In the course and conduct of their business, at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the manufacture, sale and distribution of phonograph records.

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

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

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

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication, represent to

their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

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

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

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

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

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

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

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

Mr. Arthur Wolter, Jr., for the Commission.
Brower Brill & Gangel, New York, N.Y., for the respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Commission counsel has filed a motion asking that the complaint be dismissed without prejudice. In substance, the ground assigned for the motion is that since the issuance of the complaint specific statutes have been enacted by Congress which afford adequate protection to the public against the practices challenged by the complaint, and that therefore the expenditure of further time, effort and public funds in the present proceeding would be unwarranted.

The motion is not opposed by respondents.

In the circumstances, it is concluded that the motion is well taken and should be granted.

ORDER

It is 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.

IN THE MATTER OF

RADLEY FURS, INC., ET AL.

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

Docket 8369. Complaint, Apr. 20, 1961—Decision, Aug. 8, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by labeling and invoicing fur products falsely to show that artificially colored fur was natural; by failing in other respects to comply with labeling and invoicing requirements; and by furnishing false guaranties that certain of their fur products were not misbranded, falsely invoiced, or falsely advertised.

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 Radley Furs, Inc., a corporation, and Herman Rifkin and Benjamin Zigman, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Radley Furs, 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 333 Seventh Avenue, New York, New York.

Respondents Herman Rifkin and Benjamin Zigman are officers of the said corporate respondent and control, direct and formulate the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the said corporate respondent.

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

PAR. 3. Certain of said fur products were misbranded or otherwise falsely or deceptively labeled in that said fur products were labeled to show that the fur contained therein was natural when in fact such fur was bleached, dyed or otherwise artificially colored in violation of Section 4(1) of the Fur Products Labeling Act.

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

PAR. 5. Certain of said products were falsely and deceptively

invoiced in that they were not invoiced as required under the provisions of Section 5(b)(1) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural when in fact such fur was bleached, dyed or otherwise artificially colored in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 7. The respondents furnished false guarantees that certain of their fur products were not misbranded, falsely invoiced or falsely advertised when respondents in furnishing such guarantees had reason to believe that fur products so falsely guaranteed would be introduced, sold, transported or distributed in commerce in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Mr. Harry E. Middleton, Jr., supporting the complaint.
Mr. Joseph Schindler, New York, N.Y., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 20, 1961, charging them with having violated the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

On June 20, 1961, there was submitted to the hearing examiner an agreement between respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

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

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

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

1. Respondent Radley Furs, Inc., is a New York corporation with its office and principal place of business located at 333 Seventh Avenue, New York, New York.

Individual respondents Herman Rifkin and Benjamin Zigman are officers of the said corporate respondent and control, direct and formulate the acts, practices and policies of the said corporate respondent. Their office and principal place of business 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 Radley Furs, Inc., a corporation, and its officers, and Herman Rifkin and Benjamin Zigman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of fur products or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

1. Misbranding fur products by:

A. Representing directly or by implication on labels that fur or fur products are natural when such is not the fact.

B. 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.

2. Falsely or deceptively invoicing fur products by:

A. Representing directly or by implication on invoices that furs or fur products are natural when such is not the fact.

B. 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.

3. Furnishing a false guarantee that any fur or fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur or fur product may be introduced, sold, transported or distributed in commerce.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of August 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

GENERAL SPRAY SERVICE, INC., ET AL.

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

Docket 7967. Complaint, June 23, 1960—Decision, Aug. 9, 1961

Consent order requiring a Katonah, N.Y., firm engaged in selling and leasing lawn spray equipment and supplies, to cease representing falsely through its sales representatives and advertisements in newspapers, magazines, etc., that persons purchasing or leasing its said products would earn $300 weekly, and that it would buy back equipment from the purchaser at the price he paid.

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 General Spray Service, Inc., a corporation, and Francis H. Hoge, Jr., individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appear-

ing 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. General Spray Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 156 Katonah Avenue in the City of Katonah, State of New York.

Respondent Francis H. Hoge, Jr. is an officer and sole stockholder of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, offering for lease and leasing of lawn spray equipment and supplies.

PAR. 3. In the course and conduct of their business, respondents now cause, and since 1956 have caused, their said products, when sold and leased, to be shipped from various states of the United States to purchasers thereof located in other states of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of said business and for the purpose of inducing the purchase or lease of said products, respondents have made various statements concerning their said products and business methods through their sales representatives and through advertisements inserted in newspapers, circulars and other advertising literature circulated among the purchasing public. Typical of such advertisements, but not all inclusive, are as follows:

GET INTO THIS FABULOUS NEW BUSINESS

YOU MUST EARN $300 WEEKLY OR WE BUY BACK THIS EQUIPMENT

PROFITS GUARANTEED

GSS only nation-wide lawn and garden spray service GUARANTEES you'll be satisfied with this business and your profits from it, or we buy back this equipment.

PAR. 5. Through the use of the statements set forth in Paragraph Four, and others similar thereto but not specifically set out therein, respondents have represented and do now represent, directly or by implication, that:

1. Persons purchasing or leasing respondents' equipment and supplies will earn $300 weekly.

2. Respondents will buy back equipment sold to purchasers thereof at the price paid for the equipment by the purchaser.

PAR. 6. The foregoing representations and implications are grossly exaggerated, false, and misleading. In truth and in fact:

1. The vast majority of purchasers of respondents' products do not earn $300 weekly, but substantially less than said amount.

2. Respondents do not buy back equipment sold to purchasers thereof at the price paid for the equipment by the purchaser.

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 lawn spray equipment and supplies 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 and lease of substantial quantities of respondents' lawn spray equipment and supplies 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. Robert G. Cutler for the Commission.

Donovan, Leisure, Newton & Irvine, by *Mr. Robert M. Loeffler*, New York, N.Y., for the respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint in this proceeding, issued June 23, 1960, charges the above-named respondents with violation of the provisions of the Federal Trade Commission Act.

On June 14, 1961, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

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

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

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

1. Respondent General Spray Service, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 156 Katonah Avenue, in the City of Katonah, State of New York.

Respondent Francis H. Hoge, Jr., an individual, is an officer and sole stockholder of General Spray Service, Inc. His address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents General Spray Service, Inc., a corporation, and its officers, and Francis H. Hoge, Jr., individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, offering for lease, or leasing of lawn spray equipment or supplies, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly and by implication that:

1. Purchasers or lessees of respondents' lawn spray equipment and supplies will earn or realize any amount in excess of that which is in fact customarily and regularly earned by purchasers or lessees of respondents' equipment and/or products under like circumstances.

2. Respondents will buy back the lawn spray equipment and supplies sold to purchasers thereof at the price paid by said purchasers; or misrepresenting in any manner the amount that a purchaser will receive for the purchased equipment and/or products, whether bought back by respondents or otherwise disposed of by the purchaser.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of August 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

LEON A. HEISSERER DOING BUSINESS AS NORTH CENTRAL TRAINING SERVICE

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

Docket 8296. Complaint, Mar. 2, 1961—Decision, Aug. 10, 1961

Consent order requiring an individual in Council Bluffs, Iowa, to cease using false job guarantee claims and other misrepresentations on post cards and circulars distributed to prospective purchasers of his correspondence course on preparation for civil service employment, as in the order below specified.

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 Leon A. Heisserer, individually and doing business as North Central Training Service, 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 Leon A. Heisserer is an individual trading and doing business as North Central Training Service, with his principal place of business located at 707 Bennett Building, Council Bluffs, Iowa.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the sale and distribution of a course of study and instruction purporting to prepare the purchasers thereof for examinations for various Civil Service positions in the United States Government and in other lesser political subdivisions, which said course is pursued by correspondence through the United States mails. Respondent, in the course and conduct of said business, causes said course of study and instruction to be sent from his place of business in the State of Iowa to, into and through various other States of the United States to purchasers thereof located in States other than the State of Iowa. There has been at all times mentioned herein a course of trade in said course of study and instruction, as sold and distributed by respondent, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In connection with the sale of said course of study and instruction, respondent has made, published and caused to be published certain advertising material, including postal cards, circulars and folders, distributed to prospective students in States other than the State of Iowa, in and by which many representations have been made, and are made, in regard to said course of study and matters connected therewith. Typical, but not all inclusive, of representations made in such advertising are the following:

GET A GOVERNMENT JOB!
MANY THOUSANDS OF OPPORTUNITIES
Federal — State — Municipal
GOVERNMENT POSITIONS
MEN and WOMEN AGES 18-50
THIS IS YOUR OPPORTUNITY!
TO PREPARE FOR CIVIL SERVICE EXAMINATIONS

Civil Service positions offer Greater Security, High Salaries, Excellent Chances for Advancement and Pay Raises, Paid Sick Leave. Long Vacations with Pay, Liberal Pensions. Thousands of men and women wanted. Prepare now for Civil Service positions. Instructions now being given if you qualify. Many Govt. jobs expected to open soon.

Rural Mail Carriers
Postmaster 2, 3, 4 Cl.
Postal Clerk-Carriers
Transportation Clerks
Border Patrol (Vets)
Customs Service (Vets)
U.S. Clerks
File Clerk-Typists
Stenographers
Office Workers
Asst. Meat Inspectors
Also, Many Others

MAIL ATTACHED CARD TODAY!
FOR FULL INFORMATION
AND LIST OF POSITIONS

GRAMMAR SCHOOL SUFFICIENT
FOR MANY JOBS

APPROXIMATE AGE LIMITS 18–62
EDUCATIONAL REQUIREMENTS: GRAMMAR SCHOOL, HIGH SCHOOL, OR IN NUMEROUS CASES, NONE

POSTAL POSITIONS
- POST OFFICE CLERK
- RURAL MAIL CARRIER
- POSTMASTER
  - 2ND CLASS
  - 3RD CLASS
  - 4TH CLASS

POSTAL TRANSPORTATION
- CLERK
  - (Railway, Air, Boat and Highway)

CITY MAIL CARRIER

Law Enforcement Positions
- Inspector of Customs
- Correctional
- Customs Guard
- Customs Patrol Inspector
- Border Patrolman
- Junior Custodial Officer
- Virus and Serum
- Livestock Inspector
- Meat Inspector
- Federal Guard
- Police Officer
- Guard Patrol

Clerical Positions
- Stenographer-Typist
- Typist, Junior
- File Clerk
- Clerk
- Messenger
- Business Machine Operator
- Billing Machine Operator
- Clerk-Stenographer

CUSTODIAL POSITIONS
- CUSTODIAN
- SUPPLY CLERK
- STOREKEEPER OR WAREHOUSEMAN

FINANCIAL & ACCOUNTING POSITIONS
- ACCOUNTING & AUDITING ASST.
- JUNIOR ACCOUNTING
- STATISTICAL CLERK
- JUNIOR PROFESSIONAL ASST.
- INTERNAL REVENUE AGENT
- ZONE DEPUTY COLLECTOR

Other Positions
- Social Worker
- Telephone Operator
- Telephone Supervisor
- Engineering Aide
- Forest and Field Clerk
- Communications Operator
- Soil Conservation Asst.
- Library Assistant
- Student Nurse
- Hospital Attendant
- Junior Observer-Meteorology
- Elevator Operator
- Employment Interviewer
- Fish Culturist
- Photographer
- Printer Proof Reader
- Printer Assistant
- Meteorologist Aide
- Nursing Assistant
- Photographic Aide

NOTE: For more than thirty years the gospel of HOME STUDY EDUCATION has been preached. Thousands who listened to the advice and ACTED are now in good jobs with regular monthly salaries.

