IN THE MATTER OF

EASTLAND WOOLEN MILLS, INC., ET AL.

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

Docket 8410. Complaint, June 1, 1961—Decision, Sept. 28, 1961

Consent order requiring manufacturers with headquarters in Corinna, Maine, to cease violating the Wool Products Labeling Act and the Federal Trade Commission Act by labeling and invoicing as "50% Wool–50% Reprocessed Wool" and tagging as "100% Reprocessed Wool," fabrics which contained substantial quantities of non-woolen fibers, and by failing to disclose on fabric labels the true generic names and percentage of the constituent fibers.

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 Eastland Woolen Mills, Inc., a corporation, and Max Striar, Louis Striar and Bernard Striar, individually and as officers of said corporation, and as partners doing business as Striar Textile Mill and Ski-Land Woolen Mill, 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 Eastland Woolen Mills, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Maine. Individual respondents, Max Striar, Louis Striar and Bernard Striar are officers of the corporate respondent. Said individual respondents, formulate, 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 located in Corinna, Maine.

In addition thereto, individual respondents Max Striar, Louis Striar and Bernard Striar, as partners, do business as Striar Textile Mill, with a plant located in Orono, Maine, and as Ski-Land Woolen Mill, with a plant located in Clifton, Maine.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since December 1958, 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 within the intent and meaning of Section 4(a)(1) of the said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such wool products were fabrics stamped or tagged as "50% wool—50% Reprocessed wool," and "100% Reprocessed Wool" whereas, in truth and in fact, said fabrics were not composed entirely of woolen fibers but contained substantial quantities of non-woolen fibers.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged and 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.

Among such misbranded wool products, but not limited thereto, were fabrics with labels which failed: (1) to disclose the true generic names of the fibers present and (2) to disclose the percentages of such fibers.

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

PAR. 6. The aforesaid acts and practices of respondents constituted misbranding of wool products and 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 methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. Respondents, in the course and conduct of their business, as aforesaid, invoiced some of their woolen fabrics as "50% Wool—50% Reprocessed Wool", whereas, in truth and in fact, said woolen fabrics were not composed entirely of woolen fibers but did contain substantial amounts of fibers other than wool.

PAR. 8. The acts and practices set out in Paragraph Seven have had and now have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof and to misbrand products manufactured by them in which said materials were used.

PAR. 9. The acts and practices of the respondents set out in Paragraph Seven were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted and now con-

stitute 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. Edward B. Finch for the Commission;
Mr. Louis J. Gribetz, New York, N.Y., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on June 1, 1961, issued its complaint herein, charging the above-named respondents with having violated, in certain particulars, the provisions of the Federal Trade Commission Act, and of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder; and respondents were duly served with process.

On August 9, 1961, there was submitted to the undersigned hearing examiner of the Commission, for his consideration and approval, an "Agreement Containing Consent Order To Cease and Desist", which had been entered into by and between respondents and counsel for both parties, under date of August 8, 1961, subject to the approval of the Commission's Bureau of Textiles and Furs, which had subsequently duly approved the same.

After due consideration thereof, the hearing examiner finds that said agreement, both in form and in content, is in accord with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Eastland Woolen Mills, Inc., is a corporation, and Max Striar, Louis Striar and Bernard Striar are individuals and officers of said corporation, with their principal place of business located in Corinna, Maine. Individual respondents Max Striar, Louis Striar and Bernard Striar, as partners, do business as Striar Textile Mill, with a plant located in Orono, Maine, and as Ski-Land Woolen Mill, with a plant located in Clifton, Maine.

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

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

4. Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

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

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

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

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

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

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

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist", the hearing examiner approves and accepts this agreement; finds that the Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, against the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the order proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That respondents Eastland Woolen Mills, Inc., a corporation, and Max Striar, Louis Striar and Bernard Striar, individually, and as officers of said corporation, and, as partners, doing business as Striar Textile Mill and Ski-Land Woolen Mill, or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen fabrics or other "wool products", as such products are defined in and subject to said Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise

identifying such products as to the character or amount of the constituent fibers included therein;

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

It is further ordered, That respondents Eastland Woolen Mills, Inc., a corporation, and Max Striar, Louis Striar and Bernard Striar, individually and as officers of said corporation, and as partners doing business as Striar Textile Mill and Ski-Land Woolen Mill, or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of fabrics or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

Misbranding such products by misrepresenting the character or amount of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 28th 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

RICHARD B. YANKEE ET AL. DOING BUSINESS AS YANKEE BROKERAGE COMPANY

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

Docket 8084. Complaint, Aug. 19, 1960—Decision, Sept. 29, 1961

Consent order requiring Kansas City, Mo., brokers of citrus fruit and produce to cease violating Sec. 2(c) of the Clayton Act by accepting from Florida suppliers unlawful brokerage on their own purchases for resale, such as a discount at the rate of 10 cents per 1⅗ bushel box, or equivalent, or a lower price reflecting such commission.

COMPLAINT

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

PARAGRAPH 1. Respondents Richard B. Yankee and Beulah M. Yankee are individuals and copartners doing business as Yankee Brokerage Company, under and by virtue of the laws of the State of Missouri, with their offices and principal place of business located at 205–07 Merchants Produce Bank Building, Kansas City, Missouri. These individual respondents formulate, direct and control the business, acts and practices of the partnership, Yankee Brokerage Company, including its purchase, sale and distribution policies.

PAR. 2. Respondents are now, and for the past several years have 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, respondents have represented, and now represent, a number of citrus fruit packers located in the State of Florida in the sale and distribution of their citrus fruit, for which respondents were and are paid for their services in connection therewith a brokerage or commission, usually at the rate of 10 cents per 1⅗ bushel box, or equivalent. In many instances respondents have also purchased citrus fruit and other food products for their own account for resale.

PAR. 3. In the course and conduct of their business for the past several years, in representing their packer-principals, as well as when purchasing for their own account, respondents have, 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 Missouri to respondents, or to respondents' customers located in Missouri and in other states. Thus, for the past several years, respondents have been, and are 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 their business in commerce, as aforesaid, during the past several years, but more particularly since July 1, 1956, to the present time, respondents have made, and are now making, numerous and substantial purchases of food products for

their own account for resale from various packers or sellers, on which purchases they have received and accepted, and are 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, respondents make substantial purchases of citrus fruit for their own account from a number of packers located in the State of Florida and receive 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. In many instances, respondents receive a lower price from the packer which reflects said brokerage or commission.

PAR. 5. The acts and practices of respondents in receiving and accepting a brokerage or commission, or an allowance or discount in lieu thereof, on their 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).

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondents Richard B. Yankee and Beulah M. Yankee are individuals and are copartners doing business as Yankee Brokerage Company under and by virtue of the laws of the State of Missouri, with their office and principal place of business located at 205–07 Merchants Produce Bank Building, in the City of Kansas City, State of Missouri.

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

ORDER

It is ordered, That respondents Richard B. Yankee and Beulah M. Yankee, individually and as copartners doing business as Yankee Brokerage Company, and respondents' agents, representatives and employees, directly or through any corporate, partnership, sole proprietorship, 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 respondents are the agents, representatives, or other intermediaries acting for or in behalf, or are subject to the direct or indirect control, of any buyer.

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

IN THE MATTER OF

WALDEN-SPARKMAN, INC., ET AL.

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

Docket 8143. Complaint, Oct. 13, 1960—Decision, Sept. 29, 1961

Consent order requiring Dover, Fla., brokers of citrus fruit and produce to cease violating Sec. 2(c) of the Clayton Act by accepting from Florida suppliers unlawful brokerage on their own purchases for resale, such as a discount at the rate of 10 cents per 1⅗ bushel box, or equivalent, or a lower price reflecting such commission.

COMPLAINT

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

PARAGRAPH 1. Respondent Walden-Sparkman, Inc., is a corporation organized, existing and doing business under and by virtue of the

laws of the State of Florida with office and principal place of business located at Dover, Florida, with mailing address at Post Office Box 98, Dover, Florida.

Respondent P. D. Walden is president of corporate respondent Walden-Sparkman, Inc., respondent John B. Simpson is vice president of corporate respondent Walden-Sparkman, Inc., and respondent W. B. Sparkman, Jr. is secretary and treasurer of corporate respondent Walden-Sparkman, Inc. The business address of the individual respondents is the same as that of the corporate respondent. Said individual respondents, at all times hereinafter mentioned, have directed and controlled the acts, practices and policies of the corporate respondent, including the acts and practices hereinafter mentioned.

Prior to the organization and incorporation of respondent Walden-Sparkman, Inc., respondent W. B. Sparkman, Jr. was trading and doing business in an individual capacity as W. B. Sparkman, Jr. with office and principal place of business located at Plant City, Florida, with mailing address at Post Office Box 1549, Plant City, Florida. The business formerly conducted by W. B. Sparkman, Jr. is now conducted by the corporate respondent Walden-Sparkman, Inc.

PAR. 2. Respondent Walden-Sparkman, Inc., by and through the individual respondents named herein, is engaged in busineess as a buying broker purchasing citrus fruit and produce for its own account for resale. Prior to the organization and incorporation of respondent Walden-Sparkman, Inc., respondent W. B. Sparkman, Jr., in an individual capacity, was engaged in business as a buying broker purchasing citrus fruit and produce for his own account for resale.

Respondent Walden-Sparkman, Inc. also operates a retail farm supply business located at Dover, Florida, but that part of its operations is not involved herein.

PAR. 3. In the course and conduct of its business respondent Walden-Sparkman, Inc. has purchased citrus fruit and produce for its own account for resale from various packers located in the State of Florida and respondent has, directly or indirectly, caused such citrus fruit and produce, when purchased and sold, to be transported from various packers' places of business or from respondent's place of business located in the State of Florida to respondent's customers located in many states other than the State of Florida. Thus, for the past several months, 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, but more particularly since October 1959 to the present time, respondent Walden-Sparkman, Inc. has made, and is now making, numerous and substantial purchases of citrus fruit and produce for

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

For example, said respondent has made substantial purchases of citrus fruit for its own account from various packers or sellers located in the State of Florida and has received from these packers or sellers 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. In many instances, respondent receives a lower price from the packers or sellers which reflects said brokerage or commission.

For several years prior to October 1959 respondent W. B. Sparkman, Jr. made substantial purchases of citrus fruit for his own account from various packers or sellers located in the State of Florida and has received from these packers or sellers 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. In many instances said respondent received a lower price from the packers or sellers which reflected said brokerage or commission.

PAR. 5. The acts and practices of respondents, and each of them, in receiving and accepting a brokerage or commission, or an allowance or discount in lieu thereof, on their 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).

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondent Walden-Sparkman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located in the City of Dover, State of Florida, with mailing address as Post Office Box 98, Dover, Florida.

Respondents P. D. Walden, John B. Simpson and W. B. Sparkman, Jr., are individuals and are officers of and maintain the same business address as that of said corporate respondent.

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

ORDER

It is ordered, That respondents Walden-Sparkman, Inc., a corporation, and its officers, and P. D. Walden, John B. Simpson and W. B. Sparkman, Jr., individually and as officers of Walden-Sparkman, Inc., and respondents' agents, representatives and employees, directly or through any corporate, partnership, sole proprietorship, 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 respondents' own account, or where respondents are the agent, representative, or other intermediary acting for or in behalf, or are subject to the direct or indirect control, of any buyer.

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

IN THE MATTER OF

ROBERT WARREN CRUM DOING BUSINESS AS BOB CRUM

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

Docket 8204. Complaint, Dec. 6, 1960—Decision, Sept. 29, 1961

Consent order requiring a Tampa, Fla., distributor and broker of citrus fruit and produce to cease violating Sec. 2(c) of the Clayton Act by accepting

from Florida suppliers unlawful brokerage on his own purchases for resale, such as a discount at the rate of 10 cents per 1⅗ bushel box, or equivalent, or a lower price reflecting such commission.

Complaint

The Federal Trade Commission, having reason to believe that the party respondent 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 Robert Warren Crum is an individual and a copartner doing business as Bob Crum, under and by virtue of the laws of the State of Florida, with office and principal place of business located at Produce Station, Tampa 10, Florida, with mailing address as Post Office Box 11463, Tampa 10, Florida.

Rudolph Eddie Hobbs, of Lumpkin, Georgia, is a copartner with respondent Robert Warren Crum, trading and doing business as Bob Crum; however, said Rudolph Eddie Hobbs is a limited partner and is not active in the conduct of the partnership business hereinafter described. Said respondent Robert Warren Crum, at all times hereinafter mentioned, has directed and controlled the acts and practices of the partnership, including the acts and practices hereinafter described.

Par. 2. Respondent is now and for some time past has been engaged in business as a distributor, purchasing citrus fruit and produce for his own account for resale, as well as a buying broker representing buyers in the purchase of citrus fruit and produce for said buyers. A substantial part of respondent's business is in the purchase, sale and distribution of citrus fruit and produce, hereinafter sometimes referred to as food products, purchased from packers or sellers located in the State of Florida.

Par. 3. In the course and conduct of his business for some time past, but more particularly since January 1, 1959, in purchasing food products for his own account, or for the account of buyers represented by respondent, respondent has directly or indirectly caused such food products when purchased and sold to be shipped and transported from various packers' packing plants or places of business located in the State of Florida, as well as in other states, to respondent or to respondent's customers located in many states other than the state in which the shipment originated. Thus for some time past, 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 his business in commerce, as aforesaid, for some time past but more particularly since January 1, 1959, to the present time, respondent has made, and is now making, numerous and substantial purchases of citrus fruit and other food products for his own account, for resale, from various packers or sellers, on which purchases said respondent has received and accepted, and is now receiving and accepting, directly or indirectly, from said packers or sellers, something of value as a commission, brokerage or other compensation, or an allowance or discount in lieu thereof. In many instances respondent has received a lower net price which reflected the allowance of said commission or brokerage, or a discount in lieu thereof, in connection with said purchases.

Further, respondent has in numerous transactions represented the buyer as the buyer's agent in connection with the purchase of citrus fruit or other food products but received a brokerage or commission, or a discount in lieu thereof, from the seller on said purchase transactions.

PAR. 5. The acts and practices of respondent in receiving and accepting from the seller a brokerage or commission, or an allowance or discount in lieu thereof, on its own purchases, or on purchases for a buyer where respondent was acting for or on behalf of said buyer in said transaction, as hereinabove 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).

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondent named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, and an agreement by and between respondent and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondent Robert Warren Crum is an individual doing business as Bob Crum, under and by virtue of the laws of the State of Florida,

with his office and principal place of business located at Produce Station, in the City of Tampa, State of Florida, with mailing address as Post Office Box 11463, Tampa, Florida.

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

ORDER

It is ordered, That respondent Robert Warren Crum, an individual doing business as Bob Crum, and his agents, representatives and employees, directly or through any corporate, partnership, sole proprietorship, 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.

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

IN THE MATTER OF

SENECA QUILTING 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 8363. Complaint, Apr. 17, 1961—Decision, Sept. 29, 1961

Consent order requiring Brooklyn manufacturers to cease violating the Wool Products Labeling Act by labeling as "100% reprocessed wool, exclusive of ornamentation" and "90% reprocessed wool, 10% other fibers", interlining materials which contained substantially less woolen fibers than so represented, failing to comply with other labeling requirements, and furnishing false guaranties that certain of their wool products were not misbranded; and to cease violating the Federal Trade Commission Act by using on invoices the misrepresentations as to fiber content above set out.

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 Seneca Quilting Company, Inc., a corporation, and Arthur Eisenberg and Paul Melinger, 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 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 Seneca Quilting Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondents Arthur Eisenberg and Paul Melinger are officers of the corporate respondent. Said individual respondents cooperate in formulating, directing and controlling 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 76 Crown Street in Brooklyn, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1958 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 the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products were interlining materials labeled or tagged by respondents as "100% reprocessed wool, exclusive of ornamentation" and "90% reprocessed wool, 10% other fibers" whereas, in truth and in fact, said products contained substantially less woolen fibers than that set forth on the said labels in each instance.

PAR. 4. 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. 5. Respondents have furnished false guaranties that certain of their wool products were not misbranded, when they knew, or had reason to believe, that the said wool products so falsely guaranteed might be introduced, and were introduced, sold, transported, or dis-

tributed in commerce, in violation of Section 9 of the Wool Products Labeling Act.

PAR. 6. In the course and conduct of their business, respondents were and are in substantial competition, in commerce, with corporations, firms and individuals likewise engaged in the sale of woolen interlining materials.

