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.

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

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

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

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

Record manufacturing companies and distributors ascertained that popular 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 disturbing "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 manufacturers, 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 itself.

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

The respondents, by participating individually or in a joint effort with certain collaborating record manufacturers, 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 itself.

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 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.

Peabody, Koufman & Brewer, by *Mr. Joseph M. Koufman*, of Boston, Mass., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

On March 2, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with the disbursement of "payola." Counsel supporting the complaint now moves to dismiss the complaint without prejudice, which motion is unopposed, for the following stated reason:

Since the disclosure requirements with respect to furnishing consideration to persons connected with broadcast licensees and the receipt thereof by the latter have been modified as a result of specific Congressional action, counsel supporting the complaint considers the continued prosecution of this matter as unnecessary expenditure of time, effort and funds in determining the legality of the alleged practice since the protection of the public interest is now fully assured by specific statute.

Now, therefore, upon said motion:

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

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 23d day of August 1961, become the decision of the Commission.

IN THE MATTER OF

BERNARD W. COATES DOING BUSINESS AS NATIONAL MAIL MERCHANDISERS

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

Docket 8193. Complaint, Nov. 28, 1960—Decision, Aug. 23, 1961

Consent order requiring a Dorchester, Mass., concern to cease selling mail order dealerships through deceptive claims in advertising, 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 Bernard W. Coates, an individual trading and doing business as National

Mail Merchandisers, 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 Bernard W. Coates is an individual trading and doing business as National Mail Merchandisers, with his office and principal place of business located at 35 Pleasant Street, Dorchester, Massachusetts. Respondent uses various mailing addresses for National Mail Merchandisers, among such addresses is 618 Washington Street, Boston, Massachusetts.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the sale of mail order dealerships. In connection with the same he sells and distributes to his purchasers catalogs and sales literature, and various supplies and equipment.

Respondent causes, and has caused, said products when sold to be shipped from his place of business in Massachusetts to purchasers thereof at their respective residences and places of business located in various other states of the United States.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said dealerships, and catalogs, sales literature and supplies in commerce as "commerce" is defined in the Federal Trade Commission Act. Respondent's volume of business in such commerce is, and has been, substantial.

PAR. 3. Respondent in the course and conduct of his business is, and has been, engaged in substantial competition with other persons, firms and corporations engaged in the sale of dealerships, supplies and equipment used in, and necessary for, the operation of a mail order merchandising business.

PAR. 4. Respondent in the course and conduct of his said business, and for the purpose of inducing the sale of his said dealerships and accompanying material, advertises the same by mailings sent through the United States mails to prospective customers, and by advertisements placed in specialty magazines. Among and typical but not inclusive of the statements appearing in said advertisements are the following:

NOW THE OPPORTUNITY OF A LIFETIME IS YOURS!
WE SET YOU UP IN A MAIL-ORDER BUSINESS
OF YOUR OWN . . . RIGHT IN YOUR OWN HOME.

. . . .

YOU NEED NO INVENTORY
YOU DO NO SHIPPING

Our plan is simple. We supply you with attractively printed catalogue folders with your name and address on them. These catalogue folders are

"self-mailers". That means that all you have to do is fold them, paste a label on them that has the name and address of a mail order customer, stamp and drop them in the mail. Soon the mail man will be bringing you envelopes containing orders with checks, cash and money orders. Then, all you do is take out your generous profit, send us the name and address of the customer and WE SHIP THE ITEMS DIRECT TO YOUR CUSTOMER FOR YOU under your own label so that you get all the re-orders. That's all there is to it.

One of the most exciting features of our dealership plan is our amazing $25.00 DEALER'S ALL PROFIT PLAN. This exclusive feature has been known to bring letters with $25.00 in every mail. The best part about this plan is that you keep every cent . . . and we ship the orders for you FREE. If you are really interested in making money at home, you can't afford to overlook this amazing money maker.

What does a dealership cost? Well you'll agree it is worth a fortune but actually it can cost you nothing because as explained in the folder, the $25.00 you send is actually nothing more than a "good faith" DEPOSIT WHICH IS REBATED TO YOU WITH YOUR FIRST ORDER OF SUPPLIES.

WAIT . . . that's not all, we also have an AMAZING MONEY BACK GUARANTEE. If your mailings are not successful, we'll refund your Dealership DEPOSIT WITHOUT ANY QUESTION. That's how sure we are that you will make a profit.

DON'T BE SORRY LATER. THIS COULD BE YOUR BIG CHANCE. TAKE YOUR FIRST STEP FORWARD TO A SECURE FUTURE BY MAILING THE $25.00 DEPOSIT.

YOURS FOR MAIL ORDER SUCCESS
B. W. COATES
DIRECTOR.

X X X

THIS MAY BE YOUR CHANCE OF A LIFETIME!

JUST THINK of trying to get started in any other business. Even the smallest retail store means an investment of $10,000 to $25,000 for rent, fixtures, stock, printing etc. Then you sit and wait for customers to come in . . . BUT NOT IN MAIL ORDER. You can start small as you want.

Without investing one cent for merchandise. No inventory. No shipping. After you've mailed the catalog, and the orders start coming, you forward the orders to us and we ship direct to your customer with YOUR SHIPPING LABEL. You keep the profit of 100 per cent or more. You get the re-orders. You have no money invested in stock, you have no wrapping, shipping or storage problems because we do it all for you. ALL you do is keep the profit! ADVICE AND CONSULTATION SERVICE FOR a full year. Your dealership entitles you to help and advice through correspondence. If you have any questions our experts are ready to help you.

REBATE COUPON. We send you a valid REBATE COUPON—This entitles you to a $25.00 rebate on your very first order for supplies. This means that actually you are getting the entire mail order dealership, offers and all absolutely FREE!

OUR GUARANTEE—You take no risk in accepting this offer as it is made through the United States Mails by the National Mail Merchandisers, an affiliate of a firm with over 20 years faithful service to MAIL ORDER DEALERS AND MAIL ORDER Beginners . . . We guarantee you profitable

results as an authorized dealer and operator of one or more of our complete Ready to Go Offers, or your dealership deposit will be refunded without further question.

RUSH THIS ORDER FORM TODAY—We need a limited number of reliable persons to participate in our unique Dealership Plan.

X X X X

MAIL ORDER EXPERTS SHOW HOW TO REACH THOUSANDS OF PROVEN MAIL ORDER BUYERS.

NATURALLY, in order for this to be successful to you, we must limit the number of men and women we allow to participate in this operation.

PAR. 5. Persons who write respondents in regard to the advertising appearing in magazines are sent sales literature, similar to the advertising sent directly through the mails to prospective customers, and are sent, similar application forms. The said application forms contain the following statements:

APPLICATION
FOR MAIL ORDER DEALERSHIP

NATIONAL MAIL MERCHANDISERS
618 WASHINGTON STREET
BOSTON 24, MASSACHUSETTS

Dear Sirs,

I certainly want to get your wonderful Mail Order Dealership. Here's my full payment of $25.00 for which you are to send me EVERYTHING as offered —your complete 7 Point Program including the $25 rebate coupon and the sensational $25 ALL PROFIT OFFER—ALL BY RETURN FIRST CLASS MAIL.

Date _____

Name _____

Address _____

City _____ Zone _____ State _____

Signed _____

Age _____

PAR. 6. By the use of the aforesaid advertisements, sales literature and application forms, and by other advertisements of the same import not herein set forth, respondent has represented and now represents directly or by implication:

1. That to become an active participating mail order dealer it will cost the purchaser of the dealership as little as $25.00 and can cost him nothing.

2. That the $25.00 "good faith deposit" is returned to the purchaser of the dealership with his first order of supplies.

3. That one wishing to withdraw as a dealer will get his $25.00 deposit back with no questions asked.

4. That respondent's offer of mail order dealerships is restricted to a limited number of people.

5. That National Mail Merchandisers is a large organization composed of more than one person.

6. That the "$25.00 ALL PROFIT PLAN" is all profit to the subscriber and that it can readily bring in $25.00 orders in every mail.

7. That National Mail Merchandisers is an affiliate of a mail order firm with over twenty years experience in the mail order business.

8. That National Mail Merchandisers guarantees successful operation of a mail order dealership to a purchaser or will refund the $25.00 dealership deposit without question.

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

1. $25.00 is not the sole cost to open a mail order business as the dealer must purchase at least one mailing offer or promotion from respondent at a cost of $80.00 and pay the cost of stamps for mailing.

2. The $25.00 "good faith deposit" is not returned to the dealer but is credited against his first order to respondent for sales literature of $80.00 or more.

3. The $25.00 deposit is not returned to the prospective dealer if he decides not to become a mail order dealer unless he actually orders respondent's sales literature, mails the same and can show the respondent that he has been unsuccessful.

4. Respondent's offers of mail order dealerships are not limited to any definite number of people but are open to all who will send respondent a $25.00 "good faith deposit."

5. National Mail Merchandisers is not a large organization as it is composed solely of the respondent.

6. The $25.00 "ALL PROFIT PLAN" is not all profit as it involves an outlay of money on the part of the dealers for mailing lists, self-mailing folders, and "sales-making folders" from respondent. All of such costs reflect on any money made by a dealer in undertaking such plan. Dealers undertaking such plan have little or no chance of realizing $25.00 orders in every mail.

7. National Mail Merchandisers is not an affiliate of any firm.

8. There are numerous conditions under respondent's guarantee of the refund of the $25.00 deposit which are not set forth in connection with the guarantee.

PAR. 8. The use by the respondent of the aforementioned false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and the tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representa-

tions were and are true and into the purchase of substantial quantities of aforesaid products because of said mistaken and erroneous belief. As a result thereof, trade in commerce has been unfairly diverted to respondent from his competitors and injury thereby has been done to competition in commerce.

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

Mr. *Garland S. Ferguson* supporting the complaint.
Mr. Milton M. Mokotoff, of New York, N.Y., for respondent.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on November 28, 1960, charging him 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 the use of false, deceptive and misleading statements in connection with the sale of mail order dealerships. After being served with said complaint, respondent appeared by counsel and entered into an agreement dated June 9, 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 the respondent, 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.

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

if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all 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. Bernard W. Coates is an individual trading and doing business as National Mail Merchandisers, with his office and principal place of business located at 35 Pleasant Street, Dorchester, Massachusetts. Respondent uses various mailing addresses for National Mail Merchandisers and among such addresses is 618 Washington Street, Boston, Massachusetts.

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

ORDER

It is ordered, That respondent Bernard W. Coates, an individual trading and doing business as National Mail Merchandisers, or under any other name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of mail order dealerships, and sales literature and other materials to be used in connection with said dealerships, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly that:

1. A mail order dealership can be acquired under respondent's dealership plan at no cost to the purchaser; or misrepresenting in any manner the actual amount of money required to be paid to obtain a dealership.

2. The $25.00 "good faith deposit", or any other sum of money, is refunded to the purchaser of one of respondent's dealerships with his first order of supplies from respondent.

3. The $25.00 deposit, or any other sum of money, paid to respondent will be returned in case the person making the payment decides not to become a dealer.

4. The offer of mail order dealerships is restricted to a limited number of people, or is restricted, or limited, in any manner which is not in accordance with the facts.

5. National Mail Merchandisers is a large organization or that it consists of persons other than respondent.

6. Respondent's $25.00 "ALL PROFIT PLAN" is all profit to the purchaser, or that dealers will receive $25.00 in every mail; or will receive any amount in excess of the amount that is usually received by such dealers.

7. National Mail Merchandisers is affiliated with any firm or person other than the respondent.

8. Successful operation of dealerships is guaranteed, or that a refund of any money paid to respondent is guaranteed unless the nature and extent of such guarantee and the manner in which the guarantor will perform are clearly disclosed.

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

IN THE MATTER OF

KATTEN & MARENGO, INC., ET AL.

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

Docket 8374. Complaint, Apr. 21, 1961—Decision, Aug. 23, 1961

Consent order requiring furriers in Stockton, Calif., to cease violating the Fur Products Labeling Act by advertising in newspapers which represented prices of fur products as reduced from regular prices which were in fact

fictitious, and as reduced by stated percentages, without keeping adequate records as a basis for such claims.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Katten & Marengo, Inc., a corporation, and Peter J. Marengo, Jr., Peter J. Marengo, III, and Mary Schenone, 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. Katten & Marengo, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 500 East Main Street, Stockton, California.

Respondents Peter J. Marengo, Jr., Peter J. Marengo, III, and Mary Schenone control, direct and formulate the acts, practices and policies of 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 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 advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 4. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which

appeared in issues of the Stockton Record, a newspaper published in the city of Stockton, 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) 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.