PAR. 4. By means of the statements appearing in the aforesaid postal cards, circulars and folders, hereinabove set forth, and others similar thereto, respondent represents, directly or by implication, that:

1. Many thousands of Government positions are open and that said positions, including those listed, will be filled within a short time.

2. Said listed positions are available to all applicants having a grammar or high school education, or in some instances no educational qualifications are required.

3. Completion of respondent's course prepares the student for all of the positions listed in respondent's advertising, including the positions of Internal Revenue Agent, livestock inspector, meat inspector, fish culturist, photographer, and other positions of a technical or semi-technical nature.

PAR. 5. The aforesaid statements are false, misleading and deceptive. In truth and in fact:

1. There are no vacancies in nor examinations scheduled for many of the positions listed by respondent.

2. Many of the said listed positions are not available to all applicants having a grammar or high school education as such positions require physical and educational qualifications or experience.

3. Completion of respondent's said course does not prepare the student for many of the listed positions, and in many of the listed positions either technical training or experience is required to qualify for such positions.

PAR. 6. Respondent Leon A. Heisserer, trading as North Central Training Service, and salesmen and representatives employed by him, in the course of their solicitations for said course of study, have repeated the statements set out in Paragraph Three and have made additional oral statements to prospective purchasers of said course, of which the following are typical:

1. The completion of respondent's course of study makes persons eligible for appointments to or assures them of or guarantees them United States Civil Service positions.

2. Respondent or his sales agents or representatives are employees of the United States Civil Service Commission or the United States Government, or have some official connection therewith.

3. Many persons who have purchased and completed respondent's course have received appointments to or have been employed by government agencies.

PAR. 7. All of the said oral statements were, and are, false, misleading and deceptive. In truth and in fact:

1. Completion of respondent's course does not make persons eligible for appointments to or assure them of or guarantee United States Civil Service positions.

2. Respondent, his sales agents or representatives are not employees of and have no connection with any governmental agency.

3. No large number of persons have received government appointments or have been employed by any governmental agencies as a result of or through the completion of respondent's course of study.

PAR. 8. Respondent is now, and at all times mentioned herein has been, in substantial competition with other individuals, corporations, partnerships and firms engaged in the sale, in commerce, of courses of instruction by correspondence.

PAR. 9. The use by respondent of the aforesaid statements and representations has had, and now has, the tendency and capacity to confuse, mislead and deceive members of the public into the erroneous and mistaken belief that such statements are true and to induce them to purchase respondent's course of study in said commerce on account thereof. As a direct result of the practices of respondent, as aforesaid, substantial trade in commerce is, and has been, diverted to respondent from his competitors and injury has been, and is being, done to competition in commerce between and among the various States of the United States.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of competitors of respondent and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. William A. Somers for the Commission.

Ginsburg, Rosenberg & Ginsburg, by *Mr. Herman Ginsburg*, for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

In a complaint issued March 2, 1961, the respondent, Leon A. Heisserer, an individual doing business under the firm name and style of North Central Training Service, located at 707 Bennett Building, Council Bluffs, Iowa, was charged with making misleading representations in connection with the sale and distribution in commerce of a correspondence course of study and instruction.

The respondent, by and with the advice of his attorneys, and counsel supporting the complaint have entered into an agreement

containing a consent order to cease and desist, thus disposing of all the issues involved in this proceeding.

In the agreement it was expressly provided that the signing thereof was for settlement purposes only and did not constitute an admission by the respondent that he had violated the law as in the complaint alleged.

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

By the agreement, the respondent expressly waived any further procedural steps before the Hearing Examiner and the Commission; the making of findings of fact or conclusions of law; and all rights he might have to challenge or contest the validity of the order to cease and desist to be entered in accordance therewith.

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

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

The Hearing Examiner has considered the agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and shall be filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice.

Now, in consonance with the terms thereof, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That Leon A. Heisserer, individually and trading and doing business under the name of North Central Training Service, or under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission

Act, of courses of study and instruction, do forthwith cease and desist from representing, directly or indirectly, that:

1. There are vacancies for any specified United States Civil Service positions when such vacancies do not exist, or that said vacancies will be filled within a short time.

2. Positions in the United States Civil Service, which are restricted to any group or otherwise restricted or require certain qualifications, are open unless such restrictions are clearly set forth.

3. Completion of respondent's course prepares a person for all of the positions listed in respondent's advertising.

4. Completion of respondent's course of study makes persons eligible for appointments to or assures them of or guarantees them United States Civil Service positions.

5. Respondent, his school, his agents or representatives, or any one of them, have any connection with the United States Civil Service Commission, any agency thereof, or any other agency of the United States Government.

6. Many persons who have completed said course of instruction have received appointments to or been employed by governmental agencies as a result of such course of instruction.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the Hearing Examiner shall, on the 10th day of August 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

TYLER PIPE & FOUNDRY COMPANY

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

Docket 8123. Complaint, Sept. 26, 1960—Decision, Aug. 11, 1961

Consent order requiring a manufacturer of plumbing specialties and soil pipe at Tyler, Tex., with annual sales in excess of $18,000,000, to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act, by such

practices as making periodic payments of $1,000 to the American Radiator and Standard Sanitary Corporation for promoting the sale of its products on television programs in the Dallas, Tex., trading area while not making payments available on proportionally equal terms to all the latter's competitors.

COMPLAINT

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

PARAGRAPH 1. Respondent Tyler Pipe & Foundry Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at Tyler, Texas.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of plumbing specialties and soil pipe.

Respondent sells its products of like grade and quality to a large number of customers located throughout the United States for use or resale therein. Respondent's sales of its products are substantial, exceeding $18,000,000 annually.

PAR. 3. Respondent, in the course and conduct of its business, as aforesaid, has caused and now causes its said products to be shipped and transported from the state or states of location of its various manufacturing plants, warehouses and places of business, to purchasers thereof located in states other than the state wherein said shipment or transaction originated. There has been at all times mentioned herein a continuous course of trade in commerce, as "commerce" is defined in the Clayton Act as amended.

PAR. 4. In the course and conduct of its business in commerce since January 1, 1957, respondent has paid or contracted for the payment of something of value to or for the benefit of certain 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 have not been offered or otherwise 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 1957 and 1958 respondent contracted to pay, and periodically did pay, sums amounting to $1,000.00 to the American Radiator and Standard Sanitary Corporation for services

and facilities furnished it by American Radiator and Standard Sanitary Corporation in promoting the sale of respondent's products through television programs sponsored by American Radiator and Standard Sanitary Corporation in the trading area of Dallas, Texas. Such payments were not offered or otherwise made available on proportionally equal terms to all other customers competing with American Radiator and Standard Sanitary Corporation 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 herein, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Lynn C. Paulson supporting the complaint.

Power, McDonald and Mell by *Mr. R. P. Power* of Tyler, Tex., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that the above-named respondent in the course and conduct of its business in commerce has violated Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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

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

only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

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

JURISDICTIONAL FINDINGS

1. Respondent Tyler Pipe & Foundry Company, is a corporation existing and doing business under and by virtue of the laws of the State of Texas, with its office and place of business located at Tyler, Texas.

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

ORDER

It is ordered, That respondent, Tyler Pipe & Foundry Company, a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of plumbing specialties, pipe and related products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 11th day of August 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

BIGTOP RECORDS, INC., ET AL.

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

Docket 7797. Complaint, Feb. 25, 1960—Decision, Aug. 12, 1961

Order—following enactment of specific statutes which afford adequate protection to the public against the challenged practices—dismissing complaint charging New York City manufacturers of phonograph records with giving illegal "payola" to radio and television disc jockeys.

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 Bigtop Records, Inc., a corporation, Bigtop Record Distributors, Inc., a corporation, and Julian J. Aberbach, Joachim Jean Aberbach, and Freddy Bienstock, individually, and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Bigtop Records, Inc., and Bigtop Record Distributors, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 1619 Broadway, New York, New York.

Respondents Julian J. Aberbach, Joachim Jean Aberbach, and Freddy Bienstock are president, vice-president and vice-president, respectively, of the corporate respondents, and formulate, direct and control the acts and practices of said corporate respondents. The addresses of the individual respondents are the same as that of the corporate respondents.

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

In the course and conduct of their business, respondents now cause, and for some time last past have caused, the records they manufacture, sell and distribute, when sold, to be shipped from their

place of business in the State of New York, to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, at all times mentioned herein, the respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the manufacture, sale and distribution of phonograph records.

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

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

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

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

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

The respondents alone, or with certain unnamed record distributors, negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influence

the selection of the records "exposed" by the disk jockeys on such programs, or to the radio station.

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

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

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

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

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

Mr. Arthur Wolter, Jr., for the Commission.
Tompkins & Lauren, New York, N.Y., for the respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Commission counsel has filed a motion asking that the complaint be dismissed without prejudice. In substance, the ground assigned

for the motion is that since the issuance of the complaint specific statutes have been enacted by Congress which afford adequate protection to the public against the practices challenged by the complaint, and that therefore the expenditure of further time, effort and public funds in the present proceeding would be unwarranted.

The motion is not opposed by respondents.

In the circumstances, it is concluded that the motion is well taken and should be granted.

ORDER

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

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 12th day of August 1961, become the decision of the Commission.

IN THE MATTER OF

FUR FLYERS, INC., ET AL.

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

Docket 8300. Complaint, Mar. 3, 1961—Decision, Aug. 17, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing 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 Fur Flyers, Inc., a corporation, and Ida L. York and Carolyn Sherwin, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in

the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PAR. 1. Respondent Fur Flyers, 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 226 West 29th Street, New York, New York.

Respondent Ida L. York and Carolyn Sherwin are officers of the corporate respondent and control, direct and formulate its acts, practices and policies. Their address is the same as that of the said corporate respondent.

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

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

PAR. 4. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

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

Mr. Ralph A. Matalon, *Matalon & Schachter*, New York, N.Y., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

In a complaint issued March 3, 1961, the respondents, Fur Flyers, Inc., a corporation located at 226 West 29th Street, New York,

New York, and Ida L. York and Carolyn Sherwin, individually and as officers of said corporation, and located at the same address as the said corporate respondent, were charged with violations of the Federal Trade Commission Act, and the Fur Products Labeling Act and the rules and regulations promulgated thereunder, such alleged violations including both failure to comply with requirements for the labeling of fur products and deceptive invoicing of fur products, all introduced by them into commerce.

After issuance of the complaint, the respondents (with the advice and agreement of their attorney) and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist, thus disposing of all the issues involved in this proceeding.