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

PAR. 8. In the course and conduct of their business, respondents have made certain statements with respect to the fibers of which their woolen interlining materials were composed on invoices covering the shipment of said interlining materials, among which the following are typical:

100% Reprocessed Wool, Exclusive of Ornamentation, and
90% Reprocessed Wool, 10% other fibers;

whereas, in truth and in fact, said interlining materials contained substantially less woolen fibers than that set forth on the said invoices.

PAR. 9. The acts and practices set out in Paragraph Eight had and now have the tendency and capacity to mislead and deceive purchasers of said interlining materials as to the true fiber content thereof and to misbrand products manufactured by them in which said products were used.

PAR. 10. The acts and practices of the respondents, as set forth in Paragraph Eight constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged

in the complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondent Seneca Quilting 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 76 Crown Street, Brooklyn, New York.

Respondents Arthur Eisenberg and Paul Melinger are officers of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Seneca Quilting Company, Inc., a corporation, and its officers, and Arthur Eisenberg and Paul Melinger, 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 or distribution, in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of wool interlining materials or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

A. Misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers 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, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

B. Furnishing false guarantees that wool products are not misbranded under the provisions of the Wool Products Labeling Act, when there is reason to believe that the wool products so guaranteed may be introduced, sold, transported or distributed in commerce.

It is further ordered, That respondents Seneca Quilting Company, Inc., a corporation, and its officers, and Arthur Eisenberg and Paul

Melinger, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of interlining materials or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or indirectly, the constituent fibers of which such products are composed, or the percentages thereof, in invoices, shipping memoranda, or in any other manner.

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

IN THE MATTER OF

ACUSHNET CARPET MILLS, INC., ET AL.

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

Docket 8412. Complaint, June 1, 1961—Decision, Sept. 29, 1961

Consent order requiring manufacturers in New Bedford, Mass., to cease violating the Textile Fiber Products Identification Act by advertising on a price list as "Woolray Blend of wool, rayon, cotton, nylon", rugs the constituent fibers of which were not designated in the order of predominance as required, and in which the wool content—implied to be substantial by the term "Woolray"—was insignificant; by failing to label rugs with the true generic name of fibers in the order of their predominance by weight and the "other fibers" present in amounts of 5% or less, together with percentages of each; and by failing to comply with other requirements of the Act; and to cease violating the Federal Trade Commission Act by labeling as "Approx. 9′ x 12′", rugs which are substandard both in length and in width by as much as eight inches.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Acushnet Carpet Mills, Inc., a corporation, and Martin Berdy and Morris Lefkowitz, individually and as officers of said corporation, and Arcco Selling Agency, Inc., a corporation, and Myron S. Rosenberg, I. Stanley Bailey and Milton L. Rosenberg, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of such Acts

and the Rules and Regulations under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Acushnet Carpet Mills, 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 95 Rodney French Boulevard, New Bedford, Massachusetts. Respondent corporation is the manufacturer of "Woolray Braided Rugs." Respondent sells their said rugs to purchasers directly and through its exclusive sales agency hereinafter referred to.

Individual respondents Martin Berdy and Morris Lefkowitz are president and secretary-treasurer, respectively, of corporate respondent Acushnet Carpet Mills, Inc. Said individual respondents formulate, direct and control the acts, practices and policies of the corporate respondent. The office and principal place of business of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondent Arcco Selling Agency, 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 295 Fifth Avenue, New York, New York. Respondent corporation is the exclusive sales agency in the United States of Acushnet Carpet Mills, Inc. for its "Woolray Braided Rugs."

Individual respondents Myron S. Rosenberg, I. Stanley Bailey, and Milton L. Rosenberg are president, vice-president and secretary-treasurer, respectively of corporate respondent Arcco Selling Agency, Inc. Said individual respondents formulate, direct and control the acts, practices and policies of this corporate respondent. The office and principal place of business of the individual respondents is the same as that of the corporate respondent.

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

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

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

Among such misbranded textile fiber products were rugs advertised on a price list as "Woolray Blend of wool, rayon, cotton, nylon." In truth and in fact, the constituent fibers in said products were not designated in the order of predominance by weight as required in Section 4(b)(1) of said Act. Further, the term "Woolray" implies the rugs contain substantial amounts of wool, whereas the woolen fibers present are insignificant in amount.

PAR. 5. Such textile fiber products, namely rugs, were misbranded by respondents in that they were not stamped, tagged, or labeled with the information required under Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under such Act. Among such misbranded textile fiber products but not limited thereto were textile fiber products, namely rugs, with labels which failed: (a) To show the true generic names of each of the fibers present exceeding 5 percentum of the total fiber weight of the said textile fiber product in the order of their predominance by weight, (b) To show fibers present in the amount of 5 percentum or less as "other fiber" or "other fibers", (c) To show the percentage of each fiber present by weight together with the percentage of such other fiber or fibers.

PAR. 6. Certain of said textile fiber products, namely rugs, were falsely and deceptively advertised under Section 4(c) of the Textile Fiber Products Identification Act in that a written advertisement, to wit: a price list, was used to aid, promote, or assist directly or indirectly in the sale or offering for sale of such braided rugs, by use of the terminology "Woolray Blend of wool, rayon, cotton, nylon" rather than the generic names of the fibers present in the order of their predominance as required by Section 4(b)(1) and (2) of said Act.

PAR. 7. Respondents made representations as to the fiber contents of certain textile fibers products, namely, rugs, on price lists without setting forth a full and complete fiber content disclosure on the fiber content tags attached to such textile fiber products, in violation of Rule 14(c) of the Rules and Regulations promulgated under the said Textile Fiber Products Identification Act.

PAR. 8. The respondents, in the course and conduct of their business, as aforesaid, were and are in substantial competition with other

corporations, firms and individuals likewise engaged in the manufacture and sale of textile fiber products, in commerce.

PAR. 9. The acts and practices of respondents, as set forth herein, were in violation of the Textile Fiber Products Identification Act, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 10. In the course and conduct of their business and for the purpose of inducing the purchase of their braided rugs, respondents Acushnet Carpet Mills, Inc., and its officers have engaged in the practice of setting out the sizes of various rugs on labels attached thereto. Certain of the aforesaid labels contain the representation "Approx. 9′ x 12′ ". A number of the rugs so labeled are substantially less than the stated size. Such rugs are substandard both in length and in width by up to eight inches.

Respondents Acushnet Carpet Mills, Inc., and its officers by mislabeling these rugs and Arcco Selling Agency, Inc., and its officers, the exclusive selling agent, by selling such mislabeled rugs to retailers, have placed in the hands of such retailers the means and instrumentality through and by which the consuming public may be misled as to the actual size of the said rugs.

PAR. 11. 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 thus induced the purchase of substantial quantities of respondents' rugs 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. 12. 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.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents in the proceeding with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and an agreement by and between respondents and counsel supporting the com-

plaint, which agreement contains an order to cease and desist, an admission by respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, and waivers and provisions as required by the Commission's rules, and further provides for dismissal of the complaint as to respondent Milton L. Rosenberg, individually and as an officer of corporate respondent Arcco Selling Agency, Inc.; and

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

1. Respondent Acushnet Carpet Mills, Inc., is a corporation organized, 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 95 Rodney French Boulevard, New Bedford, Massachusetts.

Individual respondents Martin Berdy and Morris Lefkowitz are officers of corporate respondent Acushnet Carpet Mills, Inc., and their address is the same as that of said corporate respondent.

2. Respondent Arcco Selling Agency, 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 295 Fifth Avenue, New York, New York.

Individual respondents Myron S. Rosenberg and I. Stanley Bailey are officers of corporate respondent Arcco Selling Agency, Inc., and their address is the same as that of said corporate respondent.

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 Acushnet Carpet Mills, Inc., a corporation, its officers, Martin Berdy and Morris Lefkowitz, individually and as officers of said corporation, and Arcco Selling Agency, Inc., a corporation, its officers, and Myron S. Rosenberg and I. Stanley Bailey, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale, in commerce, or in the transportation or causing to be transported in commerce, or in the importation into the United

States, of textile fiber products; or in connection with the selling, offering for sale, advertising, delivering, transporting, or causing to be transported, textile fiber products, which have been advertised or offered for sale, in commerce; or in connection with the selling, offering for sale, advertising, delivering, transporting, or causing to be transported, after shipment in commerce, textile fiber products, either in their original state or which were contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding such products by falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products as to the name or amount of constituent fibers contained therein.

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

C. Making any representations by disclosure or by implication of the fiber contents of any textile fiber product in any written advertisement which is used to aid, promote, or assist directly or indirectly in the sale or offering for sale of such textile fiber product unless the same information required to be shown on the stamp, tag, label or other means of identification under Section 4(b) (1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

D. Making any representations as to fiber content of any textile fiber product or any portion of a textile fiber product which has been labeled as being composed of unknown or undetermined fibers.

It is further ordered, That respondents Acushnet Carpet Mills, Inc., a corporation, its officers, and Martin Berdy and Morris Lefkowitz, individually and as officers of said corporation, and Arcco Selling Agency, Inc., a corporation, its officers, and Myron S. Rosenberg and I. Stanley Bailey, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of rugs or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or indirectly, the size of said products to be of larger dimensions than is the fact.

It is further ordered, That the complaint be, and the same hereby

is, dismissed as to Milton L. Rosenberg, individually and as an officer of Arcco Selling Agency, Inc.

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

IN THE MATTER OF

RODLESS DECORATIONS, INC., ET AL.

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

Docket 8429. Complaint, June 16, 1961—Decision, Oct. 3, 1961

Consent order requiring New York City manufacturers to cease violating the Textile Fiber Products Identification Act by labeling "100% 'Dacron' Polyester, Trim consists of All Cotton", curtains which contained no "Dacron" polyester; by failing to label curtains with the true generic names of constituent fibers and the percentage of each by weight and to show "other fibers" present; by failing to keep proper records showing the fiber content of their products; and by furnishing false guaranties that their products were not misbranded or falsely invoiced.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Rodless Decorations, Inc., a corporation, and Charles Druck, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of such Acts and the Rules and Regulations under the Textile Fiber Identification Act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Rodless Decorations, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 256 Fifth Avenue, New York, New York.

Respondent Charles Druck is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent.

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

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

Among such textile fiber products were window curtains labeled by respondents as "100% 'Dacron' Polyester, Trim consists of All Cotton," whereas in truth and in fact the said curtains contained no "Dacron" polyester.

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

Among such misbranded textile fiber products but not limited thereto were textile fiber products, namely curtains, with labels which failed: (a) To disclose the true generic names of each of the fibers present exceeding five percentum of the total fiber weight of the said textile fiber products in the order of their predominance by weight, (b) To show the fibers present in the amount of five percentum or less as "other fiber" or "other fibers", (c) To show the percentage of each fiber present by weight together with the percentage of such other fiber or fibers.

PAR. 5. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them, in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

PAR. 6. Respondents have furnished a false guaranty that certain of their textile fiber products were not misbranded or falsely invoiced,

in violation of Section 10 of the Textile Fiber Products Identification Act.

PAR. 7. Respondents, in the course and conduct of their business, as aforesaid, were and are in substantial competition in commerce with corporations, firms and individuals likewise engaged in the manufacture and sale of textile fiber products, including window curtains.

PAR. 8. The acts and practices of the respondents, as set forth above, were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Edward B. Finch for the Commission.
Mr. Richard M. Michaelson for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

Rodless Decorations, Inc. is a corporation organized and existing under the laws of the State of New York, and Charles Druck, who formulates, directs and controls its acts and practices, is an officer thereof. They are engaged in business at 256 Fifth Avenue, in the City and State of New York.

In a complaint issued June 16, 1961, said corporation and individual were charged with violating the Federal Trade Commission Act and the Textile Fiber Products Identification Act by misbranding textile fiber products,* failing to maintain fiber content records and furnishing a false guaranty with respect to the branding of such products.

Together with the advice and consent of their attorney, on August 1, 1961, they entered into an agreement with counsel supporting the complaint wherein it is provided, in accordance with Section 3.25 of the Rules of Practice applicable to this case, for the entry of a consent order to cease and desist. The proposed order would dispose of all the issues herein.

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.

*As modified by order of Sept. 25, 1961.

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 and 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 Rodless Decorations, Inc., a corporation and its officers, and Charles Druck, 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, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported, in commerce, or the importation into the United States of textile fiber products; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of textile fiber products which have been advertised or offered for sale in commerce, or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of textile fiber products, whether in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

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

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

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed August 18, 1961, accepting an agreement containing a consent order theretofore executed by the respondents and counsel in support of the complaint; and

It appearing that the second paragraph in the initial decision, purporting to summarize the charges in the complaint is in error; 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, modified by striking from the fourth and fifth lines of the second paragraph on page one of said decision the words "sold and distributed by them in commerce" as they appear immediately following the word "products" in the fourth line.

It is further ordered, That the initial decision, as herein modified, shall on the 3rd day of October 1961, become the decision of the Commission.

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

IN THE MATTER OF

KEMWORTH LABORATORIES, INC., ET AL.

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

Docket 8430. Complaint, June 16, 1961—Decision, Oct. 3, 1961

Consent order requiring distributors of drugs in Orange, N.J., to cease representing falsely in advertisements in periodicals, by such statements as "Rigid quality control", that they employed an adequate control system for their products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Kemworth Laboratories, Inc., a corporation, and Harold H. Fisher, 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 Kemworth Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 554 Mitchell Street in the City of Orange, State of New Jersey.

Respondent Harold H. Fisher is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

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

Among, but not all inclusive of, the said drugs and preparations are those designated as follows:

1. "Chorionic Gonadotropin Lyopholized"
2. "Posterior Pituitary Solution, U.S.P."
3. "Vitamin B-12 Solution"

PAR. 3. Respondents cause their said drugs and preparations, when sold, to be transported from their place of business in the State of New

Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said drugs and preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said drugs and preparations 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 periodicals, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said drugs and preparations by drug wholesalers and distributors; and have disseminated, and caused the dissemination of, advertisements concerning said drugs and preparations 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 drugs and preparations 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 is the following:

Rigid quality control

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 and by implication, that they employ an adequate control system.

PAR. 7. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact respondents do not have an adequate control system.

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

Mr. Berryman Davis for the Commission;
Respondents for themselves.

INITIAL DECISION by Abner E. Lipscomb, Hearing Examiner

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

the dissemination of false advertisements with respect to certain of their drugs and preparations, among which are those designated as "Chorionic Gonadotropin Lyopholized," "Posterior Pituitary Solution, U.S.P." and "Vitamin B-12 Solution."

Thereafter, on August 4, 1961, Respondents and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Chief, Division of Food and Drug Advertising, and the Director, of the Commission's Bureau of Deceptive Practices, and thereafter, on August 17, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Kemworth Laboratories, Inc., as a New Jersey corporation, with its office and principal place of business located at 554 Mitchell Street, Orange, New Jersey, and Respondent Harold H. Fisher as an officer of the corporate Respondent, his address being the same as that of the corporate Respondent.

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

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. 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 Kemworth Laboratories, Inc., a corporation, and its officers, and Harold H. Fisher, individually and as an officer

of said corporation, and Respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of drugs, do forthwith cease and desist, directly or indirectly:

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

(a) Uses the term "quality control" or any other term or words of similar import or meaning; or

(b) Represents, directly or indirectly, that Respondents, or any of them, have an adequate control system, or misrepresents the nature or extent of the procedures used by them in the manufacture, preparation or distribution of drugs;

2. Disseminating or causing the dissemination of 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 drugs, which advertisement contains the term, words or 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, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 3rd day of October 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

PHOENIX PHARMACEUTICAL COMPANY ET AL.

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

Docket 8397. Complaint, May 15, 1961—Decision, Oct. 5, 1961

Consent order requiring two associated concerns in Hartford, Conn.—one the retail outlet for the other—to cease representing falsely in advertising in newspapers, circulars, magazines, etc., that their various vitamin preparations were U.S. Government standard formulations, and that they would be beneficial in the treatment of such conditions as excessive fatigue, nervous irritability, low resistance, etc., as in the order below in detail set out.

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 Phoenix Pharmaceutical Company, a corporation, The Vitamin Center, Inc., a corporation, and Aaron Honiberg and Julian Gross, individually and as officers of both of the aforesaid 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 Phoenix Pharmaceutical Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut with its principal office and place of business located at 1001 Albany Avenue in the City of Hartford, Connecticut.

Respondent The Vitamin Center, 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 1001 Albany Avenue in the City of Hartford, Connecticut. This said corporate respondent is a subsidiary of corporate respondent Phoenix Pharmaceutical Company, and is a distributor and retail outlet for corporate respondent Phoenix Pharmaceutical Company in connection with the advertising and sale of various preparations described below.