(b) Represented directly or by implication through the use of percentage savings claims such as "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. 5. Respondents in advertising fur products for sale as aforesaid made claims and representations respecting the 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 said Rules and Regulations.

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

Mr. Charles S. Cox for the Commission.

Kroloff, Brown, Belcher & Smart, by *Mr. William E. Tout*, Stockton, Calif., for the respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated April 21, 1961, the respondents are charged with violating the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

On June 20, 1961, the respondents and their attorneys entered into an agreement with counsel in support of the complaint for a consent order.

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

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

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

1. Respondent Katten Marengo, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 500 East Main Street, in the City of Stockton, State of California. Respondents Peter J. Marengo, Jr., Peter J. Marengo, III, and Mary Schenone are officers of said corporate respondent, and their address is the same as that of corporate respondent.

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

ORDER

It is ordered, That Katten & Marengo, Inc., a corporation and its officers, and Peter J. Marengo, Jr., Peter J. Marengo, III, and Mary Schenone, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, 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. Represents directly or by implication that the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of business.

B. Represents, directly or by implication, through the use of the words, symbols or figures "½ off", "regular", "reg.", or any other words or terms of the same import, that the regular or usual price of any fur product is any amount which is in excess of the price at which the respondents have usually and customarily sold such products in the recent regular course of business.

C. Represents, directly or by implication, that any savings from respondents' regular or usual retail price are afforded to the purchasers of respondents' fur products unless the price at which same are offered constitutes a reduction from the price at which said fur products have been usually and customarily sold by respondents in the recent regular course of their business.

D. Misrepresents, in any manner, the amount of savings available to purchasers of respondents' fur products or the amounts by which the prices of said fur products are reduced from the prices at which said products are usually and customarily sold by respondents in the recent regular course of their business.

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

MIDWEST LAMP COMPANY ET AL.

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

Docket 8381. Complaint, May 4, 1961—Decision, Aug. 23, 1961

Consent order requiring Milwaukee distributors of lamps to retailers to cease such misrepresentations as attaching to their lamps tickets bearing excessive amounts represented thereby as regular retail prices, and bearing the words "nationally advertised" when such claim was false.

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 Midwest Lamp Company, a corporation, and Ivan Weinstein, Samuel Goldenberg and Lillian Weinstein, 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 Midwest Lamp Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 302 North Broadway Street, Milwaukee, Wisconsin.

Individual respondents Ivan Weinstein, Samuel Goldenberg and Lillian Weinstein 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 manufacture, sale and distribution of lamps to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Wisconsin 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 prod-

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

PAR. 4. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of using fictitious prices in connection therewith, and misrepresenting that their product is nationally advertised, by the following methods and means:

(a) By attaching, or causing to be attached, tickets to their said lamps upon which certain amounts are printed, thereby representing, directly or by implication, that said amounts are the usual and customary retail price of said lamps in the trade areas where such representation is made. In truth and in fact, said amounts are fictitious and in excess of the usual and customary retail prices of said lamps in the trade areas where such representation is made.

(b) By printing, or causing to be printed, on their price tags, the words "nationally advertised", thereby representing that said lamps were advertised nationally. In truth and in fact, said lamps are not advertised nationally.

PAR. 5. By the aforesaid practices, respondents placed in the hands of retailers means and instrumentalities by and through which they may mislead the public as to the usual and regular retail price of said lamps and as to the nature and extent of their advertising.

PAR. 6. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of lamps of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 8. The 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.
Respondents, *pro se.*

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 4, 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 the use of fictitious prices and misrepresentations as to the extent of their advertising, in connection with the sale and distribution of lamps manufactured by them. After being served with said complaint, respondents entered into an agreement dated June 20, 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 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.

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 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 affect 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.

The order which has been agreed upon provides that the complaint shall be dismissed as to respondent Samuel Goldenberg in his individual capacity. The basis for such disposition as to said re-

spondent is set forth in an affidavit by him subscribed and sworn to May 31, 1961, and submitted together with and as part of the above-mentioned agreement containing consent order. Said affidavit recites that said respondent did not formulate, direct or control the acts and practices of the corporate respondent, including those alleged in the complaint, and that he resigned as an officer on May 26, 1961, upon learning of the charges in said complaint. The parties have recommended that the complaint be dismissed as to respondent Samuel Goldenberg in his individual capacity.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, together with the affidavit of Samuel Goldenberg which has been made a part of said agreement, 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 Midwest Lamp Company is a corporation existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 302 North Broadway Street, in the City of Milwaukee, State of Wisconsin.

Respondents Ivan Weinstein and Lillian Weinstein are officers of said corporate respondent. They formulate, direct and control the acts and practices of said corporate respondent. Their address is the same as the corporate respondent. Respondent Samuel Goldenberg resigned as an officer on May 26, 1961. His address is 735 North Water Street, Milwaukee, 2, Wisconsin.

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, Midwest Lamp Company, a corporation, and its officers, and Ivan Weinstein and Lillian Weinstein, individually and as officers of said corporation, and Samuel Goldenberg as a former officer of said corporation, and respondents' agents,

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

1. Representing, directly or by implication, by means of preticketing or in any other manner, that any amount is the usual and regular retail price of merchandise when such amount is in excess of the price at which said merchandise is usually and customarily sold at retail in the trade area or areas where the representations are made.

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

3. Representing, directly or by implication, that merchandise is nationally advertised when such is not the fact.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

MINNESOTA MINING AND MANUFACTURING COMPANY

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

Docket 7973. Complaint, June 24, 1960—Decision, Aug. 24, 1961

Consent order requiring the nation's largest manufacturer of electrical insulation tapes, among other products, and with a record of 14 acquisitions during the five-year period 1952 to 1956, to sell as a unit its Insulation and Wires division—before the acquisition the third largest distributor of electrical insulation products and consisting of three entities with dis-

tribution in the same nation-wide areas as respondent—which it acquired in August 1956 from Essex Wire Corp., and requiring it to comply with other provisions of the order of divestiture as set forth below in full.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described has violated and is now violating the provisions of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18) as amended, hereby issues its complaint pursuant to Section 11 of the aforesaid Act (U.S.C. Title 15, Sec. 21), charging as follows:

PARAGRAPH 1. Respondent Minnesota Mining and Manufacturing Company, hereinafter referred to as Minnesota Mining, is a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business located at 900 Bush Street, St. Paul 6, Minnesota.

For a number of years beginning prior to 1953 Minnesota Mining has been a highly diversified company manufacturing and selling a number of product lines and segments thereof including the following: coated abrasives and related products; tapes including cellophane, masking, industrial and electrical; sound-recording magnetic tape; adhesives and coatings; roofing granules; graphic products including reflective, printing and duplicating products; color pigments; sulfuric acid; crushed stone, sand and ready mixed cement; and gummed paper, cloth tapes, and gummed labels. It has been also engaged in leasing and servicing signs for highway advertising. Since 1953 Minnesota Mining has begun the manufacture and sale of reinforced plastics, contact bond adhesives, heat sealable polyester film and certain types of chemical products.

It is the largest manufacturer of magnetic tapes, electrical insulation tapes, pressure sensitive plastic backing including cellophane tapes, and is the largest or one of the largest manufacturers of coated abrasive products, roofing granules, graphic products and highway advertising material.

Minnesota Mining has a world-wide business with properties and facilities throughout the United States and in many foreign countries. It is and has been engaged in the manufacture, sale, and distribution of its products in commerce, as "commerce" is defined in the Clayton Act, throughout the several States of the United States and in the District of Columbia.

Minnesota Mining has branch offices and warehouses in nineteen cities throughout the United States through which primary distri-

bution is made to wholesalers and distributors in a wide variety of trades. Sales are also made direct to large industrial and other consumers. During the early 1950's it sold its electrical insulation tape through many distributors and to original equipment manufacturers throughout the United States with the exception of the Eastern Seaboard where its electrical insulation tape was sold directly to consumers.

Minnesota Mining's net sales increased from $108,246,000 in 1948 to $185,242,000 in 1952. During this five year period its net income increased from $13,235,000 to $16,090,000, and its total assets increased from $88,902,000 to $153,275,000. From 1952 to 1956 Minnesota Mining's net sales increased from $185,242,000 to $330,808,000, its net income increased from $16,090,000 to $38,724,000, and its total assets increased from $153,275,000 to $255,084,000.

During the five year period 1952 to 1956 a substantial portion of Minnesota Mining's growth was achieved by 14 acquisitions, 12 domestic and two foreign. Nine of the 12 domestic acquisitions included all the assets of the companies; one was the acquisition of patents; one was an acquisition of a chemical division belonging to another company; and one an acquisition of a research and development partnership. The acquisitions fell into six categories, all of which were related to the existing Minnesota Mining operations. The product groups with the number of acquisitions in each are as follows:

Electrical insulation (6 domestic and 2 foreign companies)	8 acquisitions
Adhesives	1 acquisition
Reinforced plastics	2 acquisitions
Chemicals, including resins	1 acquisition
Paper products (including electrical insulation paper)	1 acquisition
Video recording equipment	1 acquisition

The electrical insulation products of the companies acquired in the electrical insulation industry were complementary to the electrical insulation tape manufactured and sold by Minnesota Mining. The principal electrical insulation product lines acquired were varnished fabrics and paper, manufactured mica, industrial laminates, insulating liquid varnish, extruded plastic tubing, flexible treated tubing and sleeving, and steatite.

In June 1953, Minnesota Mining acquired American Lava Corporation. American Lava Corporation was engaged in the manufacture and sale of steatite ceramic insulation products and other ceramic products throughout the United States. These products were used principally as electrical insulation in radio and television components and household appliances, and as components for textile

machinery and processes. At the time of its acquisition American Lava Corporation was the largest producer of steatite. In 1952 American Lava Corporation's net sales were $7,515,000 and its total sales of steatite were $5,204,000. Its sales of steatite for electrical insulation were $3,383,000, and accounted for approximately one third of the total sales of steatite in the electrical insulation industry. Most of its sales were made directly to original equipment manufacturers.

In July 1953, Minnesota Mining acquired Irvington Varnish & Insulator Company, hereinafter referred to as Irvington. Irvington was engaged in the manufacture and sale of electrical insulation (varnished fabrics and paper, flexible treated tubing and sleeving, extruded plastic tubing, and liquid insulation varnish) and certain other products throughout the United States. Prior to its acquisition, Irving was the largest producer and seller of varnished fabrics and paper, and of extruded plastic tubing for electrical insulation. In 1952 Irvington accounted for approximately two fifths of the total industry sales of varnished fabrics and paper and for approximately one third of the total industry sales of extruded plastic tubing. Its net sales in 1952 were $13,540,000, of which approximately 70 percent was in electrical insulation products. Its sales of electrical insulation products were made to original equipment manufacturers and to electrical insulation distributors.

In November 1955, Minnesota Mining acquired Mica Insulator Company. Mica Insulator Company was engaged in the manufacture and sale of manufactured mica products industrial laminated sheets, varnished fabrics and paper for use as electrical insulation, and certain other products throughout the United States. In 1955, Mica Insulator Company was the second largest producer of mica insulation, accounting for approximately 20 percent of total industry sales. In varnished fabrics and paper it was the seventh largest producer with approximately 5 percent of total industry sales in 1955. Its net sales of electrical insulation products in 1955 were $5,672,000. Its sales of electrical insulation products were made to original equipment manufacturers and to electrical insulation distributors.

At the time Mica Insulator Company was acquired by Minnesota Mining it owned 20 percent of the stock of Micanite of Canada, Ltd. and 33⅓ percent of the stock of Samica Corporation. After Mica Insulator Company was acquired, Minnesota Mining purchased the remaining stock of said companies. Samica Corporation was engaged in the manufacture and sale of reconstituted mica sheets used for electrical insulation throughout the United States. The manu-

facture of reconstituted mica sheets was a relatively new process in 1954, with Samica Corporation being one of the first companies to produce this new product. Sales of mica sheets in 1954 by Samica Corporation were $124,000.

By 1959, Minnesota Mining's net sales had increased to $446,580,000, its net income had increased to $60,262,000, and its total assets had increased to $351,838,000.

PAR. 2. In March 1956, Minnesota Mining acquired all of the assets of Prehler Brothers, Incorporated and Prehler Electrical Insulation Company which were operating as Prehler Electrical Insulation Company, hereinafter referred to as Prehler. Prehler was a corporation organized under the laws of the State of Illinois.

Prehler was engaged in the purchase, sale and distribution of electrical insulation products and other products in commerce, as "commerce" is defined in the Clayton Act. Prehler's principal sales office was located in Chicago, Illinois, and its other sales offices were in the following cities: Cleveland and Dayton, Ohio; Detroit, Michigan; Minneapolis and St. Paul, Minnesota; and Milwaukee, Wisconsin. Prehler sold and distributed electrical insulation products throughout the various sections of eight states, including Minnesota, Wisconsin, Iowa, Illinois, Michigan, Indiana, Ohio and Kentucky and in sections of three other adjacent states.