In the said agreement it was expressly provided that the signing thereof was for settlement purposes only and did not constitute an admission by the respondents that they had violated the law as in the complaint alleged.

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

By said agreement, the respondents expressely waived any further procedural steps before the Hearing Examiner and the Commissioner; the making of findings of fact or conclusions of law; and all rights they may have to challenge or contest the validity of the order to cease and desist to be entered in accordance therewith.

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

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

The Hearing Examiner has considered the agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and shall be filed upon becoming part of

the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice.

Now, in consonance with the terms thereof, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That Fur Flyers, Inc., a corporation, and its officers, and Ida L. York and Carolyn Sherwin, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or the manufacture for introduction, into commerce, or the sale, advertising or offering for sale, transportation or distribution, in commerce, of fur products, or in connection with the manufacture for sale, 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 failing to affix labels to fur products showing in words and figures, plainly legible, all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

B. Falsely or deceptively invoicing fur products by 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the Hearing Examiner shall, on the 17th day of August 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.

Complaint

IN THE MATTER OF

LIVIGEN LABORATORY SALES CORP. ET AL.

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

Docket 7469. Complaint, Apr. 8, 1959—Decision, Aug. 22, 1961

Consent order requiring two associated corporations and their common officer, all at the same address in New York City, to cease representing falsely in advertisements in newspapers, magazines, etc., that the cosmetic preparation "Livigen", which they distributed, was a skin food which, when used as directed, would rejuvenate the skin of the user.

As to respondent Max Laserow, consent order issued September 22, 1961.

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 Livigen Laboratory Sales Corp., a corporation, and Biotex, Ltd., a corporation, and David L. Ratke, individually and as an officer of said corporations, and Max Laserow, individually and as an officer of Livigen Laboratory Sales Corp., 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 Livigen Laboratory Sales 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 business located at 42 West 38th Street, New York, New York.

Respondent Biotex, Ltd., 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 42 West 38th Street, New York, New York.

Respondent David L. Ratke is an officer of both corporate respondents and he participates in the formulation, direction and control of the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

Respondent Max Laserow is an officer of corporate respondent Livigen Laboratory Sales Corp., and he participates in the formulation, direction and control of the acts and practices hereinafter set

forth. He resides in Malmo, Sweden and has a mailing address at: c/o Malis, Malis & Malis, 6 Penn Plaza, Philadelphia, Pa.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the sale and distribution of a preparation containing ingredients which come within the classification of drug and cosmetic as the term "drug" and "cosmetic" are defined in the Federal Trade Commission Act.

The designation used by respondents for said preparation, the contents thereof and directions for use are as follows:

Designation: Livigen.

Chemical analysis shows preparation to be essentially: A white perfumed water-in-oil cream containing hydrocarbons, glycerides, lanolin and/or sterols and borax.

Directions: Dr. Laserow's 30-Day Plan For Beauty Follow closely this simple, 4-step plan before retiring:

1. Every night, wash your face carefully with warm water. Then dab and pat dry . . . do not rub!

2. Next apply LIVIGEN to your face and softly work your fingers together to reactivate it.

3. Softly, lightly, apply LIVIGEN to your skin . . . to wrinkles, lines; to the sagging flesh at the chin and neck. Then observe how it starts to be absorbed into your skin . . . how it begins to go to work for you!

4. Then relax, sleep, dream of beauty because LIVIGEN is working for you . . . working for natural, youthful-looking skin beauty.

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

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

PAR. 5. Among and typical of the statements contained in said advertisements disseminated as hereinabove set forth are the following:

LIVIGEN is a super-powerful skin food concentrate that gives natural nourishment to undernourished skin tissues. As the skin absorbs LIVIGEN, it provides new nourishment and helps provide the normal oils and fluids the skin needs for natural beauty. With this new nourishment, the skin is once again able to work for natural, youthful-looking beauty. . . .

Now You Can Feed Youthful-looking Beauty Back Into Your Skin.

. . . this new skin food formula renourishes and replenishes skin tissues and glands.

PAR. 6. Through the use of said statements, and others similar thereto not specifically set out herein, respondents have represented, and are now representing, directly and by implication, that their said preparation is a skin food which, when used as directed, will rejuvenate the skin of the user thereof.

PAR. 7. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact respondents' said preparation does not constitute a skin food; nor will it rejuvenate the skin of the user thereof.

PAR. 8. The dissemination by respondents of the false advertisements, as aforesaid, constituted, and now constitute, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Edward F. Downs supporting the complaint.

Bass & Friend, New York, N.Y., by *Mr. Milton A. Bass* and *Mr. Edwin Kaplan* for respondents Livigen Laboratory Sales Corp., Biotex, Ltd., and David L. Ratke.

INITIAL DECISION AS TO ALL RESPONDENTS EXCEPT MAX LASEROW* BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 8, 1959, charging them with misrepresenting their "Livigen" skin cream in violation of the Federal Trade Commission Act.

On July 3, 1961, there was submitted to the hearing examiner an agreement between certain respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the terms of said agreement, Livigen Laboratory Sales Corp., a corporation, Biotex, Ltd., a corporation, and David L. Ratke,

* Consent order as to Max Laserow issued Sept. 22, 1961.

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

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

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

1. Respondent Livigen Laboratory Sales Corp., is a New York corporation with its office and principal place of business located at 42 West 38th Street, New York, New York.

Respondent Biotex, Ltd., is a New York corporation with its office and principal place of business located at 42 West 38th Street, New York, New York.

Respondent David L. Ratke is an individual and an officer of both corporate respondents, and he participates in formulating, directing and controlling the policies, acts and practices of both corporate respondents, and his address is the same as that of the corporate respondents.

2. The agreement does not dispose of this proceeding as to Max Laserow, who is subject to further proceedings.

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

ORDER

It is ordered, That the respondents Livigen Laboratory Sales Corp., a corporation, and its officers, Biotex, Ltd., a corporation, and its officers and respondent David L. Ratke, individually and as an

officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation designated livigen, or any other preparation of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, do forthwith cease and desist from:

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

(a) Is a skin food;

(b) Will rejuvenate the skin of the user thereof.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed July 10, 1961, accepting an agreement containing a consent order theretofore executed by certain of the respondents herein and by counsel in support of the complaint; and

It appearing that through inadvertence the date "April 8, 1961" is given in the initial decision as the date on which complaint issued; and

The Commission being of the opinion that this error should be corrected:

It is ordered, That the initial decision be, and it hereby is, amended by striking the date "April 8, 1961" as it appears in the second line of the first paragraph of said decision and substituting therefor the date "April 8, 1959".

It is further ordered, That the initial decision, as so amended, shall, on the 22d day of August 1961, become the decision of the Commission.

It is further ordered, That respondents Livigen Laboratory Sales Corp., a corporation, Biotex, Ltd., a corporation, and David L. Ratke, individually and as an officer of said corporations, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

THE STANDARD MATTRESS COMPANY ET AL.

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

Docket 8135. Complaint, Oct. 7, 1960—Decision, Aug. 22, 1961

Consent order requiring Hartford, Conn., distributors of mattresses to retailers for resale, to cease setting forth excessive amounts as usual retail prices on attached labels and in advertising material; using such terms as "10 year . . .", "15 year . . .", and "20 year registered guarantee" in advertising certain mattresses when the guarantees furnished were limited and conditional; stating falsely in advertising that a national survey had determined that "American Dream" mattress should sell for $69.98; and representing falsely, by use of such terms as "Orthopedic Construction" and "Medic Rest" and otherwise, that their stock mattresses would correct bodily deformities and disorders; and to disclose clearly that use of their mattresses would relieve backache only when caused by sleeping on a soft mattress.

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 Standard Mattress Company, a corporation, and N. Aaron Naboicheck, Louis H. Naboicheck and Max H. Kaminsky, 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 The Standard Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut with its office and principal place of business located at 55 North Street in the City of Hartford, State of Connecticut.

Respondents N. Aaron Naboicheck, Louis H. Naboicheck and Max H. Kaminsky 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 mattresses to retailers for resale to the public.

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

PAR. 4. Respondents, for the purpose of inducing the purchase of certain of their mattresses, have engaged in the practice of using fictitious prices in connection therewith, in representing that such products are guaranteed, have therapeutic properties, and have been chosen by consumers in a survey. Such representations have been made by respondents on the labels attached to said mattresses, and in advertising mats, window banners and other advertising materials furnished retail dealers. Among and typical of said practices are the following:

1. Setting out amounts on labels attached to certain of their mattresses, and in advertising material, thereby representing that said amounts were the usual and customary retail prices of certain of its mattresses. In truth and in fact, said amounts were fictitious and in excess of the prices at which such mattresses were usually and customarily sold at retail.

2. Using such terms as "10 year registered guarantee", "15 year registered guarantee" and "20 year registered guarantee" in the advertising of certain of their mattresses thereby representing that said mattresses were fully and unconditionally guaranteed for ten, fifteen and twenty years, respectively. In truth and in fact, the guarantees furnished in connection with said mattresses were limited and conditional in several respects, which limitations and conditions were not set out in the advertising.

3. Stating in newspaper advertising a national survey had determined that their "American Dream" mattress should sell for $69.98. In truth and in fact, said mattress was not the subject of a survey and the price at which it should sell was not determined by a survey.

4. Using the statements, "Orthopedic Construction" and "Medic Rest" in the advertising of certain of their mattresses, thereby representing through the use of the words, "orthopedic" and "medic" that said mattresses are specially designed to, and that their use will, correct deformities and disorders of the human body. In truth and in fact, said mattresses are not so designed but are stock mattresses and their indiscriminate use cannot be relied upon to,

and will not, in fact, correct any deformity or disorder of the body.

5. Respondents use the following statement in newspaper advertisements regarding their "Sacro-Support De Luxe" mattress:

40 NIGHT TRIAL OFFER!
to prove backache* can disappear.
*Due To Sleeping On Too Soft A Mattress. (in small print)

The marginal note marked with an asterisk is so far removed from the statement it purports to explain and is so inconspicuous that it does not constitute adequate notice that respondents are referring therein only to backache caused by sleeping on a soft mattress.

PAR. 5. 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 mattresses of the same general kind and nature as those sold by respondents.

PAR. 6. The use by the 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. 7. 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. Charles W. O'Connell supporting complaint.

Mr. Irving S. Ribicoff, *Ribicoff and Kotkin*, Hartford, Conn., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission duly issued its complaint in this matter against the respondents listed above on October 7, 1960. The complaint charged respondents with violating the Federal Trade Commission Act through the use of fictitious pricing and the issu-

ance of false, misleading and deceptive statements, representations, and practices in the sale of mattresses.

On May 31, 1961, counsel submitted to the undersigned hearing examiner an agreement for the entry of an order on consent without further notice dated May 24, 1961, and executed by respondents, their counsel and counsel supporting the complaint. Said agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation.

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

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

B. Provisions that:

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

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

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

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

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

C. Waivers of:

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

The agreement further provides that subparagraph 4 of Paragraph Four of the Complaint herein insofar as it relates to the word "Sacro-Support" may be dismissed without prejudice on the grounds that the evidence is insufficient to substantiate the allegations set out therein with respect thereto.