Respondents Aaron Honiberg and Julian Gross are officers of both corporate respondents. They formulate, direct and control the acts and practices of both of the corporate respondents, including the acts and practices hereinafter set forth. The address of respondent Aaron Honiberg is the same as that of corporate respondents Phoenix Pharmaceutical Company and The Vitamin Center, Inc. The address of respondent Julian Gross is 770 Asylum Avenue, Hartford, Connecticut.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale and distribution of various preparations containing ingredients which come within the classification of food, as the term "food" is defined in the Federal Trade Commission Act.

The designations used by respondents for certain of their said preparations, the formulas thereof and directions for use are as follows:

1. Designation: "Vitagran-Formulation No. 115"
Formula: Each capsule contains:

Vitamin A	25,000 USP Units

Vitamin D	1,000 USP Units
Thiamine Chloride	10 mg.
Riboflavin	5 mg.
Ascorbic Acid	150 mg.
Niacinamide	150 mg.

Directions: Average adult dose. One capsule daily or as directed by a physician.

2. Designation: "Phoenix No. 215 Vitagran-Forte"

Formula: Each capsule contains:

Vitamin A (Palmitate)	25,000 USP Units
Vitamin D (Irradiated Ergosterol)	1,000 USP Units
Vitamin B_1 (Thiamine Mononitrate)	10 mg.
Vitamin B_2 (Riboflavin)	10 mg.
Vitamin C (Ascorbic Acid)	200 mg.
Niacinamide	100 mg.
Vitamin B_6 (Pyridoxine HCl)	5 mg.
Calcium Pantothenate	20 mg.
Vitamin B_{12} (Cobalamin Conc. N.F.)	5 mcg.

Directions: Adults—One capsule daily, or as directed by physician.

3. Designation: "Phoenix No. 116 Multi-Thera"

Formula: Each tablet contains:

Vitamin A (Acetate)	25,000 USP Units
Vitamin D (Calciferol)	1,000 USP Units
Vitamin B_1 (Thiamine Mononitrate)	10 mg.
Vitamin B_2 (Riboflavin)	10 mg.
Niacinamide	100 mg.
Vitamin B_6 (Pyridoxine HCl)	5 mg.
Vitamin B_{12} (Cobalamin Conc.)	5 mcg.
Vitamin C (Ascorbic Acid)	200 mg.
d-Calcium Pantothenate	20 mg.
Vitamin E (d-a-Tocopherol Acid Succinate)	5 Int. Units
Vitamin K (Menadione)	1 mg.
Calcium (as Carbonate)	105 mg.
Iron (Ferrous Sulfate Exsiccated)	15 mg.
Copper (as Sulfate)	1 mg.
Manganese (as Sulfate)	1 mg.
Magnesium (as Sulfate)	6 mg.
Potassium (as Sulfate)	5 mg.
Zinc (as Sulfate)	1.5 mg.

Directions: Adults—One tablet daily, or as directed by physician.

4. Designation: "#110 Vegerol", a combination preparation consisting of (a) "Phoenix No. 110A Vegerol Vitamin Capsules" and (b) "Phoenix No. 110B Vegerol Mineral Tablets"

Formula: (a) "Phoenix No. 110A Vegerol Vitamin Capsules."

Each capsule contains:

Vitamin A (Acetate)	12,500 USP Units
Vitamin D (Calciferol)	1,250 USP Units
Vitamin B (Thiamine HCl)	12.5 mg.
Vitamin B_2 (Riboflavin)	5.0 mg.
Vitamin B_6 (Pyridoxine HCl)	2.5 mg.

Vitamin B_{12} (Activity)	2.5 mcg.
Vitamin C (Ascorbic Acid)	100 mg.
Vitamin E (Wheat Germ Oil)	5.0 mg.
Niacinamide	79.1 mg.
Folic Acid	0.4 mg.
Calcium Pantothenate	12.5 mg.
Liver Desiccated	25 mg.
Brewers Yeast	21 mg.
dl-Methionine	3.34 mg.
Choline Bitartrate	32.5 mg.
Inositol and Vegerol Conc. of Watercress, Parsley and Alfalfa	25 mg.

Directions: Adults—One or two Vegerol Vitamin Capsules with one or two Vegerol Mineral Tablets daily taken at breakfast with fruit juice or water.

Formula: (b) "Phoenix No. 110B Vegerol Mineral Tablets"

Each tablet contains:

Calcium (Dicalcium Phosphate)	66 mg.
Phosphorus (Dicalcium Phosphate)	47 mg.
Iodine (Potassium Iodide)	.033 mg.
Iron (Ferrous Sulfate)	6.7 mg.
Copper (as Sulfate)	.34 mg.
Magnesium (as Sulfate)	5.84 mg.
Potassium (as Sulfate)	21 mg.
Biotin	4.2 mg.
Betaine	3.34 mg.
Manganese (as Sulfate)	.5 mg.
Rutin	8.3 mg.
Zinc (as Sulfate)	.34 mg.
Vitamin B_{12} (Activity)	4.1 mcg.
Vitamin K (Menadione)	.17 mg.
Niacinamide	0.8 mg.
dl-Methionine	3.34 mg.
Para Aminobenzoic Acid	3.3 mg.
Liver Desiccated	8.34 mg.
Brewers Yeast and Vegerol Conc. of Watercress, Parsley and Alfalfa	21 mg.

Directions: Adults—One or two Vegerol Vitamin Capsules with one or two Vegerol Mineral Tablets daily taken at breakfast with fruit juice or water.

5. Designation: "#114 Stressvite"

Formula: Each Stressvite supplies:

Thiamin HCl	10 mgm.
Riboflavin	10 mgm.
Niacinamide	100 mgm.
Calcium Pantothenate	20 mgm.
Ascorbic Acid	300 mgm.
Pyridoxine HCl	2 mgm.
Folic Acid	1.5 mgm.
Vitamin B_{12} (Oral Conc. from streptomyces fermentation extractives)	4 mcgm.

Directions: Adults—One tablet daily, or as directed by physican.

6. Designation: "Phoenix #117 B-Plexol"
Formula: Each B-Plexol tablet supplies:

Vitamin B_1	15 mg.
Vitamin B_2	6 mg.
Vitamin B_6	0.5 mg.
Vitamin B_{12}	3 mcg.
Vitamin C	30 mg.
Vitamin E	5 mg.
Niacinamide	10 mg.
Calcium Pantothenate	3 mg.
Folic Acid	0.1 mg.
Whole Dried Liver	100 mg.
Yeast	100 mg.
Choline	20 mg.
Inositol	20 mg.
dl-Methionine	20 mg.
Dicalcium Phosphate	200 mg.
Ferrous Gluconate	30 mg.
Potassium Iodide	0.15 mg.
Magnesium Sulfate	7.2 mg.
Copper Sulfate	5.0 mg.
Manganese Sulfate	3.4 mg.
Cobalt Sulfate	0.2 mg.
Potassium Chloride	1.3 mg.

Directions: Adults—One tablet daily, or as directed by physician.
7. Designation: "#119 Super-Plex"
Formula: Each Super-Plex supplies:

Thiamine Mononitrate (B_1)	25.0 mg.
Riboflavin (B_2)	12.5 mg.
Nicotinamide	75.0 mg.
Pyridoxine HCl (B_6)	3.0 mg.
Calcium Pantothenate	10.0 mg:
Absorbic Acid (C)	250.0 mg.
Vitamin B_{12} Crystalline with Intrinsic Factor Concentrate	0.11 USP Units

Directions: Adults—One tablet daily, or as directed by physician.
8. Designation: "#310 Vegerol Plus B-Plexol"
Formula: (This preparation is a combination of three (3) preparations: (1) "Phoenix No. 110A Vegerol Vitamin Capsules" and (2) "Phoenix No. 110B Vegerol Mineral Tablets", the formulas and directions for use of which are set out on pages 758 and 759 supra, and (3) "Phoenix #117 B-Plexol", the formula and directions for use of which are set out above supra).
9. Designation: "#50 Gerichol"
Formula: Each capsule contains:

Vitamin A (Palmitate)	12,500 USP Units
Vitamin D (Irradiated Ergosterol)	1,000 USP Units
Thiamine Mononitrate	5 mg.
Riboflavin	2.5 mg.
Niacinamide	40 mg.
Pyridoxine Hydrochloride	0.5 mg.
Calcium Pantothenate	4 mg.
Folic Acid	0.5 mg.

Vitamin B_{12}	1 mcg.
Ascorbic Acid	75 mg.
Vitamin E (from d-Alpha Tocopherol Acetate Conc.)	2 Int'l. Units
Choline Bitartrate	31.4 mg.
dl-Methionine	10 mg.
Inositol	15 mg.
Calcium (from Dicalcium Phosphate)	75 mg.
Phosphorus (from Dicalcium Phosphate)	58 mg.
Iron (from Ferrous Sulfate)	30 mg.
Cobalt (from Cobalt Sulfate)	0.04 mg.
Copper (from Copper Sulfate)	0.45 mg.
Iodine (from Potassium Iodine)	0.075 mg.
Magnesium (from Magnesium Sulfate)	3 mg.
Molybdenum (from Sodium Molybdate)	0.1 mg.
Manganese (from Manganese Sulfate)	0.5 mg.
Potassium (from Potassium Sulfate)	2 mg.
Zinc (from Zinc Sulfate)	0.5 mg.
Safflower Oil	340 mg.

Directions: One or two daily at breakfast—or as directed by physician.

10. Designation: "Geri-Aids—Formulation No. 108"
Formula: Each Geri-Aids contains:

Thiamin Chloride	15 mgm.
Riboflavin	6 mgm.
Pyridoxine HCl	0.5 mgm.
Ascorbic Acid	30 mgm.
Calcium Pantothenate	3 mgm.
Niacinamide	15 mgm.
Alpha Tocopherol Acetate	0.8 mgm.
Liver Whole Desiccated	100 mgm.
Brewer's Yeast	15 mgm.
Vitamin B_{12} Oral Conc. (from streptomyces fermentation extractives)	5 mcgm.
Dicalcium Phosphate	300 mgm.
Choline Dihydrogen Citrate	20 mgm.
Inositol	20 mgm.
dl-Methionine	20 mgm.
Folic Acid	0.1 mgm.
Rutin	10 mgm.
Cobalt Sulphate	0.2 mgm.
Potassium Iodide	0.14 mgm.
Magnesium Sulfate dried	8 mgm.
Copper Sulfate dried	5 mgm.
Potassium Sulfate	5 mgm.
Sodium Molybdate	0.5 mgm.
Ferrous Gluconate	30 mgm.

Directions: One Geri-Aids daily or as directed by physician.

PAR. 3. Respondents cause the said preparations, when sold, to be transported from their place of business in the State of Connecticut to purchasers thereof located in various other states of the United States

and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparations, in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said preparations 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 circulars, brochures, newspapers, magazines and other advertising media, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said preparations; and have disseminated, and caused the dissemination of, advertisements concerning said preparations 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 preparations, 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:

VITAMINS FOR YOUNG AND OLD * * * ON GUARANTEED GOVERNMENT STANDARD FORMULATIONS

For years, all the formulations below have been prescribed by physicians for vitamin deficiencies symptomatized by EXCESSIVE FATIGUE, NERVOUS IRRITABILITY, RESTLESS SLEEP, LOW RESISTANCE, LOSS OF APPETITE— * * *

#115 VITAGRAN
#215 VITAGRAN FORTE
#116 MULTI-THERA

The formulations below * * * are generally prescribed by physicians for B-Complex deficiencies resulting in LACK OF PEP, WEAKNESS OR TIREDNESS, NERVOUSNESS, DIGESTIVE DIFFICULTIES. * * *

#114 STRESSVITE
#117 B-PLEXOL
#119 SUPER-PLEX
Underweight? Exhausted? Aging?
Special Combination Offer
#310 VEGEROL PLUS B-PLEXOL
* * *

Contains high potencies of the lipotropic and other factors which help to restore * * * youthful vitality and appearance.

The formulation below * * * can contribute greatly in cases of vitamin deficiency exhibiting such symptoms as:

PREMATURE AGING
RESTLESS SLEEP
NERVOUS IRRITABILITY
LOSS OF STRENGTH
POOR DIGESTION
#110 VEGEROL
* * *

It also provides desirable potencies of Choline and Inositol for helping improve liver function and fat metabolism.

#50 Gerichol. * * * Gerichol is a dramatic contribution to the fields of geriatric and heart medicine. * * * helps the blood keep its cholesterol level low. In addition to lowering blood cholesterol levels * * *.

#108 Geri-Aids * * * Contains Choline and Inositol for improved liver function and fat metabolism.

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

(a) That their preparations are United States Government standard formulations.

(b) That "Vitagran- Formulation No. 115," "Phoenix No. 215 Vitagran-Forte" and "Phoenix No. 116 Multi-Thera" will be of benefit in the treatment of excessive fatigue, nervous irritability, restless sleep, low resistance and loss of appetite.

(c) That "#114 Stressvite," "Phoenix #117 B-Plexol" and "#119 Super-Plex" will be of benefit in the treatment of lack of pep, weakness, tiredness, nervousness and digestive difficulty.

(d) That "#310 Vegerol Plus B-Plexol" will be of benefit in the treatment of underweight, exhaustion, premature aging and loss of youthful vitality and appearance.

(e) That "#110 Vegerol":

(1) Will be of benefit in the treatment of premature aging, restless sleep, nervous irritability, loss of strength and poor digestion; and

(2) Will improve liver function and fat metabolism.

(f) That "#50 Gerichol" will be of benefit in the treatment of cardiac conditions, and will lower the blood cholesterol level.

(g) That "Geri-Aids—Formulation No. 108" will improve liver function and fat metabolism.

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:

(a) None of respondents' preparations are United States Government standard formulations.

(b) Neither "Vitagran—Formulation No. 115", "Phoenix No. 215 Vitagran-Forte" nor "Phoenix No. 116 Multi-Thera" will be of benefit

in the treatment of excessive fatigue, nervous irritability, restless sleep, low resistance or loss of appetite except in a small minority of persons whose excessive fatigue, nervous irritability, restless sleep, low resistance and loss of appetite are symptoms of an established deficiency of one or more of the nutrients provided by these said preparations.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest to persons who suffer excessive fatigue, nervous irritability, restless sleep and loss of appetite, and who have low resistance, that there is a reasonable probability that they have symptoms which will respond to treatment by the use of "Vitagran—Formulation No. 115," "Phoenix No. 215 Vitagran-Forte" or "Phoenix No. 116 Multi-Thera." In the light of such statements and representations, said advertisements are misleading in a material respect and therefore constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons who suffer excessive fatigue, nervous irritability, restless sleep and loss of appetite, and who have low resistance, these symptoms are not caused by an established deficiency of one or more of the nutrients provided by "Vitagran—Formulation No. 115", "Phoenix No. 215 Vitagran-Forte" or "Phoenix No. 116 Multi-Thera," and that in such cases these said preparations will be of no benefit.

(c) Neither "#114 Stressvite," "Phoenix #117 B-Plexol" nor "#119 Super-Plex" will be of benefit in the treatment of lack of pep, weakness, tiredness, nervousness or digestive difficulty, except in a small minority of persons whose lack of pep, weakness, tiredness, nervousness and digestive difficulty are symptoms of an established deficiency of one or more of the nutrients provided by these preparations.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest to persons who suffer lack of pep, weakness, tiredness, nervousness and digestive difficulty that there is a reasonable probability that they have symptoms which will respond to treatment by the use of "#114 Stressvite," "Phoenix #117 B-Plexol" or "#119 Super-Plex". In the light of such statements and representations, said advertisements are misleading in a material respect and therefore constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons who suffer lack of pep, weakness, tiredness, nervousness or digestive difficulty, these symptoms are not caused by an established deficiency of one or more of the nutrients provided by "#114 Stressvite,"

"Phoenix #117 B-Plexol" or "#119 Super-Plex", and that in such cases these said preparations will be of no benefit.

(d) "#310 Vegerol Plus B-Plexol" will not be of benefit in the treatment of underweight, exhaustion, premature aging or loss of youthful vitality or appearance except in a small minority of persons whose underweight, exhaustion, premature aging or loss of youthful vitality or appearance are symptoms of an established deficiency of one or more of the nutrients provided by this said preparation.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest to persons who are underweight and exhausted and who suffer premature aging and loss of youthful vitality and appearance that there is a reasonable probability that they have symptoms which will respond to treatment by the use of "#310 Vegerol Plus B-Plexol". In the light of such statements and representations, said advertisements are misleading in a material respect and therefore constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons who are underweight and exhausted and who suffer premature aging and loss of youthful vitality and appearance these symptoms are not caused by an established deficiency of one or more of the nutrients provided by "#310 Vegerol Plus B-Plexol" and that in such cases this said preparation will be of no benefit.