Prehler purchased substantial amounts of electrical insulation products from Minnesota Mining and other electrical insulation manufacturers. Electrical insulation products sold by Prehler included varnished fabrics and paper, manufactured mica, industrial laminates, insulating liquid varnish, electrical insulation tape, flexible tubing and sleeving and extruded plastic tubing. Its sales were made to original equipment manufacturers and to motor repair and rewind shops in competition with others including Insulation and Wires, Inc.

Prehler was the second largest distributor of electrical insulation products in the United States and in the sections of the country in which it sold electrical insulation products. In 1956 its total sales of all electrical insulation products were $6,471,000 and its total assets amounted to approximately $1,500,000.

PAR. 3. In August 1956, Minnesota Mining acquired the principle assets of Insulation and Wires, Inc., hereinafter referred to as IWI, a wholly-owned subsidiary of Essex Wire Corporation. IWI consisted of (1) Insulation and Wires, a Missouri corporation, (2) Insulation and Wires, a Georgia corporation, and (3) Insulation and Wires, a Division of the Essex Corporation, a Michigan corporation.

IWI was engaged in the purchase, sale and distribution of electrical insulation products and other products in commerce, as "commerce" is defined in the Clayton Act. Its principal office was located at Ft. Wayne, Indiana, and its nine sales offices were located throughout the United States, namely: Newark, New Jersey; Boston, Massachusetts; Detroit, Michigan; St. Louis, Missouri; Houston, Texas; Los Angeles, and San Francisco, California; Portland, Oregon and Atlanta, Georgia.

A substantial amount of IWI's total purchases were electrical insulation products which were purchased from electrical insulation manufacturers. Electrical insulation products sold by IWI included varnished fabrics and paper, manufactured mica, industrial laminates, insulating liquid varnish, electrical insulation tape, flexible tubing and sleeving and extruded plastic tubing. Its principal sales were made to motor repair and rewind shops and original equipment manufacturers in competition with others including Prehler.

IWI was the third largest distributor of electrical insulation products in the United States and one of the few distributors who sold electrical insulation on a nation-wide basis. In 1956, its total sales of all electrical insulation products were $6,126,000, and its total assets amounted to approximately $1,772,000. Its sales of electrical insulation products in the areas in which Prehler did business were over $1,000,000.

PAR. 4. Electrical insulation products are used in electric motors, transformers, generators, electric cables, appliances, and other electrical and electronic equipment. Each of the electrical insulation product lines have approximately 15 to 20 manufacturers and most of these manufacturers are small companies who concentrate their efforts in one product line. Some manufacturers use most of their electrical insulation products in their own integrated operation. Practically all electrical insulation manufacturers sell electrical insulation products to original equipment manufacturers and to electrical insulation distributors. The electrical insulation distributors in turn sell to original equipment manufacturers and to other classes of customers including motor repair and rewind shops.

Prior to its acquisitions in the electrical insulation industry, Minnesota Mining was the largest producer of electrical insulation tape. It was the first company to develop and sell this product on a commercial basis. As other companies entered this market, Minnesota Mining's market position declined to approximately 84 percent in 1952 and 66 percent in 1958, with sales of $5,112,000 and $4,912,000 respectively.

Minnesota Mining's acquisitions of electrical insulation manufacturers between 1952 and 1956 brought under its control substantial shares of major electrical insulation product lines and made it the largest company in the United States engaged in the manufacture and sale of electrical insulation products to original equipment manufacturers and electrical insulation distributors. These acquisitions included:

(1) In 1955, Irvington and Mica Insulator Company together accounted for approximately 33 percent of the varnished fabrics and paper market. In 1958, their combined sales were approximately 19 percent of the industry's total sales of varnished fabrics and paper and they ranked as the second largest seller.

(2) Irvington was the largest seller of extruded plastic tubing at the time of its acquisition and has continued to hold this market position, accounting for approximately 33 percent of the industry's total sales of extruded plastic tubing.

(3) Irvington's sales of flexible treated tubing and sleeving has increased from approximately 7 percent of the industry's total sales in 1952 to approximately 11 percent in 1958.

(4) Mica Insulator Company has ranked as the second largest company in the sale of manufactured mica with approximately 20 percent of total industry sales of this product since 1955.

(5) American Lava Corporation has ranked as the largest company in the sales of steatite, with approximately 33 percent of total industry sales of steatite in 1952 and approximately 28 percent of said sales in 1958.

Minnesota Mining's total net sales of all electrical insulation products were $44,497,000 in 1956 and $40,237,000 in 1958. Its domestic sales of varnished fabrics and paper, manufactured mica, industrial laminates, insulating liquid varnish, electrical insulation tape, extruded plastic tubing, flexible treated tubing and sleeving, and steatite were $21,687,000 in 1956 and $15,709,000 in 1958.

Prior to their acquisitions, Prehler and IWI were two of the three largest electrical insulation distributors competing with Minnesota Mining in the sale of electrical insulation products to original equipment manufacturers and others in various sections of the country. Prehler and IWI accounted for approximately 15 percent and 14 percent, respectively, of the total sales of all electrical insulation products sold through electrical insulation distributors in 1956.

With these acquisitions, Minnesota Mining became the largest distributor of electrical insulation products and has continued to hold

this market position, accounting for approximately 29 percent of the total sales of all electrical insulation products sold and distributed by electrical insulation distributors in the United States. During the same period of time the sales of the next largest distributor of electrical insulation products declined from approximately 24 percent to approximately 20 percent of said total sales. In 1958, Minnesota Mining's sales of all electrical insulation products through its acquired distributors amounted to $10,665,000.

The acquisitions of Prehler and IWI made Minnesota Mining the second largest distributor of seven of the electrical insulation product lines which it manufactured, accounting for approximately 18 percent of the total sales of said products. In 1958, Minnesota Mining's sales of said seven electrical insulation products through its acquired electrical insulation distributors had increased to about 21 percent of the total sales of said products by electrical insulation distributors, while sales of said seven products by the largest electrical insulation distributor declined to less than 21 percent. In 1958, Minnesota Mining's sales of said seven electrical insulation products through its acquired distributors were $4,820,000.

In 1956, Prehler accounted for approximately 27 percent of the sales of the aforesaid seven electrical insulation products sold by electrical insulation distributors in the sections of the country in which it sold electrical insulation products. In 1958, Prehler's sales of these products accounted for approximately 32 percent of the total sales of these products in said sections of the country.

Prior to the acquisitions of Prehler and IWI a number of electrical insulation manufacturers were suppliers of electrical insulation products to Prehler and IWI. Since the acquisitions many of these suppliers have been discontinued.

Prior to the acquisitions of Prehler and IWI, a number of electrical insulation distributors purchased electrical insulation products for resale from Minnesota Mining and from the manufacturers of electrical insulation products who were acquired by Minnesota Mining. Since said acquisitions many of these electrical insulation distributors have been foreclosed from purchasing electrical insulation products from Minnesota Mining and its acquired companies.

PAR. 5. The effect of the aforesaid acquisitions by Minnesota Mining of Prehler and IWI, and of each of them, may be substantially to lessen competition or to tend to create a monopoly in the manufacture, distribution and sale of electrical insulation products, individually and collectively, in various sections of the country within the meaning of Section 7 of the Clayton Act as amended.

The aforesaid effects include the actual or potential lessening of competition and a tendency to create a monopoly in the following ways, among others:

1. Minnesota Mining, as the largest producer of electrical insulation tape, and with its acquisitions of leading manufacturers of other electrical insulation products, by acquiring two of the three largest distributors of electrical insulation products in the United States, has extended and integrated its business in such a manner as to substantially increase its position in the manufacture, sale and distribution of electrical insulation products; and it may exercise the inherent powers of its acquired position to substantially lessen competition or tend to create a monopoly in the manufacture, sale and distribution of electrical insulation products.

2. Manufacturers of electrical insulation products have been foreclosed from a substantial share of the markets for said products.

3. Competition has been eliminated between Prehler and IWI in the distribution and sale of electrical insulation products in the sections of the country in which they were competing, and potential competition has been eliminated between said companies throughout the United States.

4. Actual and potential competition has been eliminated between Minnesota Mining and the two acquired distributors.

5. As a leading manufacturer and distributor of electrical insulation products Minnesota Mining has acquired a position whereby it may:

(a) Manipulate prices or use other means to lessen competition or tend to create a monopoly; and

(b) Concentrate the full impact of its sales, promotional and merchandising experience and ability on one of its electrical insulation products, or on one selected section of the country.

6. Concentration of the manufacture, sale and distribution of electrical insulation products may be increased.

PAR. 6. The foregoing acquisitions, acts and practices of respondent, as hereinbefore alleged and set forth, constitute a violation of Section 7 of the Clayton Act as amended and approved December 29, 1950.

Mr. J. Wallace Adair for the Commission.

Connolly, Tucker, Post & Lyons, St. Paul, Minn., for respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On June 24, 1960, the Federal Trade Commission issued its complaint against the above-named respondent charging it with vio-

lating the provisions of Section 7 of the Clayton Act, as amended. On July 19, 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 Prehler Electrical Insulation Company violated Section 7 of the amended Clayton Act should be dismissed for the reasons set forth in an Appendix A attached thereto.

As also set forth in the aforesaid agreement and for the purposes thereof, electrical insulation products shall consist of the following sixteen products and any other product, which may be introduced as a replacement, substitution, or improvement on said sixteen products, which are sold for use by manufacturers of electrical appliances, electrical machinery, electronics apparatus, communication and power cable, and in the repair of motors, generators and transformers.

(1) Varnished fabrics and paper.

(2) Manufactured electrical mica.

(3) Coated electrical sleeving (formerly known as flexible treated tubing and saturated sleeving).

(4) Industrial laminates.

(5) Insulating liquid varnish.

(6) Electrical insulation tape (pressure sensitive).

(7) Extruded plastic tubing.

(8) Steatite.

(9) Polymeric films such as cellulose acetate, polyvinyl chloride, polypropylene, polyethylene, polyester, fluorinated ethylene propylene, and polytetrafluorethylene.

(10) Vulcanized fibre, fish paper, asbestos paper, kraft paper (including condenser tissue), rag paper, and transformer board.

(11) Untreated cotton and glass tapes.

(12) Encapsulating resins and molding compounds—polyester, epoxy, phenolic alkyds, silicone, waxes, and asphaltic compounds.

(13) Wire enamels.

(14) Natural, butyl, buna, neoprene, and silicone rubber.

(15) Liquid dielectrics for distribution transformers, power transformers, circuit breakers, specialty transformers, and capacitors.

(16) Hardwood slot sticks.

For the further purposes of this agreement an electrical insulation distributor is a firm which purchases a line of electrical insulation products, from manufacturers other than a parent or subsidiary, for stock and resale.

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 Minnesota Mining and Manufacturing Company 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 located at 900 Bush Avenue, St. Paul, 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 Section 7 of the Clayton Act, as amended.

ORDER

I

It is ordered, That respondent Minnesota Mining and Manufacturing Company, its subsidiaries, officers, directors, agents, representatives and employees, shall:

1. On or before January 1, 1962, divest itself absolutely, in good faith, as a unit by sale to a purchaser approved by the Commission of all assets, properties, rights and privileges, including but not

limited to all trade-marks, trade names, customer lists, contracts, business and good will acquired by respondent as a result of its acquisition of all of the assets of Insulation and Wires division of the Essex Wire Corporation, and all of the assets of Insulation and Wires Incorporated, a Missouri corporation, and all of the assets of Insulation and Wires Incorporated, a Georgia corporation (hereinafter collectively referred to as Insulation and Wires and presently operated as a division of respondent), together with the additions and equipment of whatever description that is presently utilized by respondent in its Insulation and Wires division, in such manner as to restore Insulation and Wires as a competitive entity in substantially the same competitive standing it formerly had in the sale and distribution of electrical equipment and electrical insulation products at the time of the acquisition.

2. For a period of five (5) years from the date of divestiture, make available to said purchaser all of the electrical insulation products manufactured by respondent and sold by it to any electrical insulation distributors on the same terms and at the same prices as such products are sold by it to such other distributors.

3. Transfer to said purchaser all sales employees who are presently employed by respondent in its Insulation and Wires division.

II

It is further ordered, That in the divestiture of Insulation and Wires by respondent none of the said assets, properties, rights and privileges, tangible or intangible, shall be sold or transferred, directly or indirectly, to anyone, who at the time of the divestiture, is an 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.