Having considered said agreement, including the proposed order, and being of the opinion that it provides 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 The Standard Mattress Company is a corporation existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 55 North Street, in the City of Hartford, State of Connecticut.

2. Respondents N. Aaron Naboicheck, Louis H. Naboicheck and Max H. Kaminsky are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered. That respondents, The Standard Mattress Company, a corporation, and its officers, and N. Aaron Naboicheck, Louis H. Naboicheck and Max H. Kaminsky, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of mattresses or 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, in any manner that certain amounts are the usual and customary retail prices of their mattresses or other merchandise when such amounts are in excess of the prices at which their mattresses or other merchandise are usually and customarily sold at retail in the trade area where such representation is made.

2. Representing, directly or by implication, that their mattresses or other merchandise are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform are clearly set forth.

3. Representing, directly or by implication, that their mattresses or other merchandise have been the subject of a consumer survey or

that the retail price of such mattresses or other merchandise, or any other fact, has thereby been determined, unless such is the fact.

4. Using the word "orthopedic", or "medic" or any other term of like import as a designation or as descriptive of their stock mattresses.

5. Representing, directly or by implication, that their stock mattresses are specially designed to, and that their indiscriminate use will correct deformities and disorders of the human body.

6. Representing, directly or by implication, that use of respondents' mattresses prevents backache, unless it is clearly disclosed in immediate conjunction therewith, that such relief will be afforded only to users whose backaches result from using a soft mattress.

It is further ordered, That subparagraph 4 of Paragraph Four of the complaint, insofar as it relates to the word "Sacro-Support", be, and it hereby is, dismissed without prejudice.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22d day of August 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

ATLANTIC JET TRAINING, INC., ET AL.

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

Docket 8205. Complaint, Dec. 6, 1960—Decision, Aug. 22, 1961

Consent order requiring sellers in Zephyrills, Fla., to cease misleading prospective purchasers of their home study courses in jet engine mechanics as to opportunities and earnings prospects in the aircraft industry, and using the term "Field Registrar" for their salesmen and other misleading terms as descriptive of their business organization; and requiring them to disclose affirmatively that persons completing their course did not qualify for certification by the Federal Aviation Agency, and that such certification was required in the occupation concerned.

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 Atlantic Jet Training, Inc., a corporation, and Marvin E. Champeau and Jane Kite-Powell, individually and as officers and directors of said corporation, and Ralph G. Champeau, individually and as an officer of said corporation, and Annie E. Champeau, individually and as a director 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. Atlantic Jet Training, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at Municipal Airport, Zephyrills, Florida.

Individual respondents Marvin E. Champeau, Ralph G. Champeau and Jane Kite-Powell are officers of the said corporate respondent. Individual respondent Marvin E. Champeau and Jane Kite-Powell, together with Annie E. Champeau, are also directors of said corporate respondent. Their address is the same as that of the corporate respondent.

These individual respondents formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of advertising, offering for sale, selling and distributing courses on jet engine mechanics.

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

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their said course on jet engine mechanics, respondents have made, published, and caused to be published, a variety of statements concerning said courses in newspapers and other publications, in brochures displayed to prospective

purchasers by respondents or their salesmen and by other sales literature sent by means of the United States mails to prospective purchasers by the respondents, as well as oral representations made by respondents' salesmen, taken from sales talk furnished to them by respondents.

Among and typical of such statements and representations, and others of similar import and meaning but not specifically set forth herein, are the following:

JET AIRLINE NEEDS MEN

EMPLOYMENT POSSIBILITIES ABOUND
CAREER POSITIONS WITH GOOD PAY
UNLIMITED OPPORTUNITY FOR ADVANCEMENT

MEN NEEDED FOR JET MECHANIC POSITIONS

OUR RESIDENT TRAINING IS IMPORTANT FOR JOB PLACEMENT TRAINING DOES NOT INTERFERE WITH PRESENT JOB. ATLANTIC JET TRAINING WILL FINANCE YOUR TRAINING IF YOU CAN QUALIFY FOR REGISTRATION.

BECOME A JET
ENGINE SPECIALIST

DON'T ENVY
THE JET ENGINE MECHANIC
BE ONE!

MEN
TO TRAIN FOR JET ENGINE MECHANICS FOR AIRLINE AND GAS TURBINE MECHANICS, FOR TRUCKS, CARS AND BOATS.

HIGH STANDARDS ESTABLISHED BY
AJT GRADUATES.

MEN URGENTLY NEEDED

To train for multi-million dollar Jet Aircraft Industry. Expansion offers big pay—job security—advancement, and free employment service to men selected.

I am not a salesman—I am just the school registrar or personnel man trying to pick men for this industry whom we believe we can train and whom we would be proud to recommend to industry once they are trained.

PAR. 5. Through the use of the aforesaid statements and misrepresentations, respondents represented, directly or by implication:

(a) That if the prospect is accepted and successfully completes such course he will become a trained jet engine mechanic or technician qualified to repair, maintain and overhaul jet engines.

(b) That those who successfully complete such course are assured employment as jet mechanics or technicians, in the repair, maintenance, and overhauling of jet engines.

(c) That their "field registrars" are not salesmen but are primarily concerned with determining the qualification of prospective purchasers of such course.

(d) That prospects must have certain qualifications before the course will be sold to them.

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

(a) A person successfully completing such course cannot be considered to be a trained jet mechanic or technician nor will he be qualified to repair, maintain, or overhaul jet engines.

(b) Few, if any, of those who have purchased respondents' said course have completed it. Even were they to successfully complete the said course, there is little if any prospect of their employment as jet engine mechanics or technicians by industry.

(c) Respondents' representatives, although referred to as "field registrars", are in reality only salesmen who depend upon commissions earned from selling such course as a means of livelihood. Their sales presentation is primarily concerned with effectuating sales. They give little or no consideration to determining the qualifications of prospective purchasers of said course.

(d) No particular qualifications are required of prospects as respondents accept virtually all students who are willing to purchase said course and make the down-payment therefor.

PAR. 7. Respondents use the designation "Field Registrars" as descriptive of their salesmen and the designations "Director of Training", "Board of Admissions", "Placement Bureau", "Consultation and Employment Services", and "Student Counselors" as descriptive of their business organization, in various advertising media, thereby representing, contrary to the facts, that their salesmen perform duties similar to those of "Registrars" of colleges and Universities with which such word is ordinarily associated and that their business is organized into departments each staffed with employees who carry out the duties involved in the several departments.

The use of such designations is designed to, and has, the tendency and capacity to mislead prospective purchasers as to the stature of respondents' business.

PAR. 8. By means of the statements set forth in Paragraph Four above, and through others of similar import and meaning but not specifically set forth herein, including the oral statements of respondents' sales representatives, respondents represented, directly or by implication, that there is no bar or impediment which would operate to prevent those who successfully complete such course from

becoming mechanics and from earning the prevalent wage scales of highly skilled mechanics or technicians on jet airplane engines.

PAR. 9. Respondents, their school, and the unsupervised home study course in jet engine mechanics have not been approved by the Federal Aviation Agency. Students who successfully complete such course would not meet the prerequisites for taking an examination for certification for aircraft or power plant work on airplane engines and as a consequence, would not earn the prevailing wages earned by skilled aircraft mechanics or technicians.

Ordinarily mechanical work on jet aircraft engines is performed by skilled personnel who are capable of working on all types of power plants which includes reciprocating as well as jet engines. Much of this work, particularly above the repetitive and routine level in the repair, overhaul and maintenance of aircraft engines, can only be performed by personnel who have been examined and certified by the Federal Aviation Agency. Examination for certification by said agency will only be given upon the successful completion of a course of study including supervised practical shop and bench work, at either a duly authorized school or under an approved apprenticeship training program, in lieu of specified practical experience requirements. Certification for aircraft and power plant work is known in the trade as an "A & P license".

PAR. 10. The failure of respondents to affirmatively disclose to prospective purchasers of such course of home study for jet engine mechanics, in connection with statements and representations concerning employment and earning prospects in the aircraft industry, that such prospective purchasers cannot, on the strength of such study alone, qualify for such certification as is necessary for performing skilled work and for earning the prevalent wages of skilled jet engine mechanics or technicians, is a deceptive act and practice.

PAR. 11. 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 engaged in the sale of correspondence courses of the same general kind and nature as those sold by respondents.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, and their failure to affirmatively disclose the existing limitations as to the employment and earning prospects of their prospective purchasers, had, and now have, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and complete, and

into the purchase of substantial quantities of respondents' said correspondence course by reason of such erroneous and mistaken beliefs. 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. 13. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Michael J. Vitale supporting the complaint.

MacFarlane, Ferguson, Allison & Kelly by *Mr. J. Danforth Browne*, of Tampa, Fla., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 6, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by misrepresenting their course of instruction for training jet engine mechanics or technicians. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated June 7, 1961, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

ORDER

It is ordered, That respondents Atlantic Jet Training, Inc., a corporation, and its officers and directors, and Marvin E. Champeau and Jane Kite-Powell, individually and as officers and directors of said corporation, and Ralph G. Champeau, individually and as an officer of said corporation, and Annie E. Champeau, individually and as a director of said corporation, and respondents' representa-

tives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study or instruction, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) that a person need only complete such course to be a trained jet aircraft engine mechanic or technician or be qualified to repair, maintain or overhaul jet aircraft engines;

(b) that a person upon successful completion of such course or courses, will thereby be able to get employment as a mechanic or technician in the repair, maintenance or overhaul of jet aircraft engines;

(c) that respondents' sales representatives designated as "Field Registrars" are not salesmen or that they are primarily concerned with determining the qualifications of prospective purchasers of courses;

(d) that prospects must possess any particular qualifications before the course will be sold to them, unless such is the fact.

2. Using the term "Field Registrar" as applied to respondents' salesmen or the terms "Board of Admissions", "Placement Bureau", and "Student Counselors", as applied to their business, or any other words or terms of similar import or meaning.

3. Making any representations concerning employment or earning prospects in the jet aircraft industry, without affirmatively and conspicuously disclosing:

(a) that persons completing such course of study do not meet the prerequisites for certification by the Federal Aviation Agency;

(b) that an employee must have Federal Aviation Agency certification in order to sign off or release a product to service when it has undergone repair, maintenance, alteration or overhauling.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22d day of August 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

HOOKER CHEMICAL CORPORATION

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

Docket 8034. Complaint, July 8, 1960—Decision, Aug. 22, 1961

Consent order requiring a major chemical manufacturer—having sales for fiscal 1958 in excess of $125,000,000 and in 1957 the largest producer of phenolic molding compound, with about 43% of total sales—to divest itself absolutely, within 90 days, of all machinery and equipment, and all formulae, technical information, know-how, trade secrets, and customer lists related to the production of phenolic molding compound formulations, acquired from the third largest producer which had about 13% of the market, as a result of which acquisition at least 80% of all molding material sales were concentrated in two producers, and to comply with other requirements as in the order below specified.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated and is now violating the provisions of Section 7 of the amended Clayton Act (15 U.S.C., Section 18), hereby issues its complaint, pursuant to Section 11 of the aforesaid Act (15 U.S.C., Section 21), charging as follows:

PARAGRAPH 1. Respondent Hooker Chemical Corporation, hereinafter sometimes referred to as "Hooker", is a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at Buffalo Avenue and 47th Street, Niagara Falls, New York. For nearly fifty years subsequent to its incorporation in 1909, respondent did business under the corporate title "Hooker Electrochemical Company". On May 29, 1958, the official title of the respondent was changed to Hooker Chemical Corporation.