(e) "#110 Vegerol"—

(1) Will not be of benefit in the treatment of premature aging, restless sleep, nervous irritability, loss of strength or poor digestion except in a small minority of persons whose premature aging, restless sleep, nervous irritability, loss of strength and poor digestion are symptoms of an established deficiency of one or more of the nutrients provided by this said preparation.

Furthermore, the statements and representations have the capacity and tendency to suggest, and do suggest, to persons who suffer premature aging, restless sleep, nervous irritabiilty, loss of strength and poor digestion that there is a reasonable probability that they have symptoms which will respond to treatment by the use of "#110 Vegerol". In the light of such statements and representations, said advertisements are misleading in a material respect and therefore constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons who suffer premature aging, restless sleep, nervous irritability, loss of strength and poor digestion, these symptoms are not caused by an established deficiency of one or more of the nutrients provided by "#110 Vegerol", and that in such cases this said preparation will be of no benefit; and

(2) Will not improve liver function or fat metabolism.

(f) "#50 Gerichol" will not be of benefit in the treatment of cardiac conditions, and will not lower the blood cholesterol level.

(g) "Geri-Aids—Formulation No. 108" will not improve liver function or fat metabolism.

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

Mr. Berryman Davis for the Commission.
Gersten, Butler & Gersten, Hartford, Conn., for respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint in this proceeding, issued May 15, 1961, charges the above-named respondents with violation of the provisions of the Federal Trade Commission Act.

On July 18, 1961, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

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

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

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

1. Respondent Phoenix Pharmaceutical Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of busi-

ness located at 1001 Albany Avenue, in the City of Hartford, Connecticut.

Respondent The Vitamin Center, 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 1001 Albany Avenue, in the City of Hartford, Connecticut. This said corporate respondent is a subsidiary of corporate respondent Pheonix Pharmaceutical Company, and is a distributor and retail outlet for corporate respondent Phoenix Pharmaceutical Company in connection with the advertising and sale of various preparations.

Respondents Aaron Honiberg and Julian Gross are officers of both corporate respondents. They formulate, direct and control the acts and practices of both of the corporate respondents. The address of respondent Aaron Honiberg is the same as that of corporate respondents. The address of respondent Julian Gross is 770 Asylum Avenue, Hartford, Connecticut.

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 Phoenix Pharmaceutical Company, a corporation, and its officers, and Aaron Honiberg and Julian Gross, individually and as officers of this said corporation, and The Vitamin Center, Inc., a corporation, and its officers, and Aaron Honiberg and Julian Gross, individually and as officers of this 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 preparations designated "Vitagran—Formulation No. 115," "Phoenix No. 215 Vitagran-Forte," "Phoenix No. 116 Multi-Thera," "#110 Vegerol," "#114 Stressvite," "Phoenix #117 B-Plexol," "#119 Super-Plex," "#310 Vegerol Plus B-Plexol," "#50 Gerichol," and "Geri-Aids—Formulation No. 108," or any other preparations of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, do forthwith cease and desist, directly or indirectly:

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

(a) That their preparations, or any of them are United States Government standard formulations;

(b) That "Vitagran—Formulation No. 115," "Phoenix No. 215 Vitagran-Forte" or "Phoenix No. 116 Multi-Thera" will be of benefit in the

treatment of excessive fatigue, nervous irritability, restless sleep, low resistance or loss of appetite, unless such advertisement expressly limits the effectiveness of the preparations to those persons whose symptoms have been caused by an established deficiency of one or more of the nutrients provided by the preparations and, further unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparations, and that in such persons the preparations will not be of benefit.

(c) That "#114 Stressvite", "Phoenix #117 B-Plexol" or "#119 Super-Plex" will be of benefit in the treatment of lack of pep, weakness, tiredness, nervousness or digestive difficulty, unless such advertisement expressly limits the effectiveness of the preparations to those persons whose symptoms have been caused by an established deficiency of one or more of the nutrients provided by the preparations, and, further, unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparations, and that in such persons the preparations will not be of benefit.

(d) That "#310 Vegerol Plus B-Plexol" will be of benefit in the treatment of underweight, exhaustion, premature aging or loss of youthful vitality or appearance unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms have been caused by an established deficiency of one or more of the nutrients provided by the preparation, and, further, unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparation and that in such persons the preparation will not be of benefit.

(e) That "#110 Vegerol":

(1) Will be of benefit in the treatment of premature aging, restless sleep, nervous irritability, loss of strength or poor digestion, unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms have been caused by an established deficiency of one or more of the nutrients provided by the preparation, and, further, unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparation, and that in such persons the preparation will not be of benefit.

(2) Will improve liver function or fat metabolism.

(f) That "#50 Gerichol" will be of benefit in the treatment of cardiac conditions, or will lower the blood cholesterol level.

(g) That "Geri-Aids—Formulation No. 108" will improve liver function or fat metabolism.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

SURGICAL APPLIANCE INDUSTRIES, INC., ET AL.

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

Docket 8407. Complaint, June 1, 1961—Decision, Oct. 5, 1961

Consent order requiring Cincinnati, Ohio, distributors of women's nylon elastic hosiery to retailers, to cease representing falsely in catalogs, in advertising mats supplied to customers, on boxes in which the hose was sold, and on folders enclosed therein, that the hosiery was "70 gauge", when it was substantially less than 70 gauge.

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 Surgical Appliance Industries, Inc., a corporation, and William A. Pease, Isaac M. Pease and Walter J. Gruber, 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

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

PARAGRAPH 1. Respondent Surgical Appliance Industries, 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 at Erie Avenue at Pennsylvania Railroad, in the City of Cincinnati, State of Ohio.

Respondents William A. Pease, Isaac M. Pease and Walter J. Gruber are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of women's nylon elastic hosiery to retailers for resale to the public. They advertise and sell said product under the trade name OTC and Ohio Truss Company.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of Ohio 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 product 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 elastic hosiery, respondents have stated in catalogs, in advertising mats supplied to customers, on the boxes in which said hose is sold and the folders enclosed therein that said hosiery is "70 gauge".

PAR. 5. Respondents' hosiery is manufactured on a circular knitting machine. The term "gauge" as applied to respondents' circular knit hosiery means the number of needles employed per 1½ inches of the needle circle of said knitting machine.

PAR. 6. Said statement referred to in Paragraph Four was false misleading and deceptive. In truth and in fact said hosiery was substantially less than 70 gauge.

PAR. 7. By the aforesaid practices referred to in Paragraph Four respondent places in the hands of retailers means and instrumentalities by and through which they may mislead the public as to the gauge of respondents' hosiery.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce,

with corporations, firms and individuals in the sale of hosiery of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statement, representation and practice has had, and now has, the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said statement and representation was and is true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being done to competition in commerce.

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

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

Wood, Herron & Evans, by *Mr. Truman A. Herron*, Cincinnati, for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on June 1, 1961, charging Respondents with violation of the Federal Trade Commission Act by disseminating, in catalogs, advertising mats and folders, and on boxes, a false, misleading and deceptive statement of the gauge of the women's nylon elastic hosiery sold and distributed by them.

Thereafter, on August 4, 1961, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Chief, Division of General Advertising, and the Director of the Commission's Bureau of Deceptive Practices, and thereafter, on August 11, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Surgical Appliance Industries, Inc., as an Ohio corporation, with its office and principal place of business located at Erie Avenue at Pennsylvania Railroad, Cincinnati, Ohio: Respondents William A. Pease and Isaac M. Pease as officers of the corporate Respondent, and Respondent Walter J. Gruber as a former officer thereof, their address being the same as that of the corporate Respondent.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of juris-

dictional 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.

The agreement contains a recommendation that the complaint be dismissed as to Respondent Walter J. Gruber as an officer of the corporate Respondent for the reason that he is no longer an officer of the corporation, as more fully set forth in the affidavit attached to and made a part of the agreement.

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

It is ordered, That respondents Surgical Appliance Industries, Inc., a corporation, and its officers, and Respondents William A. Pease and Isaac M. Pease, individually and as officers of said corporation, and Walter J. Gruber, individually, 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 elastic hosiery, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, directly or indirectly, the gauge of said hosiery;

2. Representing directly or indirectly that hosiery knit on a circular knitting machine is of a stated gauge unless the term "gauge" denotes the number of needles employed per 1½ inches of the knitting circle of said machine;

3. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner or as to the things hereinabove inhibited.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Respondent Walter J. Gruber as an officer of Respondent corporation.

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 5th day of October 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Surgical Appliance Industries, Inc., a corporation, William A. Pease and Isaac M. Pease, individually and as officers of said corporation; and Walter J. Gruber, individually, 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

TILE AND APPLIANCE MART, INC., ET AL.

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

Docket 8278. Complaint, Jan. 27, 1961—Decision, Oct. 9, 1961

Consent order requiring two associated concerns—in Wheeling, W. Va., and Youngstown, Ohio, respectively—and their common officer, to cease deceptive pricing of their products through representing falsely in newspaper advertising—by such statements as "Armstrong Woodgrain Floor Tile Reg. 15¢ 10¢", "100 Blocks Asphalt Tile Reg. Value $7.00 $4.88"—that the higher prices following "Reg." or "Regularly" or "Reg. Value" were the usual retail prices and purchasers would save the difference between these and the lower "sale" prices; by statements "Save 62% and more", "Everything . . . sold at approximately 80% off", that prices had been reduced by the given percentage; and through use of the terms "Clearance Sale" and "Warehouse clearance Tile sale" that customary retail prices were reduced.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Tile and Appliance

Mart, Inc. and Tile Mart, Inc., of Youngstown, corporations, and Irving M. Molever, individually and as an officer of said corporations, herein after 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 Tile and Appliance Mart, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 14th and Main Streets, in the City of Wheeling, State of West Virginia.

Respondent Tile Mart, Inc. of Youngstown is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business located at 793 Wick Avenue, in the City of Youngstown, State of Ohio.

Respondent Irving M. Molever is an officer of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is Carlton House, Pittsburgh, Pennsylvania.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of tile, paint and various hardware items 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 merchandise, when sold, to be shipped from their respective places of business in the States of West Virginia and Ohio 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 merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their said merchandise, respondents have made numerous statements in advertisements inserted in newspapers as to reduced prices, savings, special sales and other representations regarding the price or value of their merchandise.

A. Typical, but not all inclusive of such statements made by respondents Tile and Appliance Mart, Inc. and Irving M. Molever, are the following:

Armstrong "EXCELON" Vinyl Plastic Regularly 21¢—12¢
Armstrong Woodgrain Floor Tile Reg. 15¢—10¢
100% Vinyl Tile Homogeneous "Goodyear" Reg. 34¢ ea.—17¢ ea.
Ceiling Tile Reg. 21¢—12¢
CONGOWALL Famous "Gold Seal" Reg. 59¢—29¢ ft

Hi Glo Porch-Deck enamel—Hi Glo House Paint Reg. $6.95 Gal.—Now $3.89 Gal.
Texture Tone Plaster Paint Reg. $6.95 gal.—Now $3.89 gal.
Paint Sale—Famous "Rubber Tuff" Wall paint $3.89 gal.—Reg. $6.95.
Turpentine Reg. $1.99 gallon—99¢.
Garbage Cans Reg. $3.99—$1.99.
Bathtub Enclosure Reg. $69.95—$39.95.
100 Blocks Asphalt Tile Reg. Value $7.00—$4.88—B Color.
100 Blocks Linoleum Tile Armstrong Woodgrain Reg. $15.00 Value—$9.88.
Save 62% and more.
Everything will be sold at approximately 80% off.
Clearance Sale—Everything must be cleared.

B. Typical, but not all inclusive of such statements made by respondents Tile Mart, Inc., of Youngstown and Irving M. Molever, are the following:

Vinyl Plastic Floor Tile Reg. 21¢—12¢.
Famous Armstrong "Excelon" Vinyl Plastic Tile 100 Tiles $17.99—Regularly $21.00.
Woodgrain Floor Tile Reg. 15¢—10¢ ea.
Woodgrain Tiles—100 Tiles $14.99—Regularly $18.00.
Woodgrain Tile Reg. 17¢ ea.—10¢ ea.
"Goodyear" 100% vinyl—34¢ value! Now at Tile Mart 17¢.
Armstrong "Excelon" 18¢ Elsewhere—12¢ ea.
Woodgrain Tile 15¢ Elsewhere—10¢ ea.
Warehouse clearance Tile sale.
Save 62%.

PAR. 5. By means of the aforesaid statements in PARAGRAPH FOUR A, and others of the same import but not specifically set forth, respondents Tile and Appliance Mart, Inc. and Irving M. Molever have represented, directly or by implication:

1. That the higher prices listed under the denomination "Reg." or "Regularly" were the prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent regular course of business and that savings amounting to the differences between these prices and the lower "sale" prices would result to purchasers.

2. That the higher prices listed under the denomination "Reg. Value" were the prices at which the advertised merchandise was usually and customarily sold at retail in the trade area in which the representation was made and that savings amounting to the difference between these prices would result to purchasers.

3. Through the use of the statements "Save 62% and more" and "Everything will be sold at approximately 80% off" that respondents' usual and customary retail price of the advertised merchandise in the recent regular course of business had been reduced by 62% and approximately 80% and savings to that extent from respondents' usual and customary prices were afforded to purchasers.

4. Through the use of the statement "clearance sale" that respondents' usual and customary retail prices of the advertised merchandise in the recent, regular course of business had been reduced.

PAR. 6. By means of the aforesaid statements in PARAGRAPH FOUR B and others of the same import but not specifically set forth, respondents Tile Mart, Inc., of Youngstown and Irving M. Molever have represented, directly or by implication:

1. That the higher prices listed under the denomination "Reg." or "Regularly" were the prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent regular course of business and that savings amounting to the differences between these prices and lower "sale" prices would result to purchasers.

2. That the higher prices listed under the denomination "Value" or "Elsewhere" were the prices at which the advertised merchandise was usually and customarily sold at retail in the trade area in which the representation was made and that savings amounting to the difference between these prices and the lower "sale" prices would result to purchasers.

3. Through the use of the statement "Save 62%" that respondents' usual and customary retail prices of the advertised merchandise in the recent, regular course of business had been reduced by 62% and savings to that extent from respondents' usual and customary prices was afforded to purchasers.

4. Through the use of the statement "Warehouse clearance tile sale" that respondents' usual and customary retail price of the advertised merchandise in the recent, regular course of business had been reduced.

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

1. The higher prices listed under the denomination "Reg.", "Regular" or "Regularly" were not the usual and customary prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent, regular course of business, but were in excess of such prices and that savings amounting to the difference between these prices and the lower "sale" prices would not result to purchasers.

2. The higher prices listed under the denomination "Reg. Value", "Value" or "Elsewhere" were not the prices at which the advertised merchandise was usually and customarily sold at retail in the trade area where the representation was made, but were in excess of such prices and savings amounting to the differences between these prices and the lower "sale" prices would not result to purchasers.

3. Respondents' usual and customary retail prices of the advertised

merchandise in the recent, regular course of business had not been reduced by 62% and approximately 80% and 62%, respectively, and savings to the extent of the percentages stated from the respective respondents' usual and customary prices were not afforded to purchasers.

4. Respondents' usual and customary retail prices in the recent, regular course of business of the merchandise advertised "clearance sale" and "warehouse clearance tile sale", respectively, had not been reduced.

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

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' merchandise by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

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

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents in the proceeding with violation of the Federal Trade Commission Act and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, and waivers and provisions as required by the Commission's rules, and further provides for dismissal of the complaint as to respondent Irving M. Molever in his capacity as an individual respondent; and

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

1. Respondent Tile and Appliance Mart, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 14th and Main Streets, in the City of Wheeling, State of West Virginia.

Respondent Tile Mart, Inc., of Youngstown is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business located at 793 Wick Avenue, in the City of Youngstown, State of Ohio.

Respondent Irving M. Molever is an officer of the corporate respondents. His address is Carlton House, Pittsburgh, Pennsylvania.

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

ORDER

It is ordered, That respondents Tile and Appliance Mart, Inc., and Tile Mart, Inc., of Youngstown, corporations, and their officers, and Irving Molever, as an officer of said corporations, and the respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of tile and other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any amount is respondents' usual and customary retail price of merchandise when it is in excess of the price at which such merchandise is usually and customarily sold by respondents at retail in the recent regular course of business.