III

It is further ordered, That for a period of five (5) years from the date of this order respondent shall continue in good faith to operate its subsidiary Prehler Electrical Insulation Company as an electrical insulation distributor and shall cause said Company to purchase not less than 22% of its total annual purchases of electrical insulation products from suppliers other than respondent or its subsidiaries.

IV

It is further ordered, That for a period of ten (10) years from the date of this order respondent shall cease and desist from acquir-

ing, directly or indirectly, through subsidiaries or otherwise, the assets, stock, or any equity in any electrical insulation distributor in the United States.

V

It is further ordered, That, except for the restrictions set forth in Paragraph III of this order, the allegations of the complaint charging that respondent's acquisition of Prehler Electrical Insulation Company 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 24th 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 contained in said initial decision.

IN THE MATTER OF

DAVIDSON BROTHERS, INC.

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

Docket 8856. Complaint, Apr. 14, 1961—Decision, Aug. 24, 1961

Consent order requiring a Detroit furrier to cease violating the Fur Products Labeling Act by setting forth on labels and invoices and in advertising the names of animals other than those producing the fur in the fur products concerned, 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 Davidson Brothers, 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. Davidson Brothers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan with its office and principal place of business located at 1200 East McNichols, Detroit, Michigan.

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 that the respondent, on labels attached thereto, set forth the name of an animal other than the name of the animal that produced the fur, in violation of Section 4(3) of the Fur Products Labeling Act and 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) Labels affixed to fur products did not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches, in violation of Rule 27 of said Rules and Regulations.

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

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence, in violation of Rule 30 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. 6. 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. 7. Certain of said fur products were falsely and deceptively invoiced in that respondent set forth on invoices pertaining to fur products the name of an animal other than the name of the animal that produced the fur, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 8. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondent caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 9. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondent which appeared in issues of the Cleveland Press, a newspaper published in the City of Cleveland, State of Ohio, and having a wide circulation in said State and various other States of the United States.

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

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

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Mr. Harry E. Middleton, Jr., supporting the complaint.
Mr. Irwin I. Cohn, Detroit, Mich., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On April 14, 1961, the Federal Trade Commission issued a complaint against respondent Davidson Brothers, Inc., a corporation, in

which it was charged with violating the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder by falsely or deceptively labeling and invoicing fur products sold by respondent in interstate commerce. A true and correct copy of the complaint was served upon respondent as required by law. Thereafter respondent appeared by counsel and agreed to dispose of this proceeding without a formal hearing pursuant to the terms of an agreement dated June 26, 1961, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on July 3, 1961, in accordance with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The agreement purports to dispose of this proceeding as to the respondent and contains the form of a consent cease-and-desist order which the parties have represented is dispositive of the issues involved in this proceeding. The agreement has been signed by the corporate respondent by its vice president, by the attorneys for both parties, and has been approved by the Assistant Director and Acting Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement respondent admits all of the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the respondent waives: (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all rights respondent may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

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

The parties have covenanted that the said agreement is for settlement purposes only and does not constitute an admission by the 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 of June 26, 1961, containing consent order, and it appearing that the order which is approved in and by said agreement disposes of all the issues presented by the complaint as to all of the parties involved, said agreement is hereby accepted and approved as complying with §§ 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The undersigned hearing examiner, having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, makes the following findings and issues the following order:

FINDINGS

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

2. Respondent Davidson Brothers, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 1200 East McNichols in the City of Detroit, State of Michigan;

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

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

1. 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 the name or names of any animal or animals other than the name or names provided for in Section 4(2)(A) of the Fur Products Labeling Act;

C. Affixing to fur products labels that do not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches;

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

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

F. Failing to set forth required item numbers on labels as required by Rule 40 of said Rules and Regulations;

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 on invoices pertaining to fur products the name or names of any animal or animals other than the name or names provided for in Section 5(b)(1)(A) of the Fur Products Labeling Act;

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

A. Sets forth the name or names of any animal or animals other than the name or names provided for 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 24th day of August 1961, become the decision of the Commission; and, accordingly:

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

Complaint

IN THE MATTER OF

CHURCHILL SPORTSWEAR CO., INC., ET AL.

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

Docket 8379. Complaint, Apr. 26, 1961—Decision, Aug. 24, 1961

Consent order requiring Boston manufacturers of ladies' garments to cease advertising and labeling their products falsely as "Indian Madras" and "Madras".

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 Churchill Sportswear Co., Inc., a corporation, and Hyman Greenblatt, 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 Churchill Sportswear Co., 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 169 A Street, Boston, Massachusetts.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of ladies' garments to retailers throughout the Nation.

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

PAR. 4. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of misrepresenting the material of which their products are made or composed by advertising and labeling their garments as "Indian Madras" and as "Madras". In truth and in fact, said garments are not made of "Indian Madras" or "Madras".

By the use of such advertising and labels respondents represent that their color fast domestic fabrics are the same or similar to Madras cotton fabrics imported from India, which have a distinctive character and quality.

The word "Madras" has long been applied to a fabric produced in the Madras Province of India, which is made of fine hand-loomed cotton and, if in a color other than natural, is dyed with bleeding vegetable dyes. Such fabric has for a long time been well and favorably known to the purchasing public.

PAR. 5. By the aforesaid practices the respondents place in the hands of retailers the means and instrumentalities by and through which they may mislead the public as to the character and quality of their products.

PAR. 6. 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 merchandise of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true and into the purchase of substantial quantities of respondents' products by reason of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

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

Mr. Harry E. Middleton, Jr., supporting the complaint.
Mr. Jay L. Fialkow, Boston, Mass., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 26, 1961, issued its complaint in this proceeding against the above-named respondents, and a true copy was served on them. Thereafter respondents appeared by counsel and agreed to dispose of this proceeding without a formal hearing pursuant to the terms of an agreement dated June 23, 1961, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on July 3, 1961, in accordance with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The agreement purports to dispose of this proceeding as to the respondents and each and all of them and contains the form of a consent cease-and-desist order which the parties have represented is dispositive of the issues involved in this proceeding. The agreement has been signed by the corporate respondent by its president, both individually and as an officer of said corporation, by the attorneys for both parties, and has been approved by the Assistant Director and the Acting Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement respondents admit all of the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the respondents waive: (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all rights respondents may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

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

The parties have covenanted that the said agreement is for settlement purposes only and does not constitute an admission by the

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

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of June 23, 1961, containing consent order, and it appearing that the order which is approved in and by said agreement disposes of all the issues presented by the complaint as to all of the parties involved, said agreement is hereby accepted and approved as complying with §§ 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The undersigned hearing examiner, having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, makes the following findings and issues the following order:

FINDINGS

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

2. Respondent Churchill Sportswear Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 169 A Street, in the City of Boston, State of Massachusetts;

3. Individual respondent Hyman Greenblatt is an officer of said corporate respondent. His address is the same as that of the corporate respondent;

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

It is ordered, That Churchill Sportswear Co., Inc., a corporation, and its officers, and Hyman Greenblatt, 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 or distribution of women's garments or other textile products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Madras" or any simulations thereof, either alone or in combination with other words, to designate, describe or refer to any fabric or other textile product which is not, in fact, made of fine cotton, handloomed and imported from India, and, if the cloth is other than natural in color, has not been dyed with bleeding vegetable dyes;

2. Placing in the hands of retailers or others any means or instrumentalities whereby they may mislead or deceive the purchasing public with respect to the merchandise as set forth in Paragraph 1, above.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 24th day of August 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

WARE KNITTERS, INCORPORATED, ET AL.

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

Docket 8079. Complaint, Aug. 11, 1960—Decision, Aug. 25, 1961

Consent order requiring a firm in Ware, Mass., to cease violating the Flammable Fabrics Act by selling fabric so highly flammable as to be dangerous when worn, and by giving a guaranty to customers that tests made under legal procedures showed the fabric did not endanger wearers, when such tests were not made on all the fabrics covered by the guaranty.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Ware Knitters, Incorporated, and Gilbertville Mills, Incorporated, both corporations, and James F. Nields, B. Joseph Kmon, and Marion B. Damon, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, and it appearing to the Commission that a proceeding by it in respect thereof would

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

PARAGRAPH 1. Respondent Ware Knitters, Incorporated, is a corporation duly organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts. Its address is East Main Street, Ware, Massachusetts.

Respondent Gilbertville Mills, Incorporated, is a corporation duly organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts. Its address is Gilbertville, Massachusetts.

Individual respondents James F. Nields, B. Joseph Kmon, and Marion B. Damon are officers of said corporate respondents. They formulate, direct, and control their policies, acts, and practices. Said individual respondents' business address is the same as that of respondent Ware Knitters, Incorporated.

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

PAR. 3. Respondents, subsequent to July 1, 1954, have furnished their customers with a guaranty with respect to the fabric, mentioned in Paragraph Two hereof, to the effect that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, show that said fabric is not, in the form delivered by the respondents, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals. There was reason for respondents to believe that the fabric covered by such guaranty might be introduced, sold, or transported in commerce.

Said guaranty was false in that with respect to some of the said fabric, respondents have not made such reasonable and representative tests.

PAR. 4. Respondents, in the course and conduct of their business, are engaged in direct and substantial competition in commerce with other corporations, firms and individuals in the sale and offering for sale of fabric which is not flammable under the definition of the Flammable Fabrics Act.

PAR. 5. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Brockman Horne supporting the complaint.

Mr. Sidney S. Korzenik, *Rothstein & Korzenik*, New York, N.Y., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above named respondents on August 11, 1960. The complaint charged among other things the sale, introduction into commerce and transportation of fabric so highly flammable as to be dangerous when worn by individuals, and the issuance of a guarantee that such fabric was not so highly flammable as to be dangerous when worn by individuals. Said acts and practices were charged to be unfair and deceptive acts and practices and unfair methods of competition within the intent and meaning and in violation of the Federal Trade Commission Act and also to be in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder.

Thereafter and on June 13, 1961, counsel supporting the complaint presented to the undersigned an agreement dated May 26, 1961, executed by all respondents except Gilbertville Mills Inc., by counsel for respondents and by counsel supporting the complaint providing for the entry without further notice of a cease and desist order. The agreement was duly approved by the Director and the 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 respondents 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.

Attached to and made part of said agreement is an affidavit of respondent B. Joseph Kmon verified May 26, 1961, alleging that respondent Gilbertville Mills, Incorporated had never offered for sale, sold, manufactured, shipped, screenprinted or otherwise processed or handled any of the fabric involved in the proceeding. Gilbertville Mills according to the affidavit had merely acted as accommodation endorser in billing and invoicing the goods and had no connection other than this financial connection with the transactions referred to in the complaint.

On the basis of said affidavit the parties agreed that the complaint be dismissed as to respondent Gilbertville Mills, Incorporated and as to the individual respondents in their capacities as officers of said corporate respondent. Said individuals are retained as respondents in their capacity as officers of Ware Knitters, Inc., and as individuals.

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, and finally disposes of the proceeding in all respects, 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 Ware Knitters, Incorporated, is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at East Main Street, Ware, Massachusetts.

2. Individual respondents James F. Nields, B. Joseph Kmon, and Marion B. Damon are officers of said corporate respondent. They formulate, direct, and control the policies, acts and practices of said corporate respondent. Said individual respondents' business address is the same as that of respondent Ware Knitters, Incorporated.

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

ORDER

It is ordered, That respondents Ware Knitters, Incorporated, a corporation, and its officers, and respondents James F. Nields, B. Joseph Kmon and Marion B. Damon, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

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

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

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

2. Furnishing to any person a guaranty with respect to any fabrics which respondents, or any of them, have reason to believe may be introduced, sold or transported in commerce, which guaranty represents, contrary to fact, that reasonable and representative tests made under the procedures provided in Sec. 4 of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, show and will show that the fabrics covered by the guaranty, are not, in the form delivered or to be delivered by the guarantor, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals, provided, however, that this prohibition shall not be applicable to a

guaranty furnished on the basis of, and in reliance upon, a guaranty to the same effect received by respondents in good faith signed by and containing the name and address of the person by whom the fabric was manufactured or from whom it was received.

It is further ordered, That the complaint be, and the same hereby is, dismissed with respect to respondents Gilbertville Mills, Incorporated, and James F. Nields, B. Joseph Kmon, and Marion B. Damon in their capacities as officers of respondent Gilbertville Mills, Incorporated.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

It is ordered, That the respondents Ware Knitters, Incorporated, a corporation, and its officers, and James F. Nields, B. Joseph Kmon and Marion B. Damon, individually and as officers of said corporation shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

BYRON CLOTHING MFG. COMPANY, INC., ET AL.