PAR. 2. Monsanto Chemical Company, hereinafter referred to as "Monsanto", is a corporation organized and existing under the laws of the State of Delaware with offices and principal place of business located in St. Louis, Missouri.

PAR. 3. Hooker is a major chemical manufacturer. Currently it produces over 100 chemical and other products, including plastics, phosphates and basic organic and inorganic chemicals which it sells to users in such manufacturing and fabricating markets as electrical equipment, electronics, pharmaceuticals, textiles and metals. Respondent owns and operates eleven manufacturing facilities in nine states—including the States of New York, Ohio, Washington, and

Mississippi—and owns jointly, with others, two additional manufacturing facilities. As of November 30, 1958, Hooker listed total assets of over $150,000,000 and sales for fiscal 1958 in excess of $125,000,000. Hooker sells the products it manufactures in its various facilities throughout the United States, and is otherwise engaged in commerce, as "commerce" is defined in the Clayton Act.

Monsanto is one of the largest chemical manufacturers in the United States. It produces a wide range of chemical and other products varying from plastics to agricultural and heavy chemicals at a large number of manufacturing facilities located in several states, including a plastics plant in Springfield, Massachusetts. As of December 31, 1958, Monsanto listed total assets of over $600,000,000 and net sales for 1958 in excess of $664,000,000. Monsanto sells the products it manufactures in its various facilities throughout the United States, and is otherwise engaged in commerce, as "commerce" is defined in the Clayton Act.

PAR. 4. Prior to September 1, 1958, Hooker and Monsanto, among others, produced and sold throughout the United States a group of thermosetting plastic products known in the trade as "phenolic molding materials" and sometimes called "phenolic molding compounds" or "phenolic molding powders", but, for purposes of clarity, hereinafter called "molding materials" or "phenolic molding materials".

Phenolic molding materials are some of the earliest of those products generally known as "plastics". The molding material is produced from "phenolic resins", which are the product of the chemical reaction between phenol and formaldehyde. When special fillers and additives are combined with the resin, the resulting molding material is one which can be molded, with heat and pressure, into an almost unlimited variety of end products.

Phenolic molding materials are sold to processors who mold or otherwise process the material into forms useful as such or in the fabrication of products for subsequent consumer or industrial use. The processor may be an independent company selling the molded product to users, or a division of a company producing the molded product for use in a finished product of its own.

The basic phenolic molding material, called "general purpose", employs a comparatively inexpensive filler and possesses certain physical characteristics which makes it the most widely used of the phenolic molding materials. The basic material can be varied, however, by the addition of special fillers to give new characteristics especially suited for specific purposes. In this regard, a molding material can be made more resistant to sudden or prolonged impacts,

or more impervious to electricity or to heat, by the addition of special fillers to basic molding material. Consequently, it is an industry practice to divide phenolic molding materials into classes according to their physical characteristics and usefulness, e.g., General Purpose, Electrical, Heat Resistant, Impact, Closure and Special.

Typical uses of phenolic molding materials, according to industry classification, are: General Purpose—camera cases, telephones, handles and bases for household appliances; Impact—industrial pulleys and gears and transmission parts; Closure—sealing materials for liquor and drug packaging; Electrical—electrical circuit parts, radio and television parts; Heat Resistant—steam iron, frying pan and pot handles; Special—washing machine agitators and air conditioning parts.

PAR. 5. Although it produced no phenolic molding materials prior to 1955, respondent became a major factor in that industry by the acquisition in 1955 of Durez Plastics and Chemicals, Inc. Prior to this acquisition, Durez Plastics and Chemicals, Inc. was a New York corporation with principal offices in North Tonowanda, New York. Durez produced and sold phenolic molding materials, phenolic resins and related products and maintained manufacturing facilities in the States of New York, Ohio and Washington. It sold its products to customers throughout the United States and was otherwise engaged in commerce, as "commerce" is defined in the Clayton Act.

In 1954, the year prior to its acquisition by respondent, Durez was the largest producer of phenolic molding materials in the United States, with sales exceeding $13,500,000, or approximately 35% of the total market. Subsequent to the acquisition of Durez and prior to 1958, respondent substantially increased its market share of phenolic molding materials manufactured for resale.

In the years since the acquisition of Durez by Hooker, two significant producers of molding materials have abandoned their production and withdrawn from that industry. During the same period, no manufacturers have entered the industry to produce molding materials for resale. Entry into this industry is difficult because of low profitability, particularly for companies not producing the basic raw materials (phenol and formaldehyde) used in the production of molding materials, and because of the established reputation of major producers. Both respondent and Monsanto produce phenol and formaldehyde. Additional difficulty exists in the need for capital and know-how for the manufacture of molding materials and the operation of the production facilities.

In addition to acquiring Durez, respondent has effected three other acquisitions in the chemical field during the years 1955 through 1958,

acquiring Niagara Alkali Company in 1955, Oldbury Electro-Chemical Company in 1956, and Shea Chemical Company in 1958.

PAR. 6. By contract effective September 1, 1958, and by mutual agreement and cooperation prior and subsequent thereto, and for the sum of $621,000, Monsanto transferred to Hooker: (1) all of its machinery and equipment used in the production of phenolic molding materials, together with technical information, including formulae, know-how and engineering assistance, for the manufacture of Monsanto's molding materials; (2) a list, including amounts purchased, of Monsanto's current and past customers purchasing its molding materials; (3) other assets, tangible and intangible, necessary to Hooker's production and sale of Monsanto's molding materials, including a promise by Monsanto not to produce molding materials in the United States for a period of ten years.

PAR. 7. In 1957 three companies sold about 80% of all phenolic molding materials produced in the United States. Respondent was the largest producer with about 43% of total sales. The second largest producer in the industry had about 24% of the market and the third largest producer, Monsanto, had about 13% of the market. Nearly all of the remaining 20% was distributed among six other industry members, some of whom sold only in local or regional markets in which they were located. During 1957 the total annual sales of molding materials exceeded $40,000,000.

Respondent, by virtue of its acquisition of Monsanto's molding material assets, has increased its market share of all molding materials to approximately 56%. In addition to its increase in market share of all molding materials, and as a result of this acquisition, respondent has substantially increased its market share in the general purpose, electrical, impact and heat resistant lines of molding materials. Further, as a result of this acquisition, at least 80% of all molding material sales are now concentrated in two producers.

PAR. 8. Respondent has violated Section 7 of the amended Clayton Act in that the acquisition of Durez Plastics and Chemicals, Inc. and Monsanto's molding material assets, as hereinbefore described, may have the effect, individually and collectively, of substantially lessening competition or tending to create a monopoly in the production and sale of phenolic molding materials generally, and, also, of general purpose, electrical, impact and heat resistant molding materials in the United States and each of them in the following ways, among others:

1. Actual and potential competition generally in the production and sale of phenolic molding materials and of general purpose,

electrical, impact and heat resistant molding materials will be eliminated.

2. The acquisitions, individually and collectively, may enhance respondent's competitive position in the production and sale of molding materials and of general purpose, electrical, impact and heat resistant molding materials to the detriment of actual and potential competition.

3. Industry-wide concentration of the production and sale of molding materials and of general purpose, electrical, impact and heat resistant molding materials has been and may be increased.

4. The acquisitions, individually and collectively, give respondent the facilities, the market position and the economic power to monopolize or tend to monopolize the production and sale of molding materials and of general purpose, electrical, impact and heat resistant molding materials.

5. Mergers and acquisitions on the part of other molding material producers may be fostered with a consequent increase in economic concentration and tendency toward monopoly in the phenolic molding material field generally.

PAR. 9. The foregoing acquisitions, acts and practices of respondent, as hereinbefore alleged, constitute a violation of Section 7 of the amended Clayton Act (15 U.S.C., Section 18), as amended and approved December 29, 1950.

Mr. Thomas A. Sterner for the Commission.

Sage, Gray, Todd & Sims, by *Mr. Melber Chambers*, and *Cahill, Gordon, Reindel & Ohl*, by *Mr. Jerrold G. Van Cise*, all of New York, N.Y., for the respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On July 8, 1960, the Federal Trade Commission issued its complaint against the above-named respondent charging it with violating the provisions of Section 7 of the Clayton Act, as amended. On June 23, 1961, the respondent and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist and to divest 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 order to cease and desist and to divest there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondent of all rights to challenge or

contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only, 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.

Such agreement further provides that the charge that respondent's acquisition of Durez Plastics & Chemicals, Inc., violated Section 7 of the amended Clayton Act should be dismissed for the reasons set forth in an Appendix A attached thereto.

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.

JURISDICTIONAL FINDINGS

1. Respondent Hooker Chemical Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its principal office located at 666 Fifth Avenue, in the City of New York, State of New York (erroneously cited in the complaint as Buffalo Avenue and 47th Street, Niagara Falls, New York.)

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under Section 7 of the Clayton Act, as amended.

ORDER

I

It is ordered, That respondent Hooker Chemical Corporation, and its officers, directors, agents, representatives, and employees, shall, within ninety (90) days of the service of this order upon it, divest itself absolutely, in good faith, as a unit and to the same purchaser, of all right, title, privilege and interest in and to all machinery

and equipment now owned by respondent, and all formulae, technical information, know-how, trade secrets and customer lists related to the production and sale of phenolic molding compound formulations, acquired from Monsanto Chemical Company, together with all additions to, and improvements on, such assets. The divestiture shall proceed in a manner consistent with the objective of continuing the production and sale of the phenolic molding compound formulations divested.

It is further ordered, That respondent Hooker Chemical corporation:

(1) make available to the purchaser of the assets divested, for a period of six (6) months from the date of the divestiture, at respondent's cost, (to be disclosed to and held in confidence by said purchaser) the purchaser's requirements of lump resins and resin compounds needed to manufacture said phenolic molding compound formulations, and, the purchaser's requirements of said phenolic molding compound formulations, to enable the purchaser to develop its own manufacturing facilities for said products without interrupting the supply of said molding compounds to purchasers.

(2) provide the purchaser of the divested assets with engineering assistance in the setting up of test equipment and methods of testing, designed to assure that the phenolic molding compounds produced using the resins and/or formulae, technical information, know-how and trade secrets, furnished will meet the specifications for such molding compounds heretofore maintained by respondent.

(3) provide the purchaser of the divested assets with a list of customers that made any purchases of said phenolic molding compound formulations from January 1, 1957 to the date of this order. Such list shall include the formulation number and annual quantities, in dollars and pounds, purchased by each customer.