2. Using the word "Reg." or "Regularly" to describe or refer to the retail price of merchandise when such amount is not the price at which the merchandise has been usually and customarily sold by respondents at retail in the recent, regular course of business.

3. Representing, directly or by implication, that any amount is the price at which merchandise is usually and customarily sold at retail in the trade area, or areas, where the representation is made, when it is in excess of such price.

4. Using the words "Reg. value", "Value" or "Elsewhere" to describe or refer to the retail price of merchandise when such amount

is not the price at which the merchandise has been usually and customarily sold at retail in the trade area, or areas, where the representation is made.

5. Representing, directly or by implication, that any savings are afforded from respondents' usual and customary retail prices in the purchase of merchandise unless the price at which the merchandise is offered constitutes a reduction from the price at which it has been sold by respondents at retail in the recent, regular course of business.

6. Representing, directly or by implication, that any saving is afforded in the purchase of merchandise from the price at which said merchandise is usually and customarily sold at retail in the trade area, or areas, where the representation is made unless the price at which it is offered constitutes a reduction from such price.

7. Using percentage savings claims to represent that merchandise is offered at a reduction from respondents' usual and customary retail price unless the price of such merchandise has been reduced in direct proportion to the percentage stated from respondents' usual and customary price in the recent, regular course of business.

8. Using the word "Sale" to represent, directly or by implication, that merchandise is offered at a reduction from respondents' usual and customary retail price in the recent, regular course of business, unless such is the fact.

9. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of said merchandise is reduced from the price at which it is usually and customarily sold by respondents in the recent, regular course of their business, or from the price at which said merchandise is usually and customarily sold in the trade area, or areas, where the representation is made.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Irving M. Molever in his individual capacity.

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

IN THE MATTER OF

SEYMOUR LUSTIG DOING BUSINESS AS SEYMOUR LUSTIG

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

Docket 8214. Complaint, Dec. 8, 1960—Decision, Oct. 10, 1961

Consent order requiring an Orlando, Fla., distributor-broker of citrus fruit and and produce to cease violating Sec. 2(c) of the Clayton Act by unlawfully receiving brokerage or discounts in lieu of brokerage from various packers or sellers on purchases for his own account for resale, receiving a lower net price which reflected an allowance of brokerage, and receiving brokerage as the buyer's representative in numerous transactions.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent 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 Seymour Lustig is an individual doing business as Seymour Lustig under and by virtue of the laws of the State of Florida, with his office and principal place of business located at Orlando, Florida, with mailing address as Post Office Box 7505, Orlando, Florida.

PAR. 2. Respondent is now and for the past several years has been engaged in business as a distributor and selling agent, purchasing citrus fruit and produce for his own account for resale, as well as a buying broker representing buyers in the purchase of citrus fruit and produce for said buyers. A substantial part of respondent's business is in the purchase, sale and distribution of citrus fruit and produce, hereinafter sometimes referred to as food products, purchased from packers or sellers located in several states of the United States but more particularly the State of Florida.

PAR. 3. In the course and conduct of his business for the past several years, but more particularly since January 1, 1959, in the purchase, sale and distribution of food products for his own account, or for the account of buyers represented by respondent, respondent has directly or indirectly shipped and transported, or caused said food products when purchased or sold to be shipped or transported, from the various packers' packing plants or places of business located in the State of Florida, as well as in other states, to respondent or to

respondent's customers located in many states other than the state in which the shipment originated. 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 his business in commerce as aforesaid for 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 citrus fruit and produce for his own account for resale from various packers or sellers, on which purchases respondent has received and accepted, and is now receiving and accepting, directly or indirectly, from said packers or sellers, something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof. In many instances respondent has received a lower net price which reflected the allowance of said commission or brokerage, or a discount in lieu thereof, in connection with said purchases.

Further, respondent has, in numerous transactions, represented the buyer as the buyer's agent in connection with the purchase of citrus fruit or produce, but received a brokerage or commission, or a discount in lieu thereof, from the seller on said purchase transactions.

PAR. 5. The acts and practices of respondent in receiving and accepting from sellers a brokerage or commission, or an allowance or discount in lieu thereof, on his own purchases or on purchases for a buyer where respondent was acting for or on behalf of said buyer in said transaction, as hereinabove 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).

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondent named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, and an agreement by and between respondent and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides

an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Seymour Lustig is an individual doing business as Seymour Lustig under and by virtue of the laws of the State of Florida, with his office and principal place of business located at Orlando, Florida, with mailing address as Post Office Box 7505, Orlando, Florida.

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

ORDER

It is ordered, That respondent Seymour Lustig, individually and doing business as Seymour Lustig, and respondent's agents, representatives, and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the purchase of citrus fruit or produce in commerce, as "commerce" is defined in the 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.

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

IN THE MATTER OF

JERRY GROSS DOING BUSINESS AS TRANSPARENT GLASS COATINGS COMPANY

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

Docket 8353. Complaint, Apr. 13, 1961—Decision, Oct. 10, 1961

Consent order requiring a Los Angeles distributor of transparent window coatings to retailers, to cease representing falsely in newspaper and other advertising and through statements of salesmen that he manufactured said product, that it had been used, endorsed, and approved by nationally known concerns, and that it had been tested by reputable testing companies.

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 Jerry Gross, an individual, trading and doing business as Transparent Glass Coatings Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jerry Gross is an individual trading and doing business as Transparent Glass Coatings Company, with his principal office and place of business located at 533 North La Cienega Boulevard, Los Angeles, California.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of transparent plastic window coatings to dealers for resale to the public.

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

PAR. 4. In the course and conduct of his business, and for the purpose of inducing the sale of his product, respondent has made certain statements and representations with respect thereto, in newspapers, circulars, and by other advertising media, including oral representation made by the respondent and his salesmen. By and through the use of such statements and representations, and others of similar import, but not specifically set out herein, respondent represented, directly and by implication:

1. That he manufactured said product.

2. That said product had been used by, and had the endorsement and approval of, certain nationally known concerns.

3. That said product had been tested by the United States Testing Company, Inc., and by Albert L. Chaney Chemical Laboratory.

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

1. Respondent does not manufacture said product.

2. Said product has not been used, endorsed or approved by certain nationally known concerns for which respondent claims to have rendered service.

3. Tests represented to have been made by the United States Testing

Company, Inc., and Albert L. Chaney Chemical Laboratory were not test reports of respondent's product.

PAR. 6. In the conduct of his business, and at all times mentioned herein, respondent has been in substantial competition in commerce with corporations, firms and individuals engaged in the sale of a product of the same general kind and nature as that sold by respondent.

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

PAR. 8. The aforesaid acts and practices of 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.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and an agreement by and between respondent and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondent Jerry Gross is an individual trading and doing business as Transparent Glass Coatings Company, with his office and principal place of business located at 533 North La Cienega Boulevard, in the City of Los Angeles, State of California.

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

ORDER

It is ordered, That respondent Jerry Gross, an individual, trading and doing business as Transparent Glass Coatings Company, or trading and doing business under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of transparent plastic glass coatings, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That he manufactures the products sold by him when such is not the fact;
2. That any products have been used by, or had the endorsement and approval of any concern when such is not the fact; and
3. That any product has been tested by the United States Testing Company and Albert L. Chaney Chemical Laboratory, or any other organization, if such is not the case.

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

IN THE MATTER OF

PITTSBURGH PLATE GLASS COMPANY

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

Docket 8328. Complaint, Mar. 16, 1961—Decision, Oct. 11, 1961

Consent order requiring a Pittsburgh manufacturer of glass products, including automobile replacement glass, to cease violating Sec. 2(e) of the Clayton Act by paying for advertising for customers designated "A.I.D. dealers" ("autoglass installation dealer") on television, in trade publications and nationally published magazines, and also for placing names of such dealers in the "Yellow Pages" of the telephone directory, while according no comparable services to competitors of "A.I.D.'s".

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 (e) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Pittsburgh Plate Glass Company is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at One Gateway Center, Pittsburgh, Pennsylvania.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of glass products, including glass used for replacements in automobiles and trucks, paints, chemicals, and other products. Respondent sells and distributes its products throughout the United States to wholesalers, retailers and consumers. Respondent's sales of its products are substantial, exceeding $500,000,000 annually.

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

PAR. 4. In the course and conduct of its business in commerce, and particularly since 1958, respondent has discriminated in favor of certain of its purchasers buying its products by contracting to furnish, or furnishing, or by contributing to the furnishing of such favored purchasers, services or facilities connected with the handling, sale, or offering for sale of such products so purchased while not according such services or facilities to all other competing purchasers on proportionally equal terms.

PAR. 5. As illustrative of such practices, respondent has furnished certain of its purchasers "A.I.D." services and facilities, while not according such services and facilities to all other competing purchasers.

Respondent designates certain of its purchasers "A.I.D. dealers", which is an abbreviation of "autoglass installation dealer". In conjunction with its A.I.D. program, respondent advertises its automobile replacement glass on television, in trade publications, and in magazines of national publication. Respondent also places the names of all "A.I.D. dealers" in the classified section of the telephone directory known as the "Yellow Pages". All of these advertisements direct the attention of prospective customers to the "A.I.D. dealer" handling the products of respondent. Respondent pays for all "A.I.D." advertising.

Respondent has many other purchasers who are not designated "A.I.D." and who compete with purchasers who are so designated. Respondent's purchasers who are not designated "A.I.D." are thus not accorded the services and facilities which are accorded to purchasers who are designated "A.I.D."

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

Mr. John Perry for the Commission.
Mr. Robert R. MacIver, Pittsburgh, Pa., for respondent.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

The complaint in this proceeding, issued March 16, 1961, charged that the respondent, Pittsburgh Plate Glass Company, a Pennsylvania corporation, located at One Gateway Center, Pittsburgh, Pennsylvania, was engaged in the manufacture, sale and distribution of glass products, including glass used for replacement in automobiles and trucks, paints, chemicals and other products and that in the course of its business in commerce it had furnished to certain purchasers of its products services or facilities not accorded to other competing purchasers on proportionally equal terms. It charged further that the respondent had violated subsection (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, by providing advertising services and facilities to some of its customers, among which were purchasers of automobile replacement glass, without providing similar services and facilities to other customers who compete in commerce with those receiving such services and facilities.

After issuance of the complaint, respondent (with the advice of its attorney) and counsel supporting the complaint entered into an agreement containing a consent order providing that respondent cease and desist from engaging in the alleged practices in connection with the sale or distribution of automobile replacement glass in commerce.

According to the complaint, the alleged practice is not confined only to automobile replacement glass. To justify limiting the consent order to that product, the agreement recites that "Counsel supporting the complaint does not have available evidence in support of the allegations of the complaint as to products other than automotive replacement glass nor does he have available evidence indicating that practices similar to those alleged to have been used . . . would be commercially practical for use in connection with the sale of respondent's other products . . . ."* This statement is supported by seven

* The agreement and the complaint use the words "automotive" and "automobile" indiscriminately.

affidavits describing the nature of and the methods of sale and distribution of other of respondent's products. These affidavits are generally to the effect that the alleged practice, which is the subject of the complaint, is not one which is used or would be used in connection with the sale of products other than automobile replacement glass because that is the only product the sale of which is promoted by emphasis on the skill of the dealer and the conveniences afforded by him. While there is no affidavit expressly setting forth that the seven affidavits relate to *all* other products of the respondent, the agreement so implies by using in Paragraph 7 the words, "respondent's other products all of which are marketed . . ." and there is an eighth affidavit saying that "all purchasers of products from PPG's Merchandising Division are informed of PPG's current promotional services . . . [and] . . . all invoices printed in the future shall bear a notice informing each such purchaser how the purchaser can avail himself of such services." The Hearing Examiner is, therefore, of the opinion that the agreement disposes of all the issues in this proceeding.

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

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

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

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

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

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

decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, shall be filed; and, in consonance with the terms thereof, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondent Pittsburgh Plate Glass Company, a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of automotive replacement glass in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Furnishing, contracting to furnish, or contributing to the furnishing of services or facilities in connection with the handling, processing, sale or offering for sale of respondent's automotive replacement glass to any purchaser from respondent of such automotive replacement glass bought for resale, when such services or facilities are not accorded on proportionally equal terms to all purchasers from respondent who resell respondent's automotive replacement glass in competition with such purchasers who receive such services or facilities.

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 11th day of October 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

FLORIDA CITRUS DISTRIBUTORS, INC.

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

Docket 8206. Complaint, Dec. 6, 1960—Decision, Oct. 16, 1961

Consent order requiring an Orlando, Fla., broker and representative of various citrus fruit packers, to cease violating Sec. 2(c) of the Clayton Act by re-

ceiving commissions on its own purchases for resale, such as a discount at the rate of 10 cents per 1⅗ bushel box or equivalent, or a lower price reflecting brokerage.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent 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 Florida Citrus Distributors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at Orlando, Florida, with mailing address as Post Office Box 3791, Orlando, Florida.

PAR. 2. Respondent is now, and for the past several years has been, engaged in business as a broker, buyer and distributor, and in the course and conduct of this business it represents, and has represented, various packer-principals in the sale and distribution of citrus fruit, produce and other food products, 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 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 a capacity of a buyer and a distributor purchasing citrus fruit and produce for its own account for resale.

PAR. 3. In the course and conduct of its business for the past several years in representing packer-principals, as well as when purchasing for its own account, respondent has, directly or indirectly, caused such citrus fruit or produce, when sold or purchased, to be shipped and transported from various packers' packing plants or places of business located in the State of Florida to respondent's customers located in many states other than the State of Florida. 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 citrus fruit and prod-

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

For example, respondent has made substantial purchases of citrus fruit for its own account from various packers or sellers located in the State of Florida and has received from these packers or sellers on said purchases, a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per $1\frac{3}{5}$ bushel box, or equivalent. In many instances, respondent receives a lower price from said packers or sellers which reflects said brokerage or commission.

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 hereinabove 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).

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondent named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, and an agreement by and between respondent and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondent Florida Citrus Distributors, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located in the city of Orlando, State of Florida, with mailing address as Post Office Box 3791, Orlando, Florida.

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

ORDER

It is ordered, That respondent Florida Citrus Distributors, 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 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.

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

IN THE MATTER OF

MASTER MECHANIC MFG. CO. ET AL.

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

Docket 8235. Complaint, Dec. 27, 1960—Decision, Oct. 16, 1961

Consent order requiring manufacturers in Burlington, Wis., of their immersion electrode-type "Zip Instant Water Heater", to cease representing falsely in advertisements in newspapers and magazines, and by circulars and catalogs, that the device would heat any amount of water instantly and that under ordinary conditions of use it was harmless; and to attach to the device a "warning" and statement that for safe use the directions attached or enclosed should be followed.

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 Master Mechanic Mfg. Co., a corporation, and Harry J. Allen, A. E. McFarland and Margaret Allen, 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 Master Mechanic Mfg. Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin. Its principal place of business is located at 420 Wilmot Avenue, Burlington, Wisconsin.

Respondents Harry J. Allen, A. E. McFarland and Margaret Allen are officers of the corporate respondent and 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 and sale of an electric water heater designated "Zip Instant Water Heater."

Said Zip Instant Water Heater is an immersion electrode-type device in which the heating element or coil is heated by electricity. When it is immersed in water said water is heated by coming in contact with the heating coil.

PAR. 3. Respondents cause and have caused the said "Zip Instant Water Heater" when sold to be shipped from their place of business in the State of Wisconsin to purchasers thereof, many of whom are located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained a substantial course of trade in said water heater in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their said product in commerce, respondents have represented directly or by implication, by means of advertisements in newspapers and magazines and in circulars and catalogues, all of which are circulated among the purchasing public, that their "Zip Instant Water Heater" will heat either a small or large amount of water instantly and that under ordinary conditions of use said water heater is harmless in that it is shockproof.

PAR. 5. The aforesaid representations are false, misleading and deceptive. In truth and in fact, said water heater will not heat a large amount of water instantly nor is said water heater harmless or shockproof. Being an immersion type heater operated by electricity in which the heating element is in direct contact with the water to be heated there is a leakage of electrical current which flows through the water in an amount which constitutes a serious electrical hazard under some conditions of ordinary use.

PAR. 6. By failing to reveal the dangerous potentialities of their water heater respondents impliedly represent, contrary to the facts, that said product is harmless under all conditions of ordinary use.