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

Docket 8324. Complaint, Mar. 15, 1961—Decision, Aug. 29, 1961

Consent order requiring manufacturers in Somerville, Mass., to cease violating the Wool Products Labeling Act by labeling as "100% wool—except decoration" and as "all wool", men's topcoats and ziplined coats which contained substantially less than 100% wool, and by failing in other respects to comply with labeling requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Byron Clothing Mfg. Company, Inc., a corporation, and John S. Dasho and Aram H. Boyadjian, indi-

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

PARAGRAPH 1. Respondent Byron Clothing Mfg. Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts.

Individual respondents John S. Dasho and Aram H. Boyadjian are President and Secretary-Treasurer respectively of said corporate respondent. The individual respondents direct and control the acts, policies, and practices of the corporate respondent including the acts and practices hereinafter referred to. All respondents have their office and principal place of business at 48 Grove Street, Somerville, Massachusetts.

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

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations thereunder, in that said products were falsely and deceptively stamped, tagged and labeled with respect to the character and amount of the constituent fibers therein. Among such misbranded products were men's woolen topcoats and zip-lined coats labeled and tagged as "100% wool—except decoration" and "all wool", whereas, in truth and in fact, said woolen garments in each instance contain substantially less than 100% wool.

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

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

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

Mr. Harry E. Middleton, Jr., supporting the complaint.
Mr. Joseph Blumsack of Somerville, Mass., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On March 15, 1961, the Federal Trade Commission issued a complaint charging that the above-named respondents had violated the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated under said Wool Products Labeling Act by falsely and deceptively stamping, labeling, or tagging certain woolen products.

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

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

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

JURISDICTIONAL FINDINGS

1. Respondent Byron Clothing Mfg. Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 48 Grove Street, in the City of Somerville, State of Massachusetts.

2. Respondents John S. Dasho and Aram H. Boyadjian are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of said 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 hereinabove named and the proceeding is in the public interest.

ORDER

It is ordered, That the respondents Byron Clothing Mfg. Company, Inc., a corporation, and its officers, and John S. Dasho and Aram H. Boyadjian, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act, of wool products, as "wool products" are defined in and subject to the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

mission 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

CELTIC CONSTRUCTION COMPANY, INC., ET AL.

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

Docket 8349. Complaint, Apr. 13, 1961—Decisions, Aug. 30, 1961

Identical consent orders requiring a home repair firm in Wheaton, Md., and two of its officers to cease representing falsely in advertising in newspapers that their work and materials were unconditionally guaranteed; that their concern was Washington's largest remodeling contractor and did all their own work, without sub-contractors; and that they offered substantial savings from their usual prices and provided special family financing.

As to respondent Richard J. Mooney, the same order was issued in default on Dec. 14, 1961, p. 1321 herein.

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 Celtic Construction Company, Inc., a corporation, and Charles H. Deeringer, Richard J. Mooney, and Patrick M. Spalding, 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 Celtic Construction Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Maryland. Its office and principal place of business is located at 2413 Blueridge Avenue, Wheaton, Maryland.

Individual respondents Charles H. Deeringer, 11 South Tollgate Road, Owings Mills, Maryland; Richard J. Mooney, 4447 Wrenwood Avenue, Baltimore, Maryland, and Patrick M. Spalding, 406 Winston Road, Baltimore, Maryland, are officers of the respondent corporation. These individuals formulate, direct and control the acts of the respondent corporation, including those hereinafter set

forth. Their business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in advertising, offering for sale, and sale of, home repairs, including the furnishing and installation of aluminum storm windows, siding, roofing, dormer windows, screens, jalousies, carports, gutters, plumbing fixtures and various other kinds of building materials and appurtenances.

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

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their services and various materials, respondents have made certain statements and representations with respect thereto in various newspapers of wide and general distribution. By and through the use of such statements respondents have represented, directly or by implication:

1. That the work performed by them and the materials used are unconditionally guaranteed.

2. That respondent Celtic Construction Company, Inc., is Washington's largest remodeling contractor.

3. That respondent Celtic Construction Company, Inc., performs all work to be done without the employment of sub-contractors.

4. That respondent Celtic Construction Company, Inc., offers substantial savings to its customers, from its usual and customary prices and that special family financing is provided, if desired.

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

1. Respondents' purported guarantees are not unconditional and, in the few instances where a purported guarantee was made in writing at the insistence of the customer, the terms and limitations were not set forth.

2. Celtic Construction Company, Inc., is not the largest remodeling contractor doing business in Washington.

3. Celtic Construction Company, Inc. relies almost entirely upon the services of sub-contractors.

4. No savings from respondents' usual and customary prices are in fact afforded by Celtic Construction Company, Inc., to customers and no special family financing is provided by the respondents over and beyond the usual sources of financing available to the general public.

PAR. 6. In the course and conduct of their business, at all times mentioned herein, the respondents have been in substantial competition in commerce with corporations, firms and individuals engaged in the sale of materials and services of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true and into the purchase of substantial quantities of respondents' materials and services by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

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

Mr. Ames W. Williams supporting the complaint.

Mr. Wm. Graham Boyce, Jr. of *Musgrave, Preston & Boyce*, for respondents, Baltimore, Md.

[Respondent *Patrick M. Spalding, pro se.*]

INITIAL DECISION AS TO CELTIC CONSTRUCTION COMPANY, INC., A CORPORATION, ITS OFFICERS, AND CHARLES H. DEERINGER [AND PATRICK M. SPALDING], INDIVIDUALLY AND AS OFFICER[S] OF SAID CORPORATION

BY JOHN B. POINDEXTER, HEARING EXAMINER

On April 13, 1961, the Federal Trade Commission issued a complaint charging that the above-named respondents had violated the provisions of the Federal Trade Commission Act. The complaint alleged that for the purpose of inducing the sale of their services and materials, respondents had made certain false, misleading and

deceptive statements and representations with respect to various kinds of building materials and appurtenances.

After issuance and service of the complaint, Celtic Construction Company, Inc., a corporation, and Charles H. Deeringer, individually and as an officer of said corporation (hereinafter referred to as respondents), entered into a separate agreement for a consent order. The agreement has been approved by the Director and the Assistant Director of the Bureau of Litigation and disposes of the matters complained about. The proceeding as to Richard J. Mooney and Patrick M. Spalding will be disposed of in a separate initial decision.*

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

Upon consideration of the allegations of the complaint and the provisions of the agreement[s] and the proposed order[s], the hearing examiner is of the opinion that such order[s] constitute a proper disposition of this proceeding insofar as it relates to respondents Celtic Construction Company, Inc., and its officers, and Charles H. Deeringer [and Patrick M. Spalding], individually and as officer[s] of said corporation. Accordingly, the hearing examiner finds that the acceptance of such agreement[s] will be in the public interest and hereby accepts such agreement[s], makes the following jurisdictional findings and issues the following order[s].

* Respondent Patrick M. Spalding on the same date signed a separate consent order as indicated by the inserts in the initial decision and order to cease and desist below. The same order was served in default on respondent Richard J. Mooney on Dec. 14, 1961, p. 1321 herein.

JURISDICTIONAL FINDINGS

1. Respondent Celtic Construction Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Maryland. Its office and principal place of business is located at 2413 Blueridge Avenue, Wheaton, Maryland.

2. Individual respondent Charles H. Deeringer, 11 South Tollgate Road, Owings Mills, Maryland, is an officer of the corporate respondent. His business address is the same as that of the corporate respondent.

[1. Individual respondent Patrick M. Spalding, 406 Winston Road, Baltimore, Maryland, is an officer of the corporate respondent. His business address is 2413 Blueridge Avenue, Wheaton, Maryland.]

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 respondents Celtic Construction Company, Inc., a corporation, and its officers, and Charles H. Deeringer [and Patrick M. Spalding], individually and as officer[s] of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale or sale of services or materials, or both, in connection with the repair, remodeling, construction or renovating of any building, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication:

1. That the work performed by them or the materials used, are guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform are clearly set forth.

2. That Celtic Construction Company, Inc., is Washington's largest remodeling contractor, or misrepresenting in any manner the size or extent of respondents' business.

3. That all work is performed by the respondents; or that any work is done by them that is not in accordance with the facts.

4. That any savings are afforded to the purchaser of respondents' services and/or materials from respondents' usual and customary price, unless the price at which they are offered constitutes a reduction from respondents' usual and customary price in the recent regular course of business.

5. That special financing is afforded to customers.

B. Misrepresenting in any manner the amount of savings available to purchasers of respondents' services and/or materials or the amount by which the price of said services and/or materials is reduced from the price charged by respondents in the recent regular course of business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision[s] of the hearing examiner shall on the 30th day of August 1961, become the decision[s] of the Commission; and, accordingly:

It is ordered, That respondents Celtic Construction Company, Inc., a corporation, its officers, and Charles H. Deeringer [and Patrick M. Spaulding], individually and as officer[s] of said corporation shall within sixty (60) days after service upon them of these order[s], 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

HUBER BAKING COMPANY

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

Docket 7629, Complaint, Oct. 27, 1959—Decision, Sept. 2, 1961

Order dismissing, for the reason that respondent was no longer engaged in the baking business, complaint charging a Wilmington, Del., baking company with discriminating in price among its customers, in violation of Sec. 2(a) of the Clayton Act, by allowing some of them discounts from regular prices which were denied to others.

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 (a), Section 2, of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Huber Baking Company, is a corporation organized, existing and doing business under and by virtue of

the laws of the State of Delaware, with its principal office and place of business located at 9th and Union Streets, Wilmington, Delaware.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the production, sale, and distribution of bread and other bakery products for use, consumption or resale within the United States. Its sales in 1957 were approximately $3,750,000.

PAR. 3. Respondent sells its products to approximately 4175 retailer customers located in the States of Pennsylvania, New Jersey, Delaware, and Maryland. These customers are regular accounts with whom respondent has entered into contracts or arrangements to supply them with their requirements of bakery products made by it. For the purpose of supplying said customers and of making deliveries pursuant to such contracts or arrangements, respondent ships its products both from its baking plant at Wilmington, Delaware, directly to customers some of which are located in States other than the State of Delaware and from its said plant to sales depots or loading stations located both in the State of Delaware and in other States for regular reshipment to its customers located in the State of Delaware and in other States; and there is and has been at all times herein mentioned a continuous current of trade and commerce, as "commerce" is defined in the Clayton Act, in said products between respondent's plant at Wilmington, Delaware, and said customers.

PAR. 4. In the course and conduct of its business, respondent is now and during the times mentioned herein has been in substantial competition with other corporations, partnerships, individuals and firms engaged in the production, sale, and distribution of bakery products. Respondent's customers are competitively engaged with each other within the various trading areas in which they are engaged in business.

PAR. 5. Respondent, in the course and conduct of its business, as above described, has been for several years last past, and now is, discriminating in price, directly or indirectly, between different purchasers of bakery products, who are in competition with each other, by selling said products of like grade and quality to some of such purchasers at substantially higher prices than to other of such purchasers.

PAR. 6. Among the methods by which respondent discriminates between said purchasers is the granting of a discount of 5% off its list or regular prices on all purchases of said products by certain customers, including chain stores such as Food Fair Stores, Inc., and Penn Fruit Co., both with headquarters in Philadelphia, Pa., and operating food retail stores generally throughout respondent's

marketing area, and denying such discount to other customers who compete with said favored customers.

PAR. 7. The effect of such discriminations in price as alleged herein may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its customers are respectively engaged; or to injure, destroy or prevent competition with respondent or with purchasers therefrom who receive the benefit of such discriminations.

PAR. 8. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Mr. Brockman Horne for the Commission.

Austin, Burns, Appell & Smith, and *Mr. George F. Huber*, New York, N.Y., for the respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

The Federal Trade Commission on October 27, 1959, issued its complaint against the above-named respondent charging it with having violated the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13). It is charged in the complaint that respondent, in the course and conduct of its business, has been for several years last past, and now is, discriminating in price, directly or indirectly, between different purchasers of bakery products, who are in competition with each other, by selling said products of like grade and quality to some of such purchasers at substantially higher prices than to other of said purchasers.

An answer to the foregoing complaint was filed February 3, 1960. This answer is essentially a general denial of the discriminatory charges. Respondent, however, concedes that it sells bakery products to retail customers locally in the States of Pennsylvania, New Jersey, Delaware and Maryland, and further admits that some of respondent's customers are competitively engaged in the retail sale of grocery products with some other customers of respondent in certain trading areas.