II

It is further ordered, That respondent cease and desist, for a period of ten (10) years from the receipt of this order, from the acquisition, directly or indirectly, of any shares of stocks or assets of any manufacturer or distributor engaged in the manufacture, sale or distribution of phenolic molding compounds in the United States.

III

It is further ordered, That in such divestitures hereinbefore mentioned, none of the said assets, properties, rights and privileges, tangible or intangible, shall be sold or transferred, directly or in-

directly, to anyone who, at the time of the divestiture, is a stockholder, officer, director, employee or agent of, or otherwise, directly or indirectly connected with, or under the control of, respondent or any of respondent's subsidiaries or affiliated companies.

IV

It is further ordered, That the allegations of the complaint charging that respondent's acquisition of Durez Plastics & Chemicals, Inc., violated Section 7 of the amended Clayton Act be dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22d day of August 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent 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

JOHN W. THOMAS AND COMPANY

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

Docket 8332. Complaint, Mar. 16, 1961—Decision, Aug. 22, 1961

Consent order requiring a Minneapolis furrier to cease violating the Fur Products Labeling Act by failing 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 John W. Thomas and Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent John W. Thomas and Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota with its office and principal place of business located at Eighth and Nicollet Avenue, Minneapolis, Minnesota.

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 prescribed by the Rules and Regulations promulgated thereunder.

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

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

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

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

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

and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form in violation of Rule 4 of said Rules and Regulations.

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

Mr. William A. Somers supporting the complaint.
Mr. Stanley D. Smith, of Minneapolis, Minn., for respondent.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on March 16, 1961, charging it with having violated the Fur Products Labeling Act and the Rules and Regulations issued thereunder, and the Federal Trade Commission Act, through the misbranding of certain fur products and the false and deceptive invoicing thereof. After being served with said complaint, respondent appeared by counsel and subsequently entered into an agreement, dated June 20, 1961, containing a consent order to cease and desist purporting to dispose of all this proceeding as to all parties. Said agreement, which has been signed by respondent, by counsel for said respondent, and by counsel supporting the complaint, and approved by the Acting Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had ment further provides that respondent waives any further procedural steps before the hearing examiner and the commission, the ural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights

it may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

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

1. Respondent John W. Thomas and Company is a corporation existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at Eight and Nicollet Avenue, Minneapolis, Minnesota.

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

ORDER

It is ordered, That John W. Thomas and Company, a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale, in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur

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

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing in words and figures plainly legible all 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 mingled with non-required information.

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

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

D. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal furs the information required to be disclosed 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.

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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22d day of August 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

HOLT, RINEHART AND WINSTON, INC.

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

Docket 8344. Complaint, Apr. 5, 1961—Decision, Aug. 22, 1961

Consent order requiring a New York City publisher to cease violating Sec. 2(d) of the Clayton Act by paying some customers allowances which were not offered on proportionally equal terms to their competitors, such as payments to large retail newsstand chains for promoting its "Field & Stream" magazine, including 5¢ a copy to The Union News Co., New York City; 4½¢ a copy to ABC Vending Corp., New York City, and Fred Harvey, Chicago; and 3½¢ a copy to Commuter News Co., Inc., New York City, and ABC Cigar Co., San Francisco—many of which payments were proportionally unequal even among the favored customers.

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 (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Holt, Rinehart and Winston, Inc., is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at 530 Fifth Avenue, New York 36, New York. Said respondent has been engaged and is presently engaged in the business of publishing and distributing various publications including magazines under copyrighted titles. Some of the popular magazines published by respondent and distributed by it through its national distributor, Curtis Circulation Company, Inc., include "Field and Stream," "Popular Gardening," "New Homes Guide" and "Home Modernizing Guide." Respondent's sales of the aforesaid publications in 1959 were approximately $606,000.

PAR. 2. Respondent's publications are distributed through Curtis Circulation Company, Inc., which has acted and is now acting as national distributor for these publications. Among the services performed and still being performed by Curtis Circulation for the benefit of respondent in connection with the sale and distribution of its publications are the taking of orders; distributing, billing and collecting from customers; and participating in the negotiation

of various promotional arrangements with the retail customers of said publisher. In its capacity as national distributor for respondent, Curtis Circulation served and is now serving as a conduit or intermediary for the sale, distribution and promotion of the publications of the respondent. These publications are distributed throughout various states through local distributors to retail customers.

PAR. 3. Respondent through its conduit or intermediary, Curtis Circulation, has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the amended Clayton Act, to competing customers located throughout various states of the United States and in the District of Columbia.

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

PAR. 5. As an example of the practices alleged herein, respondent has made payments or allowances to certain retail customers who operate chain retail outlets in railroad, airport and bus terminals, as well as outlets located in hotels and office buildings. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers (including drug chains and other newsstands) competing with the favored customers in the sale and distribution of the publications of respondent.

Among the favored customers receiving promotional allowances or payments in 1959 which were not offered to other competing customers in connection with the purchase and distribution of respondent's publication "Field & Stream" were:

Customer	*Promotional payment per copy*
The Union News Company, New York, N.Y.	$0.05
ABC Vending Corp., New York, N.Y.	.045
Fred Harvey, Chicago, Ill.	.045
Commuter News Co., Inc., New York, N.Y.	.035
ABC Cigar Company, San Francisco, Calif.	.035

Respondent made said payments to its favored customers on the basis of individual negotiations. Among said favored customers, such payments were not made on proportionally equal terms.

PAR. 6. The acts and practices of respondent as alleged above are in violation of the provisions of subsection (d) of Section 2 of the amended Clayton Act.

Mr. J. Wallace Adair and *Mr. Jerome Garfinkel* supporting the complaint.

Mr. William E. Stockhausen of *Satterlee, Warfield & Stephens* for respondent.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on April 5, 1961. The complaint charged the respondent with violating subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, by the payment of promotional allowances to certain chain retail outlets operating in transportation terminals, hotels and office buildings, which allowances were not offered to other competing customers.

On May 29, 1961, counsel submitted to the undersigned hearing examiner an agreement executed by respondent, its counsel, and counsel supporting the complaint providing for the entry without further notice of a consent order. The agreement was duly approved by the Director of the Bureau of Litigation.

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

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

B. Provisions that:

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

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

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

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

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

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and 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 respondent that it has violated the law as alleged in the complaint.

The agreement further provides that the word customer as used in the order means anyone who purchases from a respondent acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such respondent, acting either as principal or agent.

Having considered said agreement, including the proposed order, and being of the opinion that it provides 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 Holt, Rinehart and Winston, Inc., is a corporation, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business formerly located at 530 Fifth Avenue, New York 36, New York, and presently located at 383 Madison Avenue, New York 17, New York.

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

ORDER

It is ordered, That respondent, Holt, Rinehart and Winston, Inc., a corporation, its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of publications including magazines in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of publications including magazines published, sold or offered for sale b ye rspondent, unless such payment or consideration is

affirmatively offered or otherwise made available on proportionally equal terms to all of its other customers competing with such favored customer in the distribution of such publications including magazines.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 22d day of August 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

BARRY-NEWBERG & CO.

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

Docket 8350. Complaint, Apr. 13, 1961—Decision, Aug. 22, 1961

Consent order requiring a Los Angeles furrier to cease violating the Fur Products Labeling Act by failing 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 Barry-Newberg & Co., 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. Barry-Newberg & Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 850 South Broadway, Los Angeles, California.

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 prescribed by the Rules and Regulations promulgated thereunder.

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

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with 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 set forth in handwriting on labels, in violation of Rule 29(b) 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 by respondent in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

Mr. Michael P. Hughes for the Commission.
Mr. Samuel A. Miller, Los Angeles, Calif., for the respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with certain violations of the Fur Products Labeling Act and the Rules and

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

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

1. Respondent Barry-Newberg & Co. is a California corporation with its office and principal place of business located at 850 South Broadway, Los Angeles, California.

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

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing in words and figures plainly legible all 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 mingled with non-required information.

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

C. Failing to set forth 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22nd day of August 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

MAURICE VAN DYNE TRADING AS SOBERIN AIDS COMPANY

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

Docket 8366. Complaint, Apr. 20, 1961—Decision, Aug. 22, 1961

Consent order requiring the Brooklyn, N.Y., distributor of a drug preparation called "Soberin"—actually an emetic having as its principal ingredient Syrup of Ipecac—to cease representing falsely in advertisements in magazines and newspapers that the product is a "Marvelous new discovery"

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which "Relieves drunkenness in 5 days" "And easily helps bring relief from all desire of liquor", and enables one to "go to business and carry on your social life as usual".

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 Maurice Van Dyne, individually and trading as Soberin Aids Company, 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 Maurice Van Dyne is an individual trading and doing business as Soberin Aids Company with his office and principal place of business located in Brooklyn, New York. His mailing address is P. O. Box 42, Rugby Station, Brooklyn, New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of a drug preparation called "Soberin", which preparation contains ingredients which come within the classification of drugs, as the term "drug" is defined in the Federal Trade Commission Act.

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

PAR. 4. In the course and conduct of his business, respondent has disseminated, and caused the dissemination of certain advertisements concerning the said product by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act including advertisements inserted in various magazines and newspapers, for the purpose of inducing, and which are likely to induce, directly or indirectly the purchase of said product; and has disseminated, and caused the dissemination of, advertisements concerning the said product by various means, including the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements contained in said advertisements disseminated as hereinabove set forth are the following:

Doctors Marvelous new discovery
Relieves drunkenness in 5 days
And easily helps bring relief from all desire of liquor.
You can go to business and carry on your social life as usual.

PAR. 6. Through the use of said statements, and others similar thereto not specifically set out herein, respondent has represented, and is now representing, directly or by implication, that the said product and the technique of its use is a new medical or scientific discovery, that after five days anyone addicted to alcoholism will be cured and will no longer have a desire for alcohol, that the desire for liquor is easily overcome through the use of said product, that the use of said product will not interfere with one's business or social life and that the cure of alcohol addiction is so complete with said product that it will no longer interfere with one's business or social life.

PAR. 7. The said advertisements and statements contained therein were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the product "Soberin" is not, nor is the technique of its use, a new medical or scientific discovery. It is nothing more than an emetic having as its principal ingredient Syrup of Ipecac which has long been in use by the medical profession as has been the technique of attempting to treat alcohol addiction by the use of a noxious substance which causes the addict to become nauseated or to vomit when such substance is added to his alcoholic drink, thus attempting to cause in the addict a conditioned reflex or "aversion" to alcohol by associating his nausea or vomiting with the consumption of alcohol. It cannot be claimed that one addicted to alcoholism will be cured after using "Soberin" for five days because there are many causes of alcoholism some of which are psychiatric which cannot be effectively treated by the conditioned reflex or "aversion" technique. The use of "Soberin" is not an easy way to overcome the desire for liquor. Since the use of "Soberin" contemplates nausea and vomiting its use would thereby interfere with one's business or social life. Since there are many causes of alcohol addiction, some of which cannot be cured by "Soberin" it cannot be said that said product will cure such addiction so completely that it will no longer interfere with one's business or social life.