PAR. 7. The use by respondents of the aforesaid statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements are true, and that said product is harmless under ordinary conditions of use, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the said "Zip Instant Water Heater."

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

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondent Master Mechanic Mfg. Co., 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 420 Wilmot Avenue, Burlington, Wisconsin.

Respondents Harry J. Allen, A. E. McFarland and Margaret Allen are officers of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Master Mechanic Mfg. Co., a corporation, and its officers, and Harry J. Allen, A. E. McFarland and Margaret Allen, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' electric water heating device "Zip Instant Water Heater", or any substantially similar device, whether sold under the same name or any other name, do forthwith cease and desist from:

1. Representing in any manner that other than a small amount of water can be heated instantly with said device;
2. Representing in any manner that said device is shockproof;
3. Representing in any manner that said device is harmless without adding the qualification that the said device must be used according to directions.
4. Distributing or selling said device unless there is attached thereto the word "caution" or "warning" together with a statement that for safe use of said device the directions for use thereof should be followed, which directions shall be attached to or enclosed with said device.

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

IN THE MATTER OF

ONYX ART CREATORS, INC., ET AL.

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

Docket 8441. Complaint, June 28, 1961—Decision, Oct. 16, 1961

Consent order requiring Brooklyn, N.Y., manufacturers of trophies and awards to cease representing falsely in catalogs and other advertising media distributed to dealers that their said products were made of "Bianco Marble" and were "Everlasting" when in fact they were made of the much less durable alabaster and were thus much more subject to damage and destruction.

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 Onyx Art Creators, Inc., a corporation, and Jack Weiger and Joseph Dinner, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Onyx Art Creators, 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 641 Lexington Avenue, Brooklyn 21, New York.

Individual respondents Jack Weiger and Joseph Dinner 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, advertising, offering for sale, sale and distribution of, among other things, trophies and awards to distributors and retailers for resale to the purchasing public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other states of the United States and 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 trophies and awards, respondents have made certain statements and representations in catalogs and through other media, distributed to their customers and the trade, concerning the type of materials used in manufacturing said products. Among and typical of such statements and representations are the following:

Bianco Marble
Everlasting
Everlasting Genuine Imported Onyx and Marble Sculptured Column Awards

PAR. 5. Through the use of the aforesaid statements and representations, and others similar thereto but not specifically set out herein, respondents have represented, and are now representing, directly or by implication:

1. That their trophies and awards were made in part from marble, designated as "Bianco Marble"; and

2. That said trophies and awards would last forever.

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

1. Were not made in part of marble designated as "Bianco Marble" but were made of alabaster, a stone, which is not marble, and is much less durable than marble and, consequently, much more subject to damage or destruction.

2. Will not last forever.

PAR. 7. By the aforesaid practice, respondents place in the hands of retailers and others means and instrumentalities by and through which they may mislead the public as to the nature and character of the stone portions of said products.

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

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and 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. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been

violated as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondent Onyx Art Creators, 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 641 Lexington Avenue, Brooklyn, New York.

Respondents Jack Weiger and Joseph Dinner are officers of the corporate respondent, and their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That Onyx Art Creators, Inc., a corporation, and its officers, and Jack Weiger and Joseph Dinner, individually and as officers of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of trophies or awards, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "bianco marble", "marble", or any other term of similar import or meaning, to designate, describe, or refer to, the alabaster contained in any product; or misrepresenting in any manner the composition of any product.

2. Misrepresenting by use of the word "everlasting", or any other term of similar import or meaning, that their products will last forever; or misrepresenting in any manner the durability of any product.

3. Placing in the hands of others any means or instrumentality by or through which the public may be misled with respect to any of the representations prohibited under paragraphs 1 and 2 hereof.

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

IN THE MATTER OF

LEWIS APPAREL STORES, INC., ET AL.

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

Docket 8442. Complaint, June 28, 1961—Decision, Oct. 16, 1961

Consent order requiring operators of a large number of retail clothing stores in eastern and midwestern States to cease attempting to obtain information concerning alleged delinquent debtors by subterfuge through such practices as use, on printed cards requesting the current address and employment of such delinquents, of the name "Regional Statistical Bureau" and a return address in Washington, D.C., both of which, together with the setup and phraseology of the form, represented and implied to the recipient that the request was being made by a branch of the United States Government.

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 Lewis Apparel Stores, Inc., a corporation, and Morris Lewis, Leon Lewis and David Lewis, 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 Lewis Apparel Stores, 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 275 Seventh Avenue, in the City of New York, State of New York.

Respondents Morris Lewis, Leon Lewis and David Lewis 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 retail sale of clothing and other merchandise through a large number of retail stores located in Eastern and Midwestern States.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped in commerce between and among the various States of the United States, and maintain, and at all

times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business respondents sell large quantities of their merchandise on a credit basis, and when sales are made on credit, respondents secure information from the purchasers as to their place of employment, residence address, names and addresses of references and other pertinent information. Thereafter, respondents frequently desire to obtain information as to the current address and employment of persons to whom they have sold merchandise on credit and who are delinquent in their payments. For this purpose they use, and have used, a printed card with simulated perforations on the left and right sides with the caption "Eastern Office. Regional Statistical Bureau. Washington, D.C." This form is designed to be forwarded to the addressee in a brown, window-type envelope. The front side of said form is a returned addressed, postage-free card which contains the following address, "Regional Statistical Bureau, 4512–44th St., N.W., Washington 16, D.C." The forms, which contain the last known address of the delinquent debtors, are mailed from New York, New York, with the return address at the aforementioned Washington, D.C. address. If the addressee completes the form and mails it to Washington, D.C., an agent of respondents located in Washington, D.C. receives the form and mails it back to respondents at their New York address.

Typical of the printed matter on the form sent to the debtor is shown on p. 801.

PAR. 5. Through the use of the name "Regional Statistical Bureau" and the form and phraseology of said form, respondents represented and implied to those to whom said forms were addressed that the request for information was being made by an agency or branch of the United States Government. The fact that such form, when completed by the addressee, was returned to an address in Washington, D.C., enhances such representation and implication.

PAR. 6. The aforesaid representations and implications arising therefrom are false, misleading and deceptive. In truth and in fact, respondents are not connected with the United States Government in any respect. This practice is a transparent scheme to mislead, and conceal the purpose for which the information is sought and the use of such form is to attempt to obtain information concerning alleged delinquent debtors by subterfuge.

PAR. 7. The use, as hereinabove set forth, of said form, has had, and now has, the tendency and capacity to mislead persons to whom said form is sent into the erroneous and mistaken belief that the said

EASTERN OFFICE. REGIONAL STATISTICAL BUREAU. WASHINGTON, D.C.

Do not fold, pin, staple or mutilate.

IT IS IMPORTANT THAT ALL BLANK SPACES BE FILLED IN AND RETURNED IMMEDIATELY
Social Security No.
Folio
Wife's Name
Employer
Address

☐ ☐ ☐ ☐ ☐ ☐ ☐

DEPT. S. MUST HAVE ACCURATE & CURRENT INFORMATION

____
Employed by (Please Print)

____
Employer's Address

City__________ State__________

Dept.__________ Check No.__________

ALL QUESTION PERTAINING TO THE PERSON NAMED BELOW

DO NOT WRITE IN THIS SPACE
Employed ________ ☐
On Workman's Compensation ________ ☐
Self Empl ________ ☐
On Unempl. Insurance ________ ☐
☐ ☐ ☐ ☐
RETURN THIS FORM IMMEDIATELY

IT IS NECESSARY FOR THIS OFFICE TO HAVE THE EXACT INFORMATION FOR REVERIFICATION

representations and implications are true and to induce the recipient thereof to supply information which they otherwise would not have supplied.

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

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondent Lewis Apparel Stores, 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 275 Seventh Avenue, in the City of New York, State of New York.

Respondents Morris Lewis, Leon Lewis and David Lewis are officers of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Lewis Apparel Stores, Inc., a corporation, and its officers, and Morris Lewis, Leon Lewis and David Lewis, 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 obtaining of informa-

tion concerning delinquent debtors, or in the collection of, or attempting to collect, accounts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the name "Regional Statistical Bureau", or any other name of similar import, to designate, describe, or refer to respondents' business.

2. Representing, directly or by implication, that requests for information concerning delinquent debtors are from the United States Government, or any agency or branch thereof, or that their business is in any way connected with the United States Government.

3. Using, or placing in the hands of others for use, any forms, questionnaires or other materials, printed or written, which do not clearly and expressly state that the purpose for which the information is requested is that of obtaining information concerning delinquent debtors.

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

IN THE MATTER OF

MURRAY SPACE SHOE CORPORATION ET AL.

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

Docket 7476. Complaint, Apr. 15, 1959—Decision, Oct. 17, 1961

Order requiring Bridgeport, Conn., manufacturers of molded shoes—custom made over plaster casts of customers' feet—to cease making in advertising unqualified claims that the shoes had therapeutic qualities and would correct, prevent, or relieve various diseases and disorders; and dismissing, for lack of proof of competitive effect, charges of exclusive dealing.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated, and are now violating, the provisions of the Federal Trade Commission Act, and Section 3 of the Clayton Act (15 U.S.C.A., Sec. 14), 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 as follows:

COUNT I

Charging violation of the Federal Trade Commission Act, the Commission alleges:

PARAGRAPH 1. Respondent Murray Space Shoe Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at 616 Fairfield Avenue, in the City of Bridgeport, State of Connecticut.

Respondents Alan E. Murray and Lucille Marsh Murray 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.

Respondents Alan E. Murray and Lucille Marsh Murray are copartners trading and doing business as Alan E. Murray Laboratories and Murray Space Shoe, with their principal office and place of business located at 616 Fairfield Avenue, Bridgeport, Connecticut.

In addition to the respondent corporation, there are three subsidiary corporations not specifically set out herein as parties respondent. Such subsidiary corporations are located in the States of New York, New Jersey and Delaware. The acts and practices of said subsidiary corporations are completely dominated and controlled by respondents and form a part of the acts and practices of respondents as hereinafter set forth.

PAR. 2. Respondents are now, and for some years last past have been, engaged in the business of manufacturing, selling and distributing molded shoes, that is, custom made shoes constructed over plaster casts of the customers' feet. Respondents, in their advertising, have made claims concerning such shoes which would classify them as devices, as "device" is defined in the Federal Trade Commission Act. Said shoes are designated as Murray Space Shoes, Glove Mold Shoes, Contact Shoes and Grape Skin Shoes.

PAR. 3. Respondents have caused, and now cause, such molded shoes, when sold, to be transported from their place of business in the State of Connecticut to purchasers thereof located in various other States of the United States, and at all times mentioned herein, maintained a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce is substantial.

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said molded shoes 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, pamphlets and circulars distributed to prospective customers, customers and to their retail outlets, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said molded shoes; and have disseminated, and caused the dissemination of, advertisements concerning said shoes 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 shoes 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:

a. . . . the "Space Shoe", invented by Murray and which is closely related to the profession of Chiropody, Orthopedics and other sciences dealing with deformities, which the medical "Space Shoe" is designed to relieve or correct.

b. In only 20 years Alan Murray has created a new philosophy of orthopedics . . .

c. A man who has real trouble with his feet might do well to consider the therapeutic qualities attributed to the Murray Space Shoe.

d. In addition to out and out foot ailments, misfits can result in postural disturbances, rectal conditions, a great percentage of the pelvic disturbances in women and "many of the disturbances attributed to menopause, . . ."

e. Doctors now in conference with friend Murray are studying control of the "slipped spinal disc" by Space Shoe magic.

f. One man is convinced that they have helped to reduce his blood pressure.

g. They are the . . . sufferers of chronic foot pain from . . . polio . . . .

h. J. T. says that after wearing the Glove Mold Shoes for five months her callouses have gone away, swollen joints have become smaller, and her ankles that had sagged outward were straightened into their normal position.

i. She spent three periods in the hospital for arthritis . . . Two weeks after wearing the Glove Mold Shoes the pain in her back disappeared, never to reappear.

j. S. T. was a former dancer who had retired from her profession because of bunions, aching feet, indigestion and eventually stomach ulcers. An operation was advised about the time she started to wear Glove Mold Shoes. After wearing the shoes for 10 months, her feet were in complete comfort, indigestion and ulcers had vanished . . .

k. . . . a three cast series of his own left foot showing its progress from a piteously gnarled, hammertoed specimen 20 years ago to its present lithe, high arched, muscular version.

l. . . . reduce swelling of ankles and puffiness on the ball of the foot.

m. A dentist says that wearing them has relieved a sharp pain in his hip . . .

n. . . . Glove Mold Shoe has enabled people who have to stand at their work for long exhausting hours to go home at night, put on their regular shoes, and go out an denjoy life, because they say they do not feel tired.

o. . . . the shoe is holding your foot in the natural right delightful stance and so gently making your leg action right instead of its old knock-kneed action . . .

p. He tried "corrective" shoes and still had corns, calluses, hammer toes and collapsed metatarsals.

q. Nonetheless they continue to grow in popularity among . . . sufferers from bunions, fallen arches, hammer toes, metatarsaglia, corns, heel spurs, Morton's toe, Schaffer's foot, pes cavus, and other ills of civilization.

r. Sufferers from fallen arches, corns, bunions, mosaic warts, heel spurs, or hammer toes frequently claim amazing relief from the shoe.

s. Here is proof of no further need of so-called health and corrective shoes.

t. The podiatrists are cracked on bones. The skeleton is not the key to the foot. The foot is a problem in hydraulics. The foot is composed mostly of watery tissue, jelly . . . What you must preserve in the shoes is the hydraulic envelope of tissue. If you respect that, the bones will take care of themselves.

u. He claims that just as nature twisted the foot to fit conventional shoes, nature will unkink the foot when it is freed in Space Shoes.

v. You cannot buy a shoe that fits . . .

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

1. That the Murray Space Shoe is an orthopedic device;

2. That respondents' shoe is a health shoe and has therapeutic qualities as to diseases, abnormalities and disorders of the feet.

3. That the Murray Space Shoe will correct, prevent, or relieve slipped spinal disc, knock knees, swollen ankles, swollen joints, puffiness on ball of foot, postural disturbances, rectal conditions, pelvic disturbances in women, many of the disturbances attributable to the menopause, pain in the hip, high blood pressure, fatigue, indigestion, stomach ulcers, sagging ankles and arthritis.

4. That the Murray Space Shoe will correct or prevent mosaic warts, warts, heel spurs, spurs, calluses, chronic foot pain from polio and pes cavus.

5. That the Murray Space Shoe will correct or prevent fallen arches, hammer toes, gnarled feet, collapsed metatarsals, metatarsaglia, Morton's toe, Shaffer's foot and bunions.

6. That respondents' shoes take the place of and eliminate the need for corrective shoes.

7. That the bones or skeleton of the foot are unimportant in the treatment of the foot and that the wearing of the Murray Space Shoe will correct all foot problems.

8. That even persons with normal feet cannot be properly fitted with an ordinary stock shoe.

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. The Murray Space Shoe is not an orthopedic device;

2. Respondents' shoe is not a health shoe and there are no therapeutic qualities directly attributable to it. The only possible benefits to the wearers thereof which could be directly attributed to respondents' shoe are the comfort which is inherent in a properly fitting shoe and the possibility of relief from pain and discomfort caused by the wearing of ordinary stock shoes in cases of certain deformities or abnormal conditions of the foot. The wearing of respondents' shoe will not cure or correct deformities, diseases or disorders of the foot.

3. The Murray Space Shoe will not correct, prevent, or relieve slipped spinal disc, knock knees, swollen ankles, swollen joints, puffiness on ball of foot, postural disturbances, rectal conditions, pelvic disturbances in women, disturbances attributable to the menopause, pain in the hip, high blood pressure, fatigue, indigestion, stomach ulcers, sagging ankles, or arthritis.

4. The Murray Space Shoe will not correct or prevent mosaic warts, warts, heel spurs, spurs, calluses, chronic foot pain from polio, or pes cavus.

5. The Murray Space Shoe will not correct fallen arches, hammer toes, gnarled feet, collapsed metatarsals, metatarsaglia, Morton's toe, Shaffer's foot, or bunions and its value in the prevention of such conditions is limited to the elimination of one of the causes thereof, namely, ill-fitting shoes.

6. Their shoe does not take the place of, nor eliminate the need for, corrective shoes.

7. In many instances, problems of the foot are directly related to the bones or skeletal structure thereof and treatment in such cases must be directed to the bones or skeleton themselves.

8. Persons with normal feet can be properly and comfortably fitted with ordinary stock shoes.

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.