Subsequent to the filing of the aforesaid answer, the hearing dates ordered by the undersigned hearing examiner have been rescheduled at the request and consent of counsel for the respondent and counsel in support of the complaint. On February 15, 1961, hearings in the above-entitled matter were cancelled in accordance with the request of counsel, subject to being rescheduled on ten (10) days' notice if trial of the issues was required. No hearings have ensued since issuance of the foregoing order.

On June 19, 1961, respondent made a motion pursuant to Section 3.8 of the Commission's Rules of Practice for an order dismissing the complaint herein upon the ground that respondent is no longer engaged in the manufacture or sale of bakery products, that its baking plant and all of its assets heretofore used in the baking business, including trademarks and good will, have been sold and transferred, and that respondent does not intend and there is no likelihood that it will again engage in the baking business.

In support of this motion respondent submits the affidavit of George F. Huber, Jr., its former president, setting forth the following facts:

1. Prior to March 1, 1961, respondent, Huber Baking Company, was, and for many years had been, engaged in the business of manufacturing, distributing, and selling bread and other bakery products from a single bakery located in Wilmington, Delaware. Since 1942 its bakery products have been sold principally under the trade names and trademarks "Sunbeam" and "Miss Sunbeam." As of March 1, 1961, Huber Baking Company sold, transferred, conveyed and assigned to PAB Baking Company, a Delaware corporation, all of Huber Baking Company's assets used in the operation of its bakery business including the real property used in said business, the Wilmington bakery plant, inventory, machinery, equipment, motor vehicles and accounts receivable, and the trade names, trademarks, licenses and franchises under which said business had been conducted including the trademarks "Sunbeam" and "Miss Sunbeam," together with the good will of said business, in consideration for payment of a sum in excess of $1,000,000. Said transaction has been closed, the aforesaid property and assets have been conveyed and transferred to the purchaser, and said sale and transfer is not defeasible by respondent.

2. Upon the closing of said sale and transfer PAB Baking Company took over and is now continuing, operating and conducting the bakery and baking business theretofore operated by Huber Baking Company. By the terms of sale Huber Baking Company consented to the use by PAB Baking Company of the names "Huber," "Huber Baking" or "Huber Baking Company" in connection with its baking business, and pursuant thereto PAB Baking Company has duly changed its corporate name to "Huber Baking Company, Incorporated" and is now conducting the said baking business under that name. Huber Baking Company agreed to change its corporate name to a name not containing the words "baking" or "bakery" or words of like import, and has duly changed its name to "Huber Investment Company" pursuant to that agreement.

3. Huber Baking Company (now Huber Investment Company) was and is a closely held family corporation. Neither Huber Investment Company, nor any of its stockholders, officers or directors, holds any stock in Huber Baking Company, Inc., nor does Huber Investment Company have any financial interest in or exercise any control over the operations of Huber Baking Company, Inc.

4. Huber Investment Company is not engaged in any mercantile business. The corporation is being continued principally for the purpose of holding and investing the proceeds of the sale of its baking business and other assets of the former Huber Baking Company not connected with the baking business, chiefly cash, securities and real estate.

5. Neither Huber Investment Company nor its officers and directors presently intend that said corporation will hereafter resume or engage in the baking busi-

ness, and, based upon the foregoing facts and my knowledge of my father's intentions as well as my own, it is my certain belief that there is no likelihood that said corporation will ever again engage in that business.

Counsel supporting the complaint does not oppose respondent's motion to dismiss provided such a dismissal, if granted, is without prejudice to the right of the Commission to reopen the matter should future circumstances so warrant.

After considering the motion to dismiss, the hearing examiner accepts the reasons offered in support of the motion and concurs in the opinion of counsel that it would not appear that the public interest would require continuance of the procedure in the above-entitled matter since no practical purpose beneficial to the public would ensue if the relief sought by the complaint were granted from the hearing of the evidence. Accordingly, it is

Ordered, That the respondent's motion to dismiss the complaint is herein and hereby granted, without prejudice to the right of the Commission to reopen the matter if future circumstances warrant.

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 2d day of September 1961, become the decision of the Commission.

IN THE MATTER OF

CHESS RECORD CORP. ET AL.

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

Docket 7723. Complaint, Jan. 6, 1960—Decision, Sept. 2, 1961

Order dismissing—for the reason that specific statutes have been enacted by Congress adequately protecting the public interest since its issuance—complaint charging three affiliated record concerns in Chicago with giving illegal "payola" to disc jockeys and other personnel of radio and television stations.

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 Chess Record Corp., a corporation, Argo Record Corp., a corporation, Checker Record Co., a corporation, and Leonard Chess and Phil Chess, 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 Chess Record Corp., Argo Record Corp., and Checker Record Co. are corporations organized, existing and doing business under and by virtue of the laws of the State of Illinois, with their principal office and place of business located at 2120 South Michigan Avenue, in the City of Chicago, State of Illinois.

Respondents Leonard Chess and Phil Chess are president and secretary-treasurer, respectively, of the corporate respondents, and formulate, direct and control the acts and practices of said corporate respondents, including the acts and practices herein set out. The address of the individual respondents is the same as that of said corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of phonograph records 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 record they distribute, when sold, to be shipped from their place of business in the State of Illinois, to purchasers thereof located in various other states of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

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

Record manufacturing companies and distributors ascertained that popular 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 have 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 have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

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

PAR. 6. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the 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.
Mr. A. Bradley Eben, Chicago, Ill., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

The Federal Trade Commission on January 6, 1960, issued its complaint against the above-named respondents charging them with having violated the Federal Trade Commission Act by reason of their engagement in unfair and deceptive practices and unfair methods of competition in that the respondents are alleged to have 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. It is further alleged in the complaint that deception is inherent in "payola" inasmuch as it involves the payment of money or consideration on the expressed or implied understanding that the disk jockeys will conceal, withhold or camouflage such fact from the listening public.

An answer to the foregoing complaint was filed on March 28, 1960. This answer is essentially a general denial except that the respondents admit that the sales of phonograph records have been to distributors and jobbers located in various states of the United States.

Subsequent to the filing of the aforesaid answer the hearing dates ordered by the undersigned hearing examiner have been rescheduled and the hearing of the case adjourned at the request and consent of counsel for respondents and counsel supporting the complaint. On January 17, 1961, hearings in the above-entitled matter were cancelled in accordance with the request of counsel subject to being rescheduled on ten (10) days' notice if the trial of the issues was required. No hearings have ensued since the issuance of the foregoing order.

On June 2, 1961, prior to the offering of any evidence herein, counsel supporting the complaint submitted a motion requesting that the complaint be dismissed without prejudice. The basis for this recom-

mendation is set forth in the motion of counsel supporting the complaint as follows:

Subsequent to issuance of the complaint on January 6, 1960, in this matter, Congress amended Section 317 of the Communications Act of 1934 (47 U.S.C. 317), requiring disclosure that broadcast matter has been paid for, so as to exempt from the announcement requirement that the furnishing of "any service or property furnished without charge or at a nominal charge" where such service or property is not to be identified beyond that "which is reasonably related to the use of such service or property on the broadcast." (Public Law 86–752; 74 Stat. 889). In the Report of the House Committee on Interstate and Foreign Commerce (H. Rept. No. 1800, 86th Congress, 2d Sess.) which accompanied the bill (S. 1898) that became the "Communications Act Amendments, 1960" a number of examples were given to illustrate what the exempting proviso was intended to permit. According to one of the examples given a record distributor, may under the amended act, furnish records to a radio station or a disk jockey without requiring an announcement unless the number of copies of a particular release exceeds the number required for broadcast purposes. Similarly, the House Committee Report cites a situation where a Coca Cola distributor may properly furnish to a station a Coca Cola dispenser for use in a drug store dramatic scene without any announcement being made. Prior to the amendment, the receipt of any records, merchandise as a prop, or consideration in virtually any form, had been interpreted as requiring an appropriate announcement. See Public Notice of Federal Communications Commission dated March 16, 1960 (FCC 60–239, PUBLIC NOTICE 85460).

Following enactment of the amendment the Federal Communications Commission, under date of September 21, 1960, issued a public notice (FCC 60–1141, 93746, PUBLIC NOTICE–G) declaring "that, to the extent that its Rules and Regulations or interpretations are inconsistent with those provisions of the new act which are now in effect, the Rules and Regulations and interpretations will be considered to be superseded thereby." The Federal Communications Commission further stated in said September 21, 1960, release that until further interpretative and clarifying announcements and rules can be issued, all interested parties may consider the examples set forth in the House Committee Report as "useful indications of Congressional intent underlying the September 13, 1960 amendment to the Commission Act."

In addition, the "Communications Act Amendments, 1960" added an entirely new section (Sec. 508) which not only requires disclosure of the receipt of any valuable consideration (unless announcement is waived under Sec. 317) on the part of a broadcast licensee employee but also requires disclosure of "any person (other than such station) who pays or agrees to pay such employee, any money, service or other valuable consideration . . ." Violation of this section constitutes a criminal offense enforceable on action of the Attorney General.

Since the disclosure requirements with respect to furnishing consideration to persons connected with broadcast licensees and the receipt thereof by the latter have been modified as a result of specific Congressional action, counsel supporting the complaint considers the continued prosecution of this matter an unnecessary expenditure of time, effort and funds in determining the legality of the alleged practice since the protection of the public interest is now fully assured by specific statute.

Counsel supporting the complaint, therefore, respectfully submits that the dismissal of this matter will in no way impair or derogate the public interest

It would appear from these recommendations of counsel supporting the complaint that the Communications Act of 1936 has been amended in several particulars, and that as a result of these amendments the continued prosecution of this matter is an unnecessary expenditure of time, effort and funds in determining the regularity of the alleged violations since the protection of the public interest is now fully assured by specific statute. It would further appear that respondents offer no objection to the granting of this motion since no answer or reply thereto has been filed subsequent to the filing of the motion on June 5, 1961.

After considering the motion to dismiss, the law and the amendments referred to therein and the omission of counsel for respondents to reply thereto, the hearing examiner accepts the reasons offered in support of the motion and concurs in the opinion of counsel in support of the complaint that the dismissal, without prejudice, of the complaint herein will in no way impair or derogate the public interest even though the statutory amendments heretofore referred to do not vitiate the jurisdiction of the Federal Trade Commission in the within matter. Accordingly, it is

Ordered, That the complaint herein be, and the same hereby is, dismissed, without prejudice to the right of the Federal Trade Commission to initiate further proceedings against the respondents, should future circumstances or events so warrant.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 2d day of September 1961, become the decision of the Commission.

IN THE MATTER OF

JACK M. BERRY & COMPANY, INC.

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

Docket 8164. Complaint, Nov. 4, 1960, Sept. 2, 1961

Consent order requiring a brokerage concern in New York City to cease accepting illegal brokerage on purchases for its own account, such as discounts from Florida citrus fruit packers, usually at the rate of 10 cents per 1⅗ bushel box, which transactions represented a substantial part of its business activities.

COMPLAINT

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

PARAGRAPH 1. Respondent Jack M. Berry & Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 325 Spring Street, New York, New York. Said respondent Jack M. Berry & Company, Inc. also maintains a mailing address at Winter Haven, Florida, under the same corporate name.

PAR. 2. Respondent is now, and for the past several years has been, engaged primarily in the brokerage business, representing a number of packer-principals located in various sections of the United States in the sale and distribution of citrus fruit and produce, as well as other food products, all of which are hereinafter sometimes referred to as food products. In particular, respondent has represented, and now represents, a number of citrus fruit packers located in the State of Florida in the sale and distribution of their citrus fruit, for which respondent was and is paid for its services in connection therewith a brokerage or commission, usually at the rate of 10 cents per 1⅗ bushel box, or equivalent. A substantial part of respondent's business is acting in the capacity of a buying broker, purchasing citrus fruit for its own account for resale.

PAR. 3. In the course and conduct of its business for the past several years, in representing its packer-principals, as well as when purchasing for its own account, respondent has, directly or indirectly, caused such food products, when sold or purchased, to be shipped and transported from various packers' packing plants or places of business located in many States of the United States other than the State of New York to respondent, or to respondent's customers located in New York and in other states. Thus, for the past several years, respondent has been, and is now, engaged in a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, as aforesaid, during the past several years, but more particularly since January 1, 1959, to the present time, respondent has made, and is now making, numerous and substantial purchases of food products, as a

buying broker, for its own account for resale from various packers or sellers, on which purchases it has received and accepted, and is now receiving and accepting, directly or indirectly, something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

For example, respondent makes substantial purchases of citrus fruit for its own account from a number of packers located in the State of Florida and receives from the packers on said purchases a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per 1⅗ bushel box, or equivalent. Such transactions represent a substantial part of respondent's business activities.