PAR. 8. The dissemination by respondent of the false advertisements, as aforesaid and the acts and practices of respondent as aforesaid, constituted and now constitute, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Edward F. Downs for the Commission.
Mr. Charles A. Stanziale of Newark, N.J., for the respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

In a complaint issued April 20, 1961, the Federal Trade Commission charged that the respondent, Maurice Van Dyne, individually and trading under the firm name and style of Soberin Aids Company, in Brooklyn, New York, from a mailing address, P. O. Box 42, Rugby Station, Brooklyn, New York, had violated the Federal Trade Commission Act, it having been alleged that he had made deceptive statements in connection with the advertising, offering for sale and sale in commerce of a drug, "Soberin," for the treatment of alcoholism.

After issuance of the complaint and the filing of respondent's answer thereto, but prior to a hearing herein, the respondent (with the advice and agreement of his attorney) and counsel supporting the complaint entered into an agreement containing a proposed consent order to cease and desist which disposes of the entire proceeding.

The agreement provides that the signing thereof is for settlement purposes only and does not constitute an admission by the respondent that he has violated the law as in the complaint alleged.

The respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations. He expressly waives any further procedural steps before the Hearing Examiner and the Commission; the making of findings of fact or conclusions of law; and all right he may have to challenge or contest the validity of the order to cease and desist to be entered in accordance with the agreement.

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

It is further provided that the agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order to be issued pursuant thereto; and that such order may be altered, modified or

set aside in the manner prescribed by the statute for orders of the Commission.

The Hearing Examiner has considered the agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and shall be filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice.

Now, in consonance with the terms thereof, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondent Maurice Van Dyne, an individual trading as Soberin Aids Company, or trading under any other name or names, his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a drug preparation designated "Soberin", or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, forthwith cease and desist from:

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

(a) That said preparation or the technique of its use is a new medical or scientific discovery.

(b) That anyone addicted to alcoholism will be cured after taking said preparation and will no longer have a desire for alcohol.

(c) That the desire for liquor is easily overcome through the use of said preparation.

(d) That the use of said preparation will not interfere with the user's business or social life.

(e) That said preparation will completely cure alcohol addiction so that such addiction will no longer interfere with one's business or social life.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any

such preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the Hearing Examiner shall, on the 22d day of August 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

FLEETWOOD COFFEE COMPANY ET AL.

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

Docket 8387. Complaint, May 4, 1961—Decision, Aug. 22, 1961

Consent order requiring Chattanooga, Tenn., distributors of ground coffee for resale, along with their wholly owned advertising agency, to cease promoting their coffee by means of a lottery sales plan under which each can or bag of coffee during a certain period, usually one month, contained money or a check in amounts from 1¢ to $25, which could not be ascertained until selection was made and the container opened.

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 Fleetwood Coffee Company, a corporation, and Overton Dickinson, L. W. Oehmig and Carl C. Davis, individually and as officers of said corporation, and Nelson Chesman Co., Inc., a corporation, and R. H. Leiper, individually and as an officer of Nelson Chesman Co., Inc., hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Fleetwood Coffee Company is a corporation organized, existing and doing business under and by virtue

of the laws of the State of Tennessee, with its principal office and place of business located at 246 East Eleventh Street, in the City of Chattanooga, State of Tennessee.

Respondents Overton Dickinson, L. W. Oehmig and Carl C. Davis are officers of said corporate respondent. They formulate, direct and control the acts and practices of said corporation. Their address is the same as that of said corporate respondent.

PAR. 2. Respondent Fleetwood Coffee Company and its officers are now, and for some time last past have been, engaged in the sale to retail dealers of ground coffee for resale to the public.

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

PAR. 4. Respondent Nelson Chesman Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 240 East Eleventh Street, in the City of Chattanooga, State of Tennessee. This corporate respondent is the advertising agency of the respondent Fleetwood Coffee Company and prepares advertising material used in store displays, newspapers, radio broadcasts and television commercials to promote the sale of coffee as hereinafter described. It is wholly owned by respondent Fleetwood Coffee Company.

Respondent R. H. Leiper is an officer of respondent Nelson Chesman Co., Inc. His address is the same as that of Nelson Chesman Co., Inc.

All of the respondents collaborate in carrying out the acts and practices hereinafter set forth.

PAR. 5. The product involved in this proceeding, coffee, is packed by respondent coffee company in one pound bags and cans. Each can or bag of coffee offered for sale during a promotional period, usually one month, contains a sum of money or a check payable to bearer in amounts ranging from one cent to twenty-five dollars. The ultimate purchaser, however, cannot ascertain the amount of money involved or of the check contained in the package until a selection is made and the individual can or bag is opened. Consequently, the amount of money received is determined wholly by lot or chance.

PAR. 6. Among and typical of the advertising representations made by respondents in connection with the sale of said coffee during the aforesaid promotional periods and in the manner aforesaid are the following:

NEWSPAPER ADVERTISING

FREE! 1¢ to $25.00
In Every 1 lb. Vacuum Can of
FLEETWOOD COFFEE
A special introductory offer . . .
It's true . . . for a limited time
only you get from 1¢ to $25.00 in
every one pound . . . There's money
in every bag . . .

TELEVISION ADVERTISING

Slide	*Audio*
Slide of Fleetwood— Money in the Can	Now and for a limited time only, Buy and enjoy Fleetwood Coffee in the vacuum can and get *free* 1¢ to $25.00 in every pound—There's money in every can of Fleetwood Coffee.

RADIO ADVERTISING

Now and for a limited time only,
every one pound can of Fleetwood
Coffee contains from 1¢ to $25.00
and it's yours absolutely free of
extra cost. Yes, it's actually true
. . . for a limited time only you
get *free* from 1¢ to $25.00 . . .

DISPLAY ADVERTISING PLACED
IN RETAIL STORES

FREE
Of Extra Cost
Money in Every 1 lb.
Vacuum Can of
FLEETWOOD COFFEE

PAR. 7. Many retailers are attracted by respondents' sales promotion plan, and the element of chance involved therein, and are thereby induced to buy and sell said coffee. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries in the sale of said coffee in accordance with the sales plan hereinabove set forth.

PAR. 8. The award of monetary prizes by the method or plan employed by respondents as described above constitutes a game of

chance, lottery or gift enterprise. The use of such a plan by respondents in connection with the sale of said coffee is contrary to the public interest and to an established public policy of the Government of the United States.

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 constituted, and now constitute, unfair acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. DeWitt T. Puckett for the Commission.

Mr. John S. Fletcher, Jr., of Chattanooga, Tenn., for the respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

In a complaint issued May 4, 1961, the respondents, Fleetwood Coffee Company and Nelson Chesman Co., Inc., both corporations organized and existing under the laws of the State of Tennessee, Overton Dickinson, L. W. Oehmig and Carl C. Davis, individually and as officers of Fleetwood Coffee Company, and R. H. Leiper, individually and as an officer of Nelson Chesman Co., Inc., were charged with engaging in lottery practices in connection with the advertising, sale and distribution of coffee, all in violation of the Federal Trade Commission Act. Fleetwood Coffee Company and its officers, the said Overton Dickinson, L. W. Oehmig and Carl C. Davis, are engaged in business at 246 East Eleventh Street, in Chattanooga, Tennessee; and Nelson Chesman Co., Inc. and its officer, R. H. Leiper, are engaged in business at 240 East Eleventh Street, in Chattanooga, Tennessee.

The respondents, the corporations and individuals so named (with the advice and agreement of their attorney), and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist, thus disposing of all the issues involved in this proceeding.

In the agreement it was expressly provided that the signing thereof was for settlement purposes only and did not constitute an admission by the respondents that they had violated the law as in the complaint alleged.

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

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

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

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

The Hearing Examiner has considered the agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and shall be filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice.

Now, in consonance with the terms thereof, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents Fleetwood Coffee Company, a corporation, and its officers, and Overton Dickinson, L. W. Oehmig and Carl C. Davis, individually and as officers of said corporation, and Nelson Chesman Co., Inc., a corporation, and its officers, and R. H. Leiper, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale and distribution of coffee, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising or using any sales promotion plan or scheme whereby sales of their products to the consuming public are to be made, or may be made, by means of a game of chance, gift enterprise or lottery scheme.

2. Supplying to or placing in the hands of retail dealers, or others, packages of coffee, or other products, which are to be used, or may

be used, to conduct a lottery, game of chance, or gift enterprise in the sale or distribution of their products to the public.

3. Selling or otherwise disposing of any product through the use of, or by means of, a game of chance, gift enterprise, or lottery scheme.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the Hearing Examiner shall, on the 22d day of August 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

CLISA CORPORATION ET AL.

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

Docket 8395. Complaint, May 11, 1961—Decision, Aug. 22, 1961

Consent order requiring a Boston distributor of raw wools and imported specialty fibers, to cease representing alpaca fiber stocks on invoices as "100% Baby Llama".

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 Clisa Corporation, a corporation and Vincent Melone, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Clisa Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of

business located at 146 Summer Street, in the City of Boston, State of Massachusetts.

PAR. 2. Respondent Vincent Melone is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 3. Respondents are now, and for some time last past have been, engaged in offering for sale, sale and distribution of raw wools and imported specialty fibers.

PAR. 4. Respondents in the course and conduct of their business, now cause, and for some time last past have caused, their said fiber stocks, when sold, to be shipped from their place of business in the State of Massachusetts to purchasers thereof located in various other states of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said stocks in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business as aforesaid, respondents have made representations concerning their said fiber stocks on sales invoices. Among and typical of these representations was the following:

100% Baby Llama

PAR. 6. The aforesaid representations were false, misleading and deceptive. In truth and in fact, said fiber stocks consisted of alpaca.

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

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

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

Mr. Arthur Wolter, Jr., supporting complaint.

Roche, Leen & Maloney by *Mr. Vincent F. Leahy*, of Boston, Mass., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 11, 1961, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by falsely invoicing the contents of fiber stocks sold and distributed by them. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated June 21, 1961, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents and by counsel supporting the complaint, and approved by the Acting Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an

appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Clisa Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 146 Summer Street, in the City of Boston, State of Massachusetts. Respondent Vincent Melone is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the practices hereinafter set forth. His address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Clisa Corporation, a corporation, and its officers, and Vincent Melone, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of fiber stocks or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing on invoices or in any other manner that certain fiber stocks are "100% Baby Llama" unless such is the fact.

2. Misrepresenting the character or the amount of the constituent fibers contained in such products, on invoices, or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22d day of August 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

THOMPSON MEDICAL CO., INC., ET AL.

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

Docket 8399. Complaint, May 16, 1961—Decision, Aug. 22, 1961

Consent order requiring New York City distributors of their "Tranquil-Aid" drug preparation to cease representing falsely in newspaper advertising and otherwise that their said product was a new medical or scientific discovery and was absolutely harmless and safe to take.

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 Thompson Medical Co., Inc., a corporation, and S. Daniel Abraham, William Jackson and Stella K. Abraham, 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:

PAR. 1. Respondent Thompson Medical Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 43 West 23d Street, New York, New York.