COUNT II

Charging violation of Section 3 of the Clayton Act (15 U.S.C.A., Sec. 14), the Commission alleges:

PAR. 9. Paragraphs One and Two are hereby incorporated by reference and made a part of the charges fully and with the same effect as though here again set forth verbatim.

PAR. 10. Respondents are the dominant manufacturers and sellers of molded shoes in the United States. In the years 1953 through 1957 respondents manufactured 48,734 pairs of said shoes. Respondents' total gross sales totaled $822,986.90 during the year 1956 and

$1,055,623.85 during the year 1957. Respondents' sales of molded shoes constitute a substantial share of the total sales of such molded shoes in the United States.

PAR. 11. Respondents are now and have been engaged in commerce as "commerce" is defined in the Clayton Act. Respondents and their subsidiary corporations sell to chiropodists and retailers throughout the United States and in Canada and Puerto Rico. Respondents cause their molded shoes to be transported from its manufacturing plant in Connecticut and those of their subsidiaries in the States of New Jersey and Delaware to customers therefor located throughout the various states and the District of Columbia.

PAR. 12. Respondents are now and have been engaged in competition in the manufacture, sale and distribution of molded shoes, in commerce, between and among the various States of the United States and in the District of Columbia with other corporations, persons, firms and partnerships.

PAR. 13. In the course and conduct of their business respondents through contracts, agreements and understandings sell their molded shoes on the condition that the purchasers thereof shall not use or deal in molded shoes sold or supplied by a competitor or competitors of respondents. Respondents have refused, and do now refuse to sell to chiropodists and retailers who for various reasons are unwilling to restrict themselves to the use of respondents' products and insist on using and dealing in molded shoes sold or supplied by a competitor or competitors of respondents. Respondents have also refused, and do now refuse, to sell their molded shoes to dealers who manufacture molded shoes in competition with respondents.

PAR. 14. Respondents' customers constitute a large and substantial market for molded shoes and sales to such customers have been, and are now, substantial. Competitors of respondents have been, and are now, unable to sell their molded shoes to respondents' customers, as a result of the conditions, agreements, understandings and policies of respondents described above in Paragraph Thirteen.

PAR. 15. The effects of the sales and contracts of sale upon such conditions, agreements and understandings, and pursuant to respondents' policy, may be to substantially lessen competition with respondents in the line of commerce in which respondents are engaged and may be to substantially lessen competition in the line of commerce in which the customers and purchasers of respondents are engaged, and may be to tend to create a monopoly in respondents in the manufacture, sale and distribution of molded shoes.

PAR. 16. The aforesaid acts and practices of respondents constitute a violation of the provisions of Section 3 of the Clayton Act.

Mr. Morton Nesmith for the Commission.
Mr. Edmund B. Bellinger, New York, N.Y., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

PRELIMINARY STATEMENT

The Federal Trade Commission issued its complaint against the Murray Space Shoe Corporation, Alan E. Murray and Lucille Marsh Murray, individually and as officers of said corporation, and as copartners trading and doing business as Alan E. Murray Laboratories and Murray Space Shoe, on April 15, 1959, charging them in Count I with violation of Section 5 of the Federal Trade Commission Act in the use of unfair and deceptive acts and practices in commerce. Said complaint, among other things, charges respondents who are engaged in the business of manufacturing, selling and distributing molded shoes, that is, custom-made shoes constructed on plaster casts of the customers' feet, with the dissemination of certain advertisements concerning said molded shoes by the United States mails and by various means in commerce, including, but not limited to, pamphlets and circulars distributed to prospective customers and to their retail outlets for the purpose of inducing the purchase of said molded shoes in commerce; and further, that respondents have made claims concerning such shoes which would classify them as devices, as "device" is defined in the Federal Trade Commission Act. It is further alleged, in Paragraph Six, that through the use of statements and representations contained in said advertisements, respondents have represented, directly or by implication:

1. That the Murray Space Shoe is an orthopedic device.

2. That respondents' shoe is a health shoe and has therapeutic qualities as to diseases, abnormalities and disorders of the feet.

3. That the Murray Space Shoe will correct, prevent, or relieve slipped spinal disc, knock knees, swollen ankles, swollen joints, puffiness on ball of foot, postural disturbances, rectal conditions, pelvic disturbances in women, many of the disturbances attributable to the menopause, pain in the hip, high blood pressure, fatigue, indigestion, stomach ulcers, sagging ankles and arthritis.

4. That the Murray Space Shoe will correct or prevent mosaic warts, warts, heel spurs, spurs, calluses, chronic foot pain from polio and pes cavus.

5. That the Murray Space Shoe will correct or prevent fallen arches, hammer toes, gnarled feet, collapsed metatarsals, metatarsaglia, Morton's toe, Shaffer's foot and bunions.

6. That respondents' shoes take the place of and eliminate the need for corrective shoes.

7. That the bones or skeleton of the foot are unimportant in the treatment of the foot and that the wearing of the Murray Space Shoe will correct all foot problems.

8. That even persons with normal feet cannot be properly fitted with an ordinary stock shoe.

It is further alleged, in Paragraph Seven, that 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 Count II of said complaint, in Paragraph Thirteen, it is alleged that respondents have violated Section 3 of the Clayton Act, and that in the course and conduct of their business respondents, through contracts, agreements and understandings, sell their molded shoes on the condition that the purchasers thereof shall not use or deal in molded shoes sold or supplied by a competitor, and have refused to sell to chiropodists and retailers who are unwilling to restrict themselves to the use of respondents' products and insist on using and dealing in molded shoes supplied by competitors of respondents; and further, that respondents have refused to sell their molded shoes to dealers who manufacture molded shoes in competition with respondents. It is further alleged under this Count, in Paragraph Fourteen, that respondents' customers constitute a large and substantial market for molded shoes, and that competitors of respondents are unable to sell their molded shoes to respondents' customers, as a result of the said conditions, agreements and understandings; and further, that the effects of such sales and contracts on such conditions, agreements and understandings, may be to substantially lessen competition with respondents in the line of commerce in which respondents are engaged, and may be to substantially lessen competition in the line of commerce in which respondents' customers and purchasers of molded shoes are engaged, and may be to tend to create a monopoly in respondents in the manufacture, sale and distribution of molded shoes.

Respondents, in their answer, admit that they manufacture and sell shoes, most of which are made on lasts made by taking casts of the feet for which the shoes are intended, which are called "Space" Shoes, and some shoes are made on the feet of the customers, which are called "Contact" Shoes; that the words "Space Shoe" and "Contact Shoe" are registered trademarks used in connection with the sale of such shoes. They deny, however, that portion of the complaint which alleges that respondents' claims concerning such shoes classify them as "devices." They admit interstate commerce, and the advertisements concerning such shoes, published in circulars, pamphlets, etc., as alleged, asserting, however, that some of the statements contained in the complaint from such advertisements are taken out of context and are incomplete, and that most of such statements were reprints of articles published in magazines in the years 1953 and 1956. Furthermore, respondents admit that by certain of their statements contained in such advertisements they have represented that

Murray Space Shoes will "correct, prevent or relieve deformities of the human foot which may arise or have arisen from the wearing of ill fitting shoes and have represented and now represent that even persons with normal feet cannot be properly fitted with an ordinary stock shoe." Except as specifically admitted, respondents deny all other allegations hereinbefore set forth as contained in Paragraph Six of the complaint. Respondents further state, in their answer, that the Murray Space Shoe is not an orthopedic device, as alleged, but that it forms a good environment for the foot which permits the body to function without undue interference, and is, on occasion, recommended by doctors engaged in therapeutics, and that its value in the prevention of the conditions set forth in Paragraph Seven of the complaint is limited to the elimination of one of the causes thereof, namely ill-fitting shoes. Respondents insist in their answer that the advertisements referred to by them were true, and deny that any advertisement disseminated by them was false.

Referring to the allegations of the complaint, in Count II thereof, respondents admit the volume of sales as alleged in the complaint, and that they engage in the sale of molded shoes to chiropodists and retailers throughout the United States, and in Canada and Puerto Rico, in interstate commerce.

Respondents further admit that, in the course and conduct of their business, the corporate respondent sells shoes manufactured by it on the condition that the purchaser thereof shall not deal in shoes of an appearance which can be passed off as respondents' shoes sold or supplied by a competitor or competitors of respondents within limited areas, but deny the remainder of the allegations of the complaint with respect to the refusal to sell and the effect of the conditions of sale.

It is affirmatively alleged in respondents' answer that respondents' customers constitute a minute or unsubstantial part of the relevant market for said shoes, and that respondents' shoes are interchangeable with other shoes which fit the feet of the customer.

Testimony was taken in support of the allegations of the complaint at hearings held in Bridgeport, Connecticut; New York City; and Washington, D.C. On September 1, 1959, counsel in support of the complaint completed his case-in-chief and rested. Counsel for the respondents filed a motion to dismiss the complaint for failure of proof, which was denied on the record. Counsel for the respondents requested an opportunity to state his grounds, and he was granted until October 2, 1959, within which to file his motion to dismiss, and counsel supporting the complaint was granted until October 30 to

file his answer. The hearing examiner, after considering said motion and answer on November 4, 1959, entered the following order:

IT IS ORDERED, That subparagraph 3 of Paragraphs Six and Seven of the complaint relating to the following items: slipped spinal disc, knock knees, postural disturbances, rectal conditions, pelvic disturbances in women, disturbances attributable to the menopause; and subparagraph 4 of Paragraphs Six and Seven, relating to the following items: mosaic warts, warts, heel spurs, spurs, chronic foot pain from polio and pes cavus; and subparagraph 5 of Paragraphs Six and Seven relating to the following items: fallen arches, gnarled feet, collapsed metatarsals, metatarsaglia, Morton's toe, and Shaffer's foot, be, and the same hereby are, stricken from the complaint.

IT IS FURTHER ORDERED, That the said motion of counsel in support of the complaint that the hearing examiner reverse his ruling as to the insufficiency of evidence to make out a prima facie case that respondents' shoes will not correct bunions as set forth in the transcript, pages 786, 788–789, be, and the same hereby is, granted.

The complaint also contained the following allegation in Paragraph Seven:

The only possible benefits to the wearers thereof (Murray Space Shoes) which can be directly attributed to respondents' shoe are the comfort which is inherent in a properly fitting shoe and the possibility of relief from pain and discomfort caused by the wearing of ordinary stock shoes in cases of certain deformities or abnormal conditions of the foot.

The hearing examiner ruled on the record on February 3, 1960, Tr. p. 1792, that said allegation had not been proved by attorneys for the complaint in their case-in-chief, and no evidence was allowed to be received to disprove it. Consequently said allegation is not an issue in this case.

Testimony was received in opposition to the allegations of the complaint beginning November 19, 1959, and concluding on February 26, 1960. Rebuttal testimony was concluded on July 1, 1960, at which time the examiner closed the taking of testimony. Since then, proposed findings have been received from both counsel for the complaint and for respondents. An oral argument was held on September 7, 1960, on the proposed findings. Thereafter, the proceeding came on for final consideration upon the complaint, the answer thereto, the testimony taken, the proposed findings submitted by respective counsel, and oral argument, and said hearing examiner having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order. Each of the proposed findings which have been accepted have been in substance incorporated into this initial decision. All proposed findings not so incorporated are hereby rejected.

FINDINGS AS TO THE FACTS (COUNT I)

1. The respondent, Alan E. Murray, is and has been engaged in the business of manufacturing and selling Murray "SPACE" Shoes, also sometimes described as "glove mould shoes", since about the year 1941, at first individually, and then with his wife, Lucille Marsh Murray, as co-partners, doing business under the firm name of Alan E. Murray Laboratories, and then as an officer of the corporations formed to take over the business of the said partnership.

The respondent, Lucille Marsh Murray, is and has been in the business of manufacturing and selling Murray SPACE Shoes since about the year 1943; first assisting the respondent Alan E. Murray, then as a copartner of the partnership, doing business under the firm name and style of Alan E. Murray Laboratories, and thereafter as an officer of the corporations formed to take over the business of the said copartnership.

The respondent, Murray SPACE Shoe Corporation was incorporated in the State of Connecticut on or about the 1st day of November, 1956, with a capitalization of $25,000, to take over and conduct the Connecticut business of Alan E. Murray Laboratories, and maintains its principal place of business at No. 616 Fairfield Avenue, Bridgeport, Connecticut.

Murray SPACE Shoe New York Corporation was incorporated in the State of New York on about July 18, 1957, with a capitalization of $25,000, to take over and conduct the New York business of Alan E. Murray Laboratories.

Murray SPACE Shoe Delaware Corporation was incorporated in the State of Delaware in August 1957, with an authorized capital of $5,000, to take over the Delaware business of Alan E. Murray Laboratories.

Murray SPACE Shoe New Jersey Corporation was incorporated in the State of New Jersey in 1956, with a capitalization of $5,000, to take over the New Jersey business of Alan E. Murray Laboratories, Inc.

The respondents, Alan E. Murray and Lucille Marsh Murray, own the entire outstanding capital stock of each of the said corporations, with the exception of one share of the capital stock of the New Jersey Corporation.

Murray SPACE Shoe New York Corporation sells Murray SPACE Shoes, but does not engage in the manufacture thereof. Murray SPACE Shoe Delaware Corporation manufactures, but does not sell said shoes.

Murray SPACE Shoe Laboratories ceased to conduct the business of manufacturing and selling SPACE Shoes in or about the month

of August 1957, after the incorporation and reorganization of Murray SPACE Shoe Delaware Corporation as aforesaid.

2. The respondent, Alan E. Murray, was the first to manufacture and sell a shoe of a molded foot-shaped style so closely resembling the shape of the human foot. Molded shoes manufactured and sold by the respondents as "Space Shoes", and sometimes as "Glove Mould Shoes", since the year 1941, have been made using a plaster cast of the foot as a last. The last used by respondents in making shoes is a cast taken in a certain partial weight bearing position of the foot, and it gives the shape to the shoe.

The standard procedure for making the cast used as a last is for the customer to sit on a chair, in a normal position, with the bare foot placed in a pan of sand—bearing the weight of the leg, from the knee to the foot—and while in this position liquid plaster is poured over the foot to immobilize the foot. As soon as this plaster is hardened, the pan of sand is removed from under the foot, and a pan of liquid plaster is placed under the foot, now in the plaster cast of the upper part of the foot, so that the foot rests in the liquid plaster instead of the sand, and the foot is thus suspended in the liquid plaster so that all the modulations of the bottom of the foot are caught in the plaster as it hardens. From this negative cast, after it is removed from the foot and fastened together again, the plaster last is made by pouring liquid plaster into the negative cast as a mold, and this positive plaster cast is an exact replica of the customer's foot and is used as the last on which the molded shoe is made.

The respondents manufacture and sell said molded shoes and slippers for men, women and children, made of various materials, including cotton fabrics, leather and rubber, in a variety of styles, including cut-out shoes, sometimes referred to as sandals, in which openings are cut in the upper of the shoe for ordinary wear, evening wear, tennis, ice skating and golf. Some of respondents' shoes are fastened by straps; some are lined with leather. The uppers of some are suede or other materials, and some are made with rubber or leather soles.

The distinguishing characteristic of respondents' molded shoe is that it so accurately fits the foot in a partial weight-bearing position that it assumes the shape of the foot in that position, thus giving the shoe an unconventional foot-shaped appearance.

Most of the shoes manufactured by the respondents are decorated with non-functional lines or cords in a splay design on the top of the shoes and a curved line around the sides of the shoes. These lines or cords distinguish respondents' shoes from competitors, and two competitors have been enjoined from using such lines or cords by orders of the Supreme Court of New York County, New York.

Respondents have from time to time established and held instruction courses at their place of business, and elsewhere, for podiatrists and chiropodists, their customers and prospective customers for the purpose of teaching them the Murray method of making plaster casts to enable them to take the casts of the feet of their patients for submission to respondents who make lasts and manufacture Murray Space Shoes thereon, and sell the same to said customers at specified prices.

Respondents have caused, and now cause, said molded shoes, when manufactured and sold, to be transported from their places of manufacture in the States of Connecticut and Delaware to the purchasers thereof, including chiropodists and podiatrists located in various other states of the United States and in Canada and Puerto Rico, who in turn sell the shoes to their patients for whom the said shoes were manufactured, and at all times found herein have maintained a substantial course of trade in said shoes in interstate commerce. Respondents also maintain retail stores in Bridgeport, Connecticut; New York City; Wilmington, Delaware; and Miami, Florida, from which they sell their said Space Shoes direct to the public.