PAR. 5. The acts and practices of respondent in receiving and accepting a brokerage or commission, or an allowance or discount in lieu thereof, on its own purchases, as herein alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. Cecil G. Miles and *Mr. Basil J. Mezines* supporting the complaint.

Mr. Warren E. Hall, Jr., Bartow, Fla., for respondent.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against Jack M. Berry & Company, Inc., on November 4, 1960, charging it with a violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13). The complaint alleged that as a buying broker for its own account respondent received a brokerage or commissions or a discount in lieu thereof from packers of citrus fruit usually at the rate of ten cents per 1⅗ bushel box or equivalent. The acts or practices of respondent in accepting such payments on its own purchases were allegedly in violation of subsection (c) of Section 2 of the Clayton Act.

On June 14, 1961, counsel supporting the complaint presented to the undersigned an agreement dated June 12, 1961, executed by respondent, its attorney and counsel supporting the complaint. Said agreement provided for the entry without further notice of a cease and desist order and 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.

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, and finally disposes of the proceeding in all respects, 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 Jack M. Berry & Company, 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 325 Spring Street, in the City of New York, State of New York, with a mailing address also maintained at Winter Haven, Florida, under the same corporate name.

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

ORDER

It is ordered, That respondent Jack M. Berry & Company, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of citrus fruit or produce in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or produce for respondent's own account, or where respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 2d day of September 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

KAYTON FUR CORPORATION ET AL.

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

Docket 8393. Complaint, May 10, 1961—Decision, Sept. 2, 1961

Consent order requiring New Haven, Conn., furriers to cease violating the Fur Products Labeling Act by affixing labels to fur products containing fictitious prices represented thereby as regular retail prices; by failing to comply with invoicing requirements; by advertisements in newspapers which failed to disclose the country of origin of imported furs; and by failing to keep adequate records as a basis for price and value claims in advertising.

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 Kayton Fur Corporation and Harry Kanfer, 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 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. Kayton Fur Corporation 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 851 Chapel Street, New Haven, Connecticut.

Respondent Harry Kanfer 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 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 misbranded in that labels affixed thereto contained fictitious prices and misrepresented the regular retail selling prices of such fur products in that the prices represented on such labels as the regular prices of the fur products were in excess of the retail prices at which the respondents usually and regularly sold such fur products in the recent regular course of their business, in violation of Section 4(1) of the Fur Products Labeling Act.

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

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

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated there-

under 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. 6. 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. 7. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Trenton Evening News, a newspaper published in the City of Trenton, State of New Jersey, 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 failed to disclose the name of the country of origin of the imported fur contained in fur products in violation of Section 5(a)(6) of the Fur Products Labeling Act.

PAR. 8. Respondents in advertising fur products for sale as aforesaid made claims and representations respecting prices and values of fur products. Said representations were of the type covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. 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 said Rules and Regulations.

PAR. 9. 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 S. Cox for the Commission.

Respondents, *pro se*.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated May 10, 1961, the respondents are charged with violating the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

On June 23, 1961, the respondents entered into an agreement with counsel in support of the complaint for a consent order.

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

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

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

1. Respondent Kayton Fur Corporation 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 851 Chapel Street, New Haven, Connecticut.

Respondent Harry Kanfer 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.

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 Kayton Fur Corporation, a corporation, and its officers, and Harry Kanfer, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with

the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of 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:

A. Misbranding fur products by:

1. Falsely or deceptively labeling or otherwise identifying such products as to the regular prices or values by any representation that the regular or usual prices of such products are any amount in excess of the prices at which respondents have usually and customarily sold such products in the recent regular course of business.

B. Falsely or deceptively invoicing fur products by:

1. 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.

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

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

C. 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:

1. Fails to disclose the name of the country of origin of any imported furs contained in the fur product.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 2d day of September 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

M. LOBER & ASSOCIATES COMPANY ET AL.

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

Docket 8299. Complaint, Mar. 3, 1961—Decision, Sept. 6, 1961

Consent order requiring two associated distributors in New York City and Richmond, Ind., respectively, and their common officer, to cease representing falsely in advertisements in newspapers, trade journals, etc., that they were the largest and the oldest manufacturers of power lawn mowers in the United States and in the world.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (U.S.C. Title 15, Section 41, et. seq.), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that M. Lober & Associates Company, a corporation, G. W. Davis Corporation, a corporation, and Morris Lober, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent M. Lober & Associates Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7 Central Park West, New York 23, New York.

Respondent G. W. Davis Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 500 North Twelfth Street, Richmond, Indiana.

Respondent Morris Lober is an individual and is President and Treasurer of respondent M. Lober & Associates Company, and is Vice President and Secretary of respondent G. W. Davis Corporation. The business address of respondent Morris Lober is the same as that of respondent M. Lober & Associates Company. Said respondent is also the principal owner of respondent M. Lober & Associates Company and respondent G. W. Davis Corporation. Said Morris Lober formulates, directs and controls, and at all times hereinafter mentioned has formulated, directed and controlled, the policies, acts and practices of said corporate respondents, including the acts and practices hereinafter mentioned.

PAR. 2. Respondents are now, and for the past several years have been, engaged in the advertising, offering for sale, sale and distribution of power lawn mowers. Respondents sell power lawn mowers to retailers, distributors, various dealers and others for resale to the public. Respondents' volume of business in said power lawn mowers is, and has been, substantial.

PAR. 3. In the regular and usual course and conduct of their business, respondents cause, and for the past several years have caused, their products, when sold, to be shipped and transported from their place of business in the State of Indiana, to purchasers thereof located in various other States of the United States and in the District of Columbia. Thus, for the past several years, respondents have been, and are now, engaged in a continuous course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of their business, as herein described, respondents have been in competition with other corporations, firms, partnerships and individuals engaged in the sale of power lawn mowers in commerce between and among the various States of the United States and the District of Columbia.

PAR. 5. In the course and conduct of their business, as herein described, and for the purpose of inducing the purchase and promoting the sale of their power lawn mowers in commerce, respondents have, in advertisements published in various newspapers, magazines and trade journals of general circulation and by means of other statements, represented that said respondents are the oldest and largest power mower manufacturers or producers in the United States and in the world. Representative of such statements, representations and claims are the following:

(1) "The World's Largest Producers of Power Mowers"
(2) "The Oldest and Largest Power Mower Manufacturer In The U.S.A."
(3) "The Largest Power Mower Manufacturer in the World"
(4) "The Oldest and Largest Power Mower Manufacturer in the U.S."
(5) "The Oldest and Largest Power Mower Manufacturer in the World"
(6) "The Oldest and Largest Power Mower Manufacturers in the World"
(7) "World's Largest Power Mower Manufacturer"

PAR. 6. The aforementioned statements, representations and claims are false, misleading and deceptive. In truth and in fact, said respondents are not the largest producers or manufacturers of power lawn mowers in the United States or in the world, and said respondents are not the oldest producers or manufacturers of power lawn mowers in the United States or in the world.

PAR. 7. The use by the respondents of the aforementioned false, misleading and deceptive statements, representations and claims has had, and now has, the capacity and tendency to mislead and deceive a substantial part of the dealers, retailers, distributors and others of the purchasing public into the erroneous and mistaken belief that such statements, representations and claims are true and into the purchase of a substantial number of respondents' power lawn mowers because of such erroneous and mistaken belief that they are dealing with the oldest and largest manufacturer or producer of power lawn mowers in the United States and in the world. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondent from its competitors and substantial injury has thereby been, and is being, done to said competitors and to competition in commerce.

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

Mr. Charles S. Cox for the Commission.

Segan & Culhane of New York City, by *Mr. Leon Segan* for the respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

The respondents, M. Lober & Associates Company (a corporation organized and existing under the laws of the State of Delaware), G. W. Davis Corporation (a corporation organized and existing under the laws of the State of Indiana), and Morris Lober (who is president and treasurer of the former corporation and vice-president and secretary of the latter corporation), were named in a complaint issued March 3, 1961, by the Federal Trade Commission. M. Lober & Associates Company and Morris Lober are located at 7 Central Park West, New York 23, New York, and G. W. Davis Corporation is located at 500 North Twelfth Street, Richmond, Indiana. The corporations and Morris Lober (both individually and as an officer thereof) were charged with having violated the Federal Trade Commission Act by falsely representing, in connection with the sale and distribution of power lawn mowers in commerce, that they were the oldest and largest power mower manufacturers or producers in the United States and in the world.

By and with the advice and consent of their attorney, respondents have entered into an agreeemnt with counsel supporting the com-

plaint, which agreement contains a proposed consent order to cease and desist, and disposes of all the issues involved in this proceeding.

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

By the terms of the agreement, the respondents admit all the jurisdictional facts alleged in the complaint and agree 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 waive 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 agree 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 in said agreement that the same, 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 M. Lober & Associates Company, G. W. Davis Corporation, corporations, and their officers, and Morris Lober, individually and as an officer of said corporations, and respondents' agents, representatives, and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the offering for sale, sale and distribution

of power lawn mowers, or other merchandise, in commerce, as "commerce" is defined in the aforesaid Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing in any manner that respondents, or any of them, are the oldest power lawn mower manufacturers or producers in the United States or in the world.

(2) Representing in any manner that respondents, or any of them, are the largest power lawn mower manufacturers or producers in the United States or in the world, unless such is 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 6th day of September 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

RABACH & LEVINE, INC., ET AL.

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

Docket 8370. Complaint, Apr. 21, 1961—Decision, Sept. 6, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by setting forth on invoices of fur products the name of an animal other than that which produced the fur, and by failing in other respects to comply with invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Rabach & Levine, Inc., a corporation, and Seymour Rabach, Sol Rabach, and Murray Levine, 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 issue its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Rabach & Levine, 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 208 West 30th Street, New York, New York.

Respondents Seymour Rabach, Sol Rabach and Murray Levine are officers of the corporate respondent. They control, formulate and direct 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. Subsequent to the effective date of the Fur Products Labeling Act of August 9, 1952, respondents have been and are now engaged in the introduction and 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 products" 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 that respondents set forth on invoices pertaining to fur products the name of an animal other than the name of the animal that produced the fur in violation of Section 5(b)(2) of the Fur Products Labeling Act.

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

(a) 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. 6. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the

Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Mr. Charles W. O'Connell, supporting the complaint.

Mr. Herman Wiesenthal of *Wiesenthal and Wiesenthal*, New York, N.Y., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint on April 21, 1961, charging respondents with violation of the Federal Trade Commission Act, the Fur Products Labeling Act and the Rules and Regulations promulgated under the latter act. It was alleged that respondents falsely and deceptively invoiced fur products by failing to invoice them in the manner required by Section 5(b)(1) of the Fur Products Labeling Act, by setting forth the names of animals other than the animal which produced the fur and by setting forth in abbreviated form the information required by the Fur Products Labeling Act and the Rules and Regulations issued thereunder.

On July 3, 1961, counsel supporting the complaint presented to the hearing examiner an agreement dated June 27, 1961, executed by respondents, their counsel and counsel supporting the complaint. The agreement provides for the entry without notice of a cease and desist order which would dispose of this proceeding. 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 all the respondent parties thereto of jurisdictional facts;

B. Provisions that:

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

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

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

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

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

C. Waivers of:

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

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

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

In addition the agreement contains the following provision: A statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

Having considered said agreement including the proposed order, and being of the opinion that 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:

JURISDICTIONAL FINDINGS

1. Respondent Rabach & Levine, 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 208 West 30th Street, in the City of New York, State of New York.

2. Respondents Seymour Rabach, Sol Rabach, and Murray Levine, are officers 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 Rabach & Levine, Inc., a corporation, and its officers, and Seymour Rabach, Sol Rabach and Murray Levine, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale, 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 or received in commerce, as "commerce," "fur" and

"fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from falsely and deceptively invoicing fur products by:

1. 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.

2. Setting forth on invoices pertaining to fur products the name or names of any animal or animals other than the name or names provided for in Section 5(b)(1) of the Fur Products Labeling Act.

3. 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.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 6th day of September 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

MADAME E ET AL.

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

Docket 8388. Complaint, May 5, 1961—Decision, Sept. 6, 1961

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by failing to set forth the term "Secondhand" on invoices where required, 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 Madame E, a corporation, and Jacques Kaplan,

individually and as 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. Respondent Madame E is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its office and place of business located at 1207 Lexington Avenue, New York, New York.

Respondent Jacques Kaplan, is an officer of said corporation. He controls, formulates and directs the acts and practices of the corporate respondent, including the acts and practices hereinafter referred to. His address is the same as that of the corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act of 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 products" are defined in the Fur Products Labeling Act.

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

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

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

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

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

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

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

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

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

(b) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on invoices with respect to the disclosure "Secondhand", in violation of Rule 23 of said Rules and Regulations.