Respondents S. Daniel Abraham, William Jackson and Stella K. Abraham are officers of the corporate respondent. These individuals formulate, direct and control the policies, acts and practices of the corporate respondent and 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 drug preparation designated "Tranquil-Aid," which preparation contains ingredients which come within the classification of drugs, as the term "drug" is defined in the Federal Trade Com-

mission Act. The formula and directions for use of said preparation are as follows:

Formula:

Glycerol Guaiacolate	50 mgm.
Methapyrilene HCl	20 mgm.
Pyranisamine Maleate (2-(2- Dimethylamino Ethyl) P-Methoxybenzyl Amino) Pyridine)	5 mgm.
Salicylamide	1. 5 gr.
Magnesium Trisilicate	
Also contains:	
Vitamin B1	1 mg.
Vitamin B2	½ mg.
Niacinamide	25 mg.
Ascorbic Acid	30 mg.
Phenacitin	1. 5 gr.

NOT A TRANQUILIZER. DOES NOT CONTAIN BARBITURATES OR BROMIDES. NOT HABIT FORMING.

HELPS YOU RELAX NIGHT OR DAY

Directions: For relief of Functional Nervous symptoms such as Nervous Tension, Headaches, Restlessness, Nervous Irritability: Take 1 or 2 tablets with a full glass of water or milk. Repeat 1 tablet in one hour if necessary.

SLEEPLESSNESS: As an aid to sleep take one or two tablets with a glass of warm milk 20 minutes before retiring.

Caution: If drowsiness occurs, do not drive or operate machinery. Do not take more than 4 tablets in 24 hours. Avoid frequent or continuous use. Not intended for children. If nervous symptoms persist, recur frequently, or are unusual, consult your physician.

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

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said preparation by the United States mail and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers, for the purpose of

inducing and which were likely to induce, directly or indirectly, the purchase of said preparation, and have disseminated, and caused the dissemination of, advertisements concerning said preparation by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

Amazing new wonder capsule helps you relax!
Medicine's New 'GOLDEN BULLET'
Safe, effective, Tranquil-Aid contains no barbiturates, is not habit forming.

PAR. 6. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents have represented and are now representing, directly or by implication:

1. That their said preparation is a new medical or scientific discovery or development.

2. That their said preparation is absolutely harmless and safe to take.

PAR. 7. The aforesaid advertisements were and are misleading in material respects and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. Respondents' said preparation is not a new medical or scientific discovery or development. Its ingredients have been known to and prescribed by the medical profession for some time.

2. Respondents' said preparation is not absolutely harmless and safe to take. It is dangerous when taken by some individuals.

PAR. 8. The dissemination by respondents of the false advertisements, as aforesaid, constituted and not constitute, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Edward F. Downs for the Commission.

Davis, Gilbert, Levine & Schwartz, by *Mr. Joshua Levine*, New York, N.Y., for respondents Thompson Medical Co., Inc., S. Daniel Abraham and Stella K. Abraham.

INTIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on May 16, 1961, charging Respondents with violation of the Federal Trade Commission Act by

the dissemination of false advertisements with respect to their drug preparation designated "Tranquil-Aid".

Thereafter, on June 15, 1961, all Respondents except William Jackson, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Assistant Director of the Commission's Bureau of Litigation, and thereafter, on June 26, 1961, submitted to the Hearing Examiner for consideration. The agreement provides that this proceeding will be otherwise disposed of as to Respondent William Jackson.

The agreement identifies Respondent Thompson Medical Co., Inc. as a New York corporation, with its principal place of business located at 43 West 23d Street, New York, New York, and Respondents S. Daniel Abraham and Stella K. Abraham as officers of the corporate respondent, who formulate, direct and control the policies, acts and practices of the corporate respondent, their address being the same as that of the corporate respondent.

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

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

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding as to Respondents Thompson Medical

Co., Inc., S. Daniel Abraham, and Stella K. Abraham. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondents Thompson Medical Co., Inc., a corporation, and its officers, and S. Daniel Abraham, and Stella K. Abraham, 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 the product "Tranquil-Aid", or any other medicinal or drug preparation of substantially the same formula, whether sold under this name or any other name, do forthwith cease and desist from:

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

(a) Represents in any manner that any such product or preparation is harmless or safe to take;

(b) Represents that any such product or preparation is a new medical or scientic discovery or development;

2. Disseminating or causing to be disseminated, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any such product or preparation, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22d day of August 1961, become the decision of the Commission; and, accordingly:

It is ordered, That Respondents Thompson Medical Co., Inc., a corporation, and S. Daniel Abraham and Stella K. Abraham, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commis-

sion a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Mr. Edward F. Downs for the Commission.
No appearance for respondent William Jackson.

INTIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on May 16, 1961, charging Respondents with violation of the Federal Trade Commission Act by the dissemination of false advertisements with respect to their drug preparation designated "Tranquil-Aid".

On July 12, 1961, prior to the offering of any evidence herein, counsel supporting the complaint submitted a motion requesting dismissal of the complaint without prejudice as to Respondent William Jackson, individually and as an officer of the corporate Respondent, for the reasons that the complaint was never served on Respondent Jackson, but was returned marked "Moved Left No Address"; and, according to counsel for the other Respondents, William Jackson is no longer connected with the corporate Respondent as an officer or otherwise.

After due consideration, the Hearing Examiner accepts the reasons offered in support of the motion, and concurs in the opinion of counsel supporting the complaint that the dismissal without prejudice of the complaint herein, without prejudice, as to Respondent William Jackson will be in the public interest. Therefore,

It is ordered, That the complaint herein, insofar as it relates to Respondent William Jackson, be, and the same hereby is, dismissed without prejudice to the right of the Commission to initiate further proceedings against said Respondent, should future events so warrant.

DECISION OF THE COMMISSION

This matter having come on to be heard by the Commission upon its review of the initial decision filed by the hearing examiner on July 14, 1961, and the Commission having determined that said initial decision is adequate and 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.

Complaint

IN THE MATTER OF

B. GERTZ, INC.

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

Docket 8351. Complaint, Apr. 13, 1961—Decision, Aug. 22, 1961

Consent order requiring a furrier in Jamaica, Long Island, N.Y., to cease violating the Fur Products Labeling Act by failing to disclose, in advertising in newspapers, the name of the animal producing certain fur and setting forth therein the name of another animal.

COMPLAINT

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

PARAGRAPH 1. Respondent B. Gertz, 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 162-10 Jamaica Avenue, Jamaica, Long Island, New York.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now engaged in the introduction into commerce and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution in commerce, of fur 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 falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondent advertised fur products which were made in whole or in part of fur which has been shipped and received in commerce as the terms "fur", "fur product" and "commerce" are defined in the Fur Products Labeling Act and which advertisements were not in

accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 4. Among and included in the advertisements, as aforesaid, but not limited thereto were advertisements of respondent, which appeared in issues of Newsday, a Long Island newspaper published in the State of New York.

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) Set forth the name of an animal other than the name of the animal that produced the fur in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Mr. Harry E. Middleton, Jr., supporting the complaint.
Respondent, *pro se*.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on April 13, 1961, charging it with having violated the Fur Products Labeling Act and the Rules and Regulations issued thereunder, and the Federal Trade Commission Act, through the false and deceptive advertising of certain fur products. After being served with said complaint, respondent appeared and entered into an agreement, dated June 9, 1961, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by respondent and by counsel supporting the complaint, and approved by the Acting Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

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

1. Respondent B. Gertz, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 162–10 Jamaica Avenue, in the City of Jamaica, Long Island, State of New York.

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

ORDER

It is ordered, That B. Gertz, 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 intro-

duction 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. 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 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.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22d day of August 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

THE HARRIS COMPANY ET AL.

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

Docket 8358. Complaint, Apr. 14, 1961—Decision, Aug. 23, 1961

Consent order requiring San Bernardino, Calif., furriers to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to disclose the names of animals producing certain furs and represented prices as reduced from purported regular prices which were, in fact, fic-

titious, and as reduced in stated percentages; by failing to keep adequate records as a basis for price and value claims; and by failing to comply with invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that The Harris Company, a corporation, and Melville D. Harris, individually and as an officer of said corporation, and Carlo Charles Marchese, individually and as an employee of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The Harris Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at Third and E Streets, San Bernardino, California.

Melville D. Harris is an officer of said corporation and Carlo Charles Marchese is general merchandise manager of the said corporate respondent. These individuals control, direct and formulate the acts, practices and policies of the fur department of the said corporate respondent including the practices hereinafter set forth. Their office and principal place of business is the same as that of the said corporate respondent.

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

PAR. 3. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were falsely and deceptively invoiced 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. 5. Certain of said Fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 6. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the San Bernardino Sun Telegram, a newspaper published in the City of San Bernardino, State of California, and having a wide circulation in said State and various other States of the United States.

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

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

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

(c) Represented directly or by implication through the use of percentage savings claims such as "Fabulous fur sale ⅓ to ½ off" that the regular or usual prices charged by respondents for 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. 7. In advertising fur products for sale respondents made claims and representations respecting prices and values of fur products. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of the aforesaid rules and regulations.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

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

Surr & Hellyer, by *Mr. William S. Hellyer*, San Bernardino, Calif., for the respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On April 14, 1961, the Federal Trade Commission isued its complaint against the above-named respondents charging them with violation of the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated under said Fur Products Labeling Act in connection with the introduction into commerce, and the sale, advertising and offering for sale, transportation and distribution of fur products.

On June 9, 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 of 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 The Harris Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at Third and E Streets, San Bernardino, California.

Respondent Melville D. Harris is an officer of the corporate respondent and Carlo Charles Marchese is the General Merchandise Manager of the corporate respondent. These individuals formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

2. The 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 The Harris Company, a corporation and its officers, and Melville D. Harris, individually and as an officer of said corporation, and Carlo Charles Marchese, individually and as an employee of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "com-

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

1. Falsely and deceptively invoicing fur products by:

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

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

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

2. 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 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 said rules and regulations.

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

C. Represents, directly or by implication, through percentage savings claims, such as "Fabulous fur sale ⅓ to ½ off" or words of like import, that the regular or usual prices charged by respondents 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 respondents' fur products.

3. Making claims and representations respecting prices and values of fur products unless respondents maintain full and adequate records disclosing the facts upon which such claims and representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 23d day of

August 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 Commision 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

MUTUAL DISTRIBUTORS, INC., ET AL.

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

Docket 7803. Complaint, Mar. 2, 1960—Decision, Aug. 23, 1961

Order—following enactment of specific statutes which afford adequate protection to the public against the challenged practices—dismissing complaint charging distributors of phonograph records with giving illegal "payola" to radio and television disc jockeys.

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 Mutual Distributors, Inc., a corporation, and George D. Hartstone, Leon C. Hartstone, and Robert S. Hartstone, 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. Mutual Distributors, Inc., 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 1241 Columbus Avenue, Boston, Massachusetts.

Respondents George D. Hartstone, Leon C. Hartstone and Robert S. Hartstone are, respectively, president, treasurer and clerk of the corporate respondent. Said individual respondents formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices herein set out. The address of the individual respondents is the same as that of said corporate respondent.