(c) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on invoices 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.

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

Mr. Arthur Wolter, Jr., supporting the complaint.

Respondents, *pro se*.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On May 5, 1961, the Federal Trade Commission issued a complaint against respondents Madame E, a corporation, and Jacques Kaplan, individually and as officer of said corporation, in which they were charged with violating the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promul-

gated thereunder by falsely and deceptively labeling and invoicing fur products sold by respondents in interstate commerce. A true and correct copy of the complaint was served upon respondents as required by law. Thereafter respondents agreed to dispose of this proceeding without a formal hearing pursuant to the terms of an agreement dated June 20, 1961, containing consent order to cease and desist. Respondent Jacques Kaplan signed the agreement as Jacques M. Kaplan, as attested to by an affidavit attached to and made a part of the agreement. The agreement was submitted to the undersigned hearing examiner on July 5, 1961, in accordance with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The agreement purports to dispose of this proceeding as to the respondents and contains the form of a consent cease and desist order which the parties have represented is dispositive of the issues involved in this proceeding. The agreement has been signed by the corporate respondent by its president, by counsel supporting the complaint, and has been approved by the Assistant Director and the Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement respondents admit all of the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the respondents waive: (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all rights respondents may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

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

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

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of June 20, 1961, containing consent order, and it appearing that the order which is approved in

and by said agreement disposes of all the issues presented by the complaint as to all of the parties involved, said agreement is hereby accepted and approved as complying with §§ 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The undersigned hearing examiner, having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, makes the following findings and issues the following order:

FINDINGS

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

2. Respondent Madame E 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 1207 Lexington Avenue, in the City of New York, State of New York.

3. Individual respondent Jacques Kaplan is an officer of said corporation. His address is the same as that of the corporate respondent.

4. Respondent is engaged in commerce as "commerce" is defined in the pertinent statutes which are invoked by the complaint filed herein.

Now, therefore,

It is ordered, That Madame E, a corporation, and its officers, and Jacques Kaplan, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of 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 under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder required information;

(1) In abbreviated form;

(2) Mingled with non-required information;

(3) In handwriting;

(4) Not in the required sequence.

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 on invoices under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder required information:

(1) In abbreviated form;

(2) Incompletely and not separately with respect to the required disclosure "Second hand."

(3) Incompletely with respect to each section of fur products composed of two or more sections containing different animal furs.

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 6th day of September 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

LARRY LEVINE, INC., ET AL.

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

Docket 8389. Complaint, May 5, 1961—Decision, Sept. 6, 1961

Consent order requiring a manufacturer in New York City to cease violating the Wool Products Labeling Act by failing to label ladies' and junior misses' wool coats as required; by setting forth required information on labels in abbreviated form; and by failing to set forth separately on labels the character and amount of constituent fibers contained in interlinings.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission,

having reason to believe that Larry Levine, Inc., a corporation, and Lawrence Levine, individually and as officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Larry Levine, 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 252 West 37th Street, New York, New York. Individual respondent Lawrence Levine is President of the corporate respondent. Said individual respondent formulates, directs, and controls the acts, policies and practices of the corporate respondent, including the acts and practices hereinafter referred to. The office and principal place of business of the individual respondent is the same as that of the corporate respondent.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1, 1959, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool products" are defined therein.

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

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

(a) In that the required information descriptive of the fiber content was set out on labels in abbreviated words or terms, in violation of Rule 9 of the Rules and Regulations as aforesaid.

(b) By failing to separately set forth on the required stamp, tag, label or other mark of identification the character and amount of constituent fibers contained in the interlinings of the said wool products, in violation of Rule 24 of the aforesaid Rules and Regulations.

PAR. 5. The respondents in the course and conduct of their business as aforesaid were, and are, in substantial competition in commerce with other corporations, firms, and individuals likewise engaged in

the manufacture and sale of wool products, including ladies and junior misses coats.

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

Mr. Charles S. Cox supporting the complaint.
Alexander Rothstein, New York, N.Y., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint in the above-entitled proceeding on May 5, 1961,* charging respondents with violation of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated under the latter Act. The complaint alleged that (1) certain wool products within the jurisdiction of the Commission were not stamped, tagged or labeled in accordance with Section 4(a)(2) of the Wool Products Act, and (2) that certain wool products were (a) labeled in abbreviated form and (b) labels, marks or stamps failed to disclose the character and amount of constituent fibers contained in interlinings. It was further alleged that these activities constituted unfair and deceptive acts and practices as well as violation of the Wool Products Act and Regulations.

On July 11, 1961, counsel supporting the complaint submitted to the hearing examiner an agreement, dated June 30, 1961, executed by respondents, their counsel and counsel supporting the complaint. The agreement provided for the disposition of the entire matter by the entry without further notice of a consent order to cease and desist the practices charged. Said agreement was duly approved by the Director of the Bureau of Deceptive Practices and by the Chief of the Division of General Deceptive Practices Number 2.

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 respondents of all jurisdictional facts alleged in the complaint.

B. Provisions that:

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

*As amended.

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

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

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

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

C. Waivers of:

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

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

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

In addition the agreement contains the following provision: A statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

Having considered said agreement, including the proposed order, and being of the opinion that 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 Larry Levine, 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 252 West 37th Street, in the City of New York, State of New York.

2. Individual respondent Lawrence Levine is President of the corporate respondent. Said individual respondent formulates, directs, and controls the acts, policies and practices of the corporate respondent. His office and principal place of business 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 respondent Larry Levine, Inc., a corporation, and its officers, and Lawrence Levine, 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 manufacture for introduction or the introduction, into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and in the Wool Products Labeling Act of 1939, of coats or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

2. Setting forth information required under Section 4(a)(2) of the Wool Products Labeling Act of 1939 in abbreviated form.

3. Failing to separately set forth on the required stamp, tag, label or other means of identification, the character and amount of the constituent fibers contained in the interlinings of said wool products.

AMENDED DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed July 20, 1961, accepting an agreement containing a consent order theretofore executed by respondents and by counsel in support of the complaint; and

It appearing that through inadvertence the date "June 30, 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 "June 30, 1961" as it appears in the second line of the first paragraph of said decision and substituting therefor the date "May 5, 1961".

It is further ordered, That the initial decision, as so amended, shall, on the 6th day of September 1961, become the decision of the Commission.

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

Complaint

IN THE MATTER OF

SEDAQUIL, INC., ET AL.

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

Docket 8400. Complaint, May 16, 1961—Decision, Sept. 6, 1961

Consent order requiring Bedford, Ohio, distributors of their drug preparation designated "Sedaquil" or "Sedaquilin" 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 Sedaquil, Inc., a corporation, and William K. Kutler, Gertrude K. Kutler and William J. Kraus, 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 Sedaquil, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located in Bedford, Ohio.

Respondents William K. Kutler, Gertrude K. Kutler and William J. Kraus are officers of the corporate respondent. These individuals formulate, direct and control the policies, acts and practices of the corporate respondent. The mailing address of all respondents is Box 97, Bedford, Ohio.

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 "Sedaquil" or "Sedaquilin", which preparation contains ingredients which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act. The formula and directions for use of said preparation are as follows:

Formula:

Salicylamide	3.0 gr.
Acetophenetidin	2.5 gr.
Atropine Sulfate	0.02 mg.
Hyoscyamine Sulfate	0.1 mg.
Hyoscine Hydrobromide	0.008 mg.
Methapyrilene Hydrochloride	10 mg.

Directions: Adults—1 or 2 capsules as needed every 3 to 4 hours. Not more than 6 capsules every 24 hours. For detailed directions see enclosure.

Caution: Activities which require close attention and alertness such as driving a motor vehicle or operation of machines should not be undertaken immediately after taking SEDAQUIL.

AS WITH ALL MEDICINES KEEP OUT OF REACH OF CHILDREN.

PAR. 3. In the course and conduct of their business respondents now cause, and for some time last past have caused their said "Sedaquil" or "Sedaquilin", when sold, to be shipped from their place of business in the State of Ohio 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 mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers and magazines and by means of television and radio broadcasts transmitted by television and radio stations having sufficient power to carry such broadcasts across state lines, 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 and representations contained in said advertisements disseminated as hereinabove set forth are the following:

Find safe relief with medical science's newest discovery . . . Sedaquil

Yes, SEDAQUIL . . . the new medical achievement that helps bring safe, soothing relief from nervous tension.

Get Safe, Non-Habit forming SEDAQUILIN

New Medical Achievement SEDAQUILIN

SEDAQUILIN is safe, new medical preparation that relieves simple tension.

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 achievement.

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

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:

1. Respondents' said preparation is not a new medical or scientific discovery or achievement. Its ingredients have been prescribed by doctors in substantially the same combination 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 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. Vincent A. Kleinfeld, Washington, D.C., for respondents Sedaquil, Inc., William K. Kutler and Gertrude K. Kutler.

INITIAL DECISION AS TO ALL RESPONDENTS EXCEPT WILLIAM J. KRAUS 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 "Sedaquil" or "Sedaquilin".

Thereafter, on July 14, 1961, all Respondents except William J. Kraus, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease and Desist, which was approved by the Commission's Chief, Division of Food & Drug Advertising, and Director, Bureau of Deceptive Practices, and thereafter, on July 19, 1961, submitted to the Hearing Examiner for consideration. The agreement provides that this proceeding will be otherwise disposed of as to Respondent William J. Kraus.

The agreement identifies Respondent Sedaquil, Inc., as an Ohio corporation, with its principal office and place of business located at Bedford, Ohio, and Respondents William K. Kutler and Gertrude K. Kutler as officers of the corporate Respondent, who formulate, direct and control the policies, acts and practices thereof, their mailing address being Box 97, Bedford, Ohio.

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 Sedaquil, Inc., William K. Kutler, and Gertrude K. Kutler. 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 Sedaquil, Inc., a corporation, and its officers, and William K. Kutler and Gertrude K. Kutler, 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 "Sedaquil" or "Sedaquilin" or any other medicinal or drug preparation of substantially the same formula, whether sold under these names 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 advertisements, directly or indirectly:

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

(b) Represent that any such product or preparation is a new medical or scientific discovery or achievement;

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 advertisements contain 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 6th day of September 1961, become the decision of the Commission; and, accordingly:

It is ordered, That Respondents Sedaquil, Inc., a corporation, and William K. Kutler and Gertrude K. Kutler, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Mr. Edward F. Downs for the Commission;
Respondent *William J. Kraus* for himself.

INITIAL DECISION AS TO RESPONDENT WILLIAM J. KRAUS 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 "Sedaquil" or "Sedaquilin".

On June 27, 1961, prior to the offering of any evidence herein, Respondent William J. Kraus submitted a motion requesting dismissal of the complaint as to him, because, as set forth in an affidavit executed by him and attached to and made a part of his motion to dismiss, he is an attorney at law, and as such organized and for a short time thereafter represented the corporate Respondent herein, but has not represented the respondent corporation since the year 1957, and never at any time had any connection with any aspect of the business operations of that corporation. Counsel supporting the complaint has offered no opposition to Respondent Kraus' motion.

After due consideration of the complaint herein and Respondent Kraus' motion that it be dismissed as to him, the Hearing Examiner is of the opinion that the reasons offered in support of that motion are adequate, and that, in the interests of justice, it should be granted. Therefore,

It is ordered, That the complaint herein, insofar as it relates to Respondent William J. Kraus, be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION AS TO RESPONDENT WILLIAM J. KRAUS

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 6th day of September 1961, become the decision of the Commission.

IN THE MATTER OF

CRAWFORD INDUSTRIES, INC., ET AL.

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

Docket 8423. Complaint, June 2, 1961—Decisions, Sept. 6, 1961, and Oct. 10, 1961

Consent order dated Sept. 6, 1961, and the same order issued in default Oct. 10, 1961, requiring an individual and a corporation, respectively, in Pikesville, Md., to cease selling home repairs through bait advertising, false savings claims, and other misrepresentations, as in the orders 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 Crawford Industries, Inc., a corporation, and Joseph Silver, alias James Crawford, and Irving Zimmerman, individually and as officers of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Crawford Industries, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Maryland. Its office and principal place of business is located at 5107 Baltimore Avenue, Hyattsville, Maryland.

Respondents Joseph Silver, alias James Crawford, whose address is 5385 West Montgomery Avenue, Philadelphia, Pennsylvania, and Irving Zimmerman, whose address is 21 Randall Street, Pikesville, Maryland, are officers of the respondent corporation. They formulate, direct and control the acts and practices of the respondent corporation, including those hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in advertising, offering for sale, and sale of home repairs, including the furnishing and installation of aluminum siding, jalousies and awnings, recreation rooms and porch enclosures.