3. Respondents do not advertise their said shoes in newspapers or magazines, but by the circulation in the United States mail of reprints of voluntary, unpaid newspaper and magazine articles by various authors and writers, extolling the comfort derived from wearing respondents' shoes, and quoting statements of podiatrists and chiropodists, as well as testimonials of satisfied wearers, have represented directly, or by implication, to their said customers and prospective customers, and through them to the public, that Murray Space Shoes would correct, prevent or relieve the following, among other ailments:

(a) Swollen ankles; (b) Swollen joints; (c) Puffiness on ball of foot; (d) Pain in the hip; (e) High blood pressure; (f) Fatigue; (g) Indigestion; (h) Stomach ulcers; (i) Sagging ankles; (j) Arthritis; (k) Bunions; (l) Hammer toes.

4. Due to the fact that respondents' "Space" Shoes are made to conform to the shape of the foot in a partial weight-bearing position, in contrast to conventional types of shoes, respondents' said shoes do not cause pressure on various parts of the foot where pressure is usually caused by improperly fitted shoes.

Respondents, through their retail stores in Bridgeport, Connecticut, and New York City, have for many years sold their "Space" Shoes direct to customers in the Metropolitan area of New York City on prescriptions, some of which are in the record, of medical doctors, usually orthopedic surgeons, to correct or relieve the following ailments:

Swollen ankles and joints; pain in the hip; rheumatoid arthritis; arthritis in joints of foot and leg, including the hip; synovitis of knee and other joints; poor peripheral circulation; circulatory disturbance in the feet; hammer toes; hallux valgus; bunions; metatarsalgia; bursitis in the foot; sacro-iliac pain in the back; herniated discs; chronic gout in the feet; gouty arthritis in the feet.

5. Reliable orthopedic surgeons, called by counsel in support of the complaint, testified that the Murray Space Shoe is not an orthopedic device; that the wearing of the Murray Space Shoe would not correct, prevent, or relieve swollen ankles or swollen joints due to heart trouble, kidney trouble, liver trouble, varicose veins, or other systemic conditions. It was generally conceded, however, that, if the swollen joints and swollen ankles were caused by ill-fitting shoes, then the Murray Space Shoe would give relief. Most of these medical doctors, testifying at the instance of the Commission, had not had actual experience with the Murray Space Shoe, although one had a limited experience. On the other hand, an orthopedic surgeon and a doctor of surgical chiropody, called by respondents, who had actual clinical experience with the Murray Space Shoe, testified to the general effect that, where the ankle or joints of the foot were swollen due to foot problems, such as those caused by ill-fitting shoes, the wearing of the Murray Space Shoe would relieve and correct the condition and, to that extent, would have a therapeutic effect. They admitted, however, that if the swollen condition was due to some systemic condition, such as inflammatory gout, or a kidney or heart ailment, the wearing of the Murray Space Shoe would not help in such a case. The testimony of these experts is to the same general effect with respect to puffiness on the ball of the foot, pain in the hip, high blood pressure, and fatigue. With respect to indigestion and ulcers, the medical doctors called in support of the complaint testified that 99% of the cases of indigestion could have no relationship to the feet, and that there was no connection between indigestion and ill-fitting shoes, and that stomach ulcers were certainly not caused by ill-fitting shoes. One medical doctor, testifying for the respondents, was of the opinion that ill-fitting shoes might indirectly cause an individual to have indigestion through tension, which would tend to aggravate the flow of juices of the stomach. He stated that by ruling out one of the hazards you probably would help or relieve the indigestion or stomach ulcers.

With respect to hammer toes and bunions, the consensus of the testimony of the medical doctors, as well as chiropodists and osteopaths, is that hammer toes, usually caused by short-fitting shoes, once they have taken an inflexible position, cannot be cured or corrected, although the wearing of the Murray Space Shoe would give

relief from the pain. Likewise with the bunion, which has been characterized by some doctors as a bursa on the joint of the great toe, the Wearing of the Murray Space Shoe would give relief, but would not cure the bunion, or correct it in any way. By reason of the exactness of the fit of respondents' Space Shoes, they give relief from pressure, thereby alleviating the pain caused by the bursitis of the big toe or the bunion. As one doctor testified, it would "relieve the inflammation of the bursa." However, the bunion itself remains and cannot be cured or removed without an operation.

Therefore, considering the foregoing testimony, it is found that the Murray Space Shoe is not an orthopedic device and has not been so represented by respondents. It is also found that the wearing of Murray Space Shoes will relieve swollen ankles, swollen joints, puffiness on ball of foot, pain in the hip, high blood pressure, fatigue, sagging ankles, arthritis, hammer toes and bunions when, and only when, these conditions are caused by ill-fitting shoes, or shoes that do not conform to the shape of the foot. The wearing of the Murray Space Shoe will not correct or prevent such conditions when they are caused by, or due to, a systematic condition of the person wearing them, such as diseases of the heart or the kidneys. As to indigestion and stomach ulcers, it is found that any beneficial effect which the wearer of Murray Space Shoes might receive would be too indirect, or too remote, to be attributed to the wearing of the Murray Space Shoe. It is also found that the Murray Space Shoe may be referred to as having therapeutic qualities only in those cases where they are prescribed by chiropodists or orthopedic surgeons to relieve pain and give comfort when the ailment is caused by the wearing of ordinary conventional stock shoes, and in the cases of certain deformities or abnormal conditions of the feet.

CONCLUSION AS TO COUNT I

The aforesaid unqualified representations as to the therapeutic benefits derived from the wearing of Murray Space Shoes, without restricting them to ailments of the feet due to ill-fitting shoes, as above set forth, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

There is ample support in the Federal Courts of the Commission's authority to prohibit the dissemination of false and deceptive advertisements with respect to the therapeutic value of products sold to the public. Recent leading cases are found in the hair preparations industry involving claims that the product in question will prevent baldness. See *Mueller* v. *U.S.*, 262 F. 2d 443; *Erickson* v. *F.T.C.*, 272

F. 2d 318; and *Keele Hair & Scalp Specialists, Inc.* v. *F.T.C.*, 275 F. 2d 18.

The Court, in the Erickson case, held, among other things, that "it is sound to say that the fact that petitioner had satisfied customers is not a defense to Commission action for deceptive practices." In the present case, the rejection of the testimony of satisfied customers is supported by the foregoing decision.

In the Keele case, the Court approved a requirement in the Commission's Order, to prevent deception, for the respondent to affirmatively disclose facts as to the ineffectiveness of the preparation in a certain type of baldness, and that 95% of the cases of baldness fall within that type.

So, in the present case, although the wearing of respondents' shoes will be of benefit to the wearer when the ailment is caused by ill-fitting shoes, to prevent deception of the public, respondents should not be allowed to represent that the wearing of their shoes will benefit the wearer when the ailment is caused by systemic conditions.

FINDINGS AS TO THE FACTS (COUNT II)

A. LINE OF COMMERCE

The line of commerce involved in this case is the manufacture and sale of molded shoes—that is, custom-made shoes which are made over plaster casts of the customers' feet, to follow all the contours of their feet. The said product is shown by the facts to have such peculiar characteristics and uses as to constitute it as sufficiently distinct from others to make it a "line of commerce" within the meaning of the Clayton Act.

This industry, at first restricted to the Eastern Seaboard, particularly the New York City Metropolitan area, has now been extended to all parts of the United States and foreign countries, and is supported generally by chiropodists, podiatrists, and orthopedic surgeons who prescribe molded contour shoes for their patients.

B. RESPONDENTS' METHODS OF DISTRIBUTION—USE OF RESTRICTIVE AGREEMENTS

Prior to 1941, respondents sold molded shoes direct to the public. About that time, respondents began to develop sales representatives among chiropodists and custom and corrective shoe dealers.

From about 1944 until 1956, respondents sold substantial quantities of molded shoes to T.O. Dey Service Corporation, hereinafter referred to as T.O. Dey, which was then engaged in the sale of custom-made shoes, as well as conventional shoes, in New York City and in Brook-

lyn. During that time, respondents' shoes were sold under the name of "Space", "Murray Space Shoe", and also "Glove Mould." Although T.O. Dey had started to represent respondents in March 1941, it was not until 1944 that substantial sales were made. Respondents taught T.O. Dey employees how to take the casts of the patients' feet and manufactured the shoes from the casts. There was no written agreement, but at the beginning there was a verbal agreement between the respondents and T.O. Dey that the latter would not be permitted to sell any other molded shoe or manufacture molded shoes without permission from respondents. This arrangement continued until 1955 or 1956, when respondents and T.O. Dey discontinued their relationship, and T.O. Dey began, on their own account, to manufacture and sell molded shoes similar to respondents.

For a number of years, from 1942 until approximately 1955, respondents trained a number of chiropodists and podiatrists, as well as orthopedic surgeons and representatives of orthopedic shoe manufacturers, such as T.O. Dey, how to take casts. These various chiropodists, podiatrists, and orthopedic surgeons prescribed respondents' shoes for their patients. The record contains a number of such prescriptions. The record also contains representative contracts, which were entered into about 1953, between respondents and such customers entitled: "Contract for Representatives of Murray Space Shoes." The following language appeared in most of these early contracts:

On your satisfactory completion of the course, we agree to manufacture Space Shoes for you on acceptable casts and foot-impressions made by you in accordance with the Murray Method in which you have been instructed, at the prices set forth in the attached schedule, payable in full with order. Positives are to be delivered to us without expense to us.

This contract covered not only the sale of shoes manufactured by respondents, but also the sale of materials to such customers for the molding of "Contact" shoes, which are not involved in this case. Respondents reserved the right to terminate the agreement on 60 days' notice in the event the customer manufactured molded shoes in accordance with methods other than the Murray method.

During 1956 through 1958, the respondents entered into similar agreements with chiropodists and podiatrists entitled: "Agreement Not to Disclose and Tentative Agreement with Representatives of Murray Space Shoes." These agreements provided that the customer would keep secret, during the course of instruction and thereafter, the ideas, methods, techniques, etc., used in connection with the fabrication or manufacture of, or taking of foot impressions or casts for, Murray shoes.

These agreements also contained a provision, hereinbefore men-

tioned, that the agreement could be terminated by respondents in the event that the customer manufactured molded shoes in accordance with methods other than the Murray method. This agreement also provided that the customer agreed to cease making shoes according to the Murray method upon the expiration of the agreement, and in the event that he should thereafter continue to employ the Murray techniques, in violation of the agreement, Murray should be entitled to liquidated damages computed at 15% of the retail sales price of all such shoes sold by the customer. Some of such agreements contained the following additional clause:

> In the event that I arrange to have shoes molded by a third party other than Murray or a manufacturer designated by him on casts or foot impressions made by me utilizing Murray techniques or patents then I agree to submit such shoes to Murray for his approval to the end that Murray may test the materials and workmanship to see that such shoes meet the Murray standards of quality and conform to the casts as prescribed by Murray for SPACE shoes manufactured by him. I agree that I shall not sell any of such shoes without first obtaining Murray's written approval.

A further provision of this contract was that it might be terminated on 60 days' notice in the event that the customer failed to comply with any of the terms or conditions of the agreement.

Another form of contract, used by respondents during those years, contained the following language:

> In the event that I use any of the MURRAY ideas. methods, techniques or the like for the purpose of making or having shoes of the general type made by MURRAY manufactured by another other than Murray, I agree to render an account thereof to MURRAY and to pay to MURRAY liquidated damages computed at 15% of the retail sales price of all such shoes sold by me or by others who may have assisted in the manufacture of such shoes.

One form of contract, used by respondents during 1958, contained the following provision:

> I recognize and agree that the ideas, methods and techniques and the like which I have learned from MURRAY are an integral part of the process employed by MURRAY in the manufacture of Murray SPACE Shoes and I agree that I will use such ideas, methods and techniques only to assist in the manufacture of SPACE Shoes which are to be completed or cause to be completed by MURRAY and that I will not use such techniques to assist others in the manufacture of shoes of the same type as made by MURRAY.

One chiropodist who had a contract, as hereinbefore described, with the respondents was Dr. Sanford E. Solomon of Hartford, Connecticut, in about 1953. He represented respondents for a number of years, during which time he conducted a short-term school in the Alan E. Murray Space Shoe casting techniques for other podiatrists and chiropodists to prepare them to represent the respondents in their respective areas. They were required to sign an application, addressed to Dr.

Solomon, and pay a fee for such course, and also, as a part of the application, they were required to sign a letter, addressed to respondents, in which they stated that they understood they must treat as confidential the techniques employed by respondents, and not discuss the methods with outsiders or disclose them to anyone. And further:

I promise not to make use of these techniques except under the provisions of our contract in making casts for the Murray Laboratories, and in case I should take employment or become part of any concern, I will not disclose or make use of the techniques taught me without your written permission.

I will not make use of any other moulded shoes in my practice during my association with the Alan E. Murray Laboratories. If after one year I wish to terminate my use of the Murray Shoe, I shall notify you and the public and guarantee not to use any product that violates Murray patents or that might confuse the public into believing it was a Murray product.

Although prices vary somewhat, the usual prices observed, during the period of time from 1953 to 1957, for the regular shoe were $45 per pair to the podiatrist or chiropodist and $70 per pair to the patient.

Beginning about 1955 or 1956, a number of respondents' customers, podiatrists and chiropodists, began to have their shoes manufactured by other manufacturers who had come into the field during that time. Most of these other manufacturers had represented the respondents in previous years, and were familiar with the technique of respondents. Among those were the Jerry Miller "I.D." Shoes, Travelmasters, Inc., Jamaica, New York, with its factory in Brockton, Massachusetts, a subsidiary of Sandler Benton Company. Jerry Miller got his training while working for a Dr. Sugarman, who at one time (1947) represented the respondents, and who later manufactured "Contour" shoes under the name "Foot Contour Shoe Laboratory, Inc." Although Jerry Miller never had a contract with Murray, he testified that he had been told by customers of respondents, in 1956, that they could not handle his shoes because of a previous contract with Murray.

Another competitor testified that he had been attempting to sell to certain named chiropodists in Springfield, Illinois; Detroit, Michigan; and Cleveland, Ohio in 1957, 1958, and 1959, and that he was told by them that they could buy molded sandals from him because Murray did not make sandals at that time. This testimony is not supported by other witnesses, and there is considerable doubt that these chiropodists were actually under contract at the times indicated.

The record also contains an agreement between respondents and R. H. Macy & Co., Inc., dated November 21, 1955, and a letter from Macy's to respondent Alan E. Murray, dated December 20, 1956, supplementing the said agreement, which is with respect to the sale of Murray Space Shoes to Macy's. The agreement, which was still in effect at the time of hearing in 1959, contains the clause whereby

Macy agrees: "to sell shoes manufactured by Murray and no other molded shoes contoured to the human foot." Counsel for respondents in his oral argument stated that the agreement had expired but there is nothing in the record to support this statement.

There is no evidence in the record as to the volume of sales to Macy by respondents under this contract, or of the inability of any one to sell Macy molded shoes because of this contract. Hence, no finding can be made as to its probable effect on competition.

C. COMPETITORS OF RESPONDENTS

The Jerry Miller I.D. Shoe is one of the largest competitors of the respondents, selling directly as they do to podiatrists and chiropodists, as the output of this concern is between six and seven thousand pairs annually.

Another manufacturer of molded shoes who is a strong competitor of respondent, is Dr. Silverman with his "Pedimold" and "Naturalmold" brands. He manufactures these shoes under the name of Naturalmold Shoe Company, and Ortho Shoes, Inc. The "Pedimold" brand is sold to retail stores, and the "Naturalmold" brand to doctors exclusively. Dr. Silverman started his business in 1954, and his sales during the succeeding years were as follows:

1955	2,000 pairs
1956	6,000 pairs
1957	9,000 pairs
1958	8,000 pairs
1959 (1st 7 months)	4,000 pairs

Other principal competitors, and the volume of business done by them, are as follows:

T.O. Dey Service Corporation:	
1957	2,000 pairs
1958	2,100 pairs
Jack C. Rich, Rich Therapeutic Shoe Laboratories:	
1956	1,500 pairs
1957	2,000 pairs
1958	2,000 pairs plus
B. Nelson Company, New York City:	
1957	500 pairs
1958	275 pairs
Ralph W. Merians	1,000 pairs annually
Dr. Fink (custom-mold shoes):	
1958	300 pairs
1959 (1st 6 months)	300 pairs

Other concerns advertising as manufacturers of molded shoes, the volume of sales unknown, are as follows:

Morris Moulded Shoe Co., New York City
Joseph Burger, New York City
Dr. Guston Appel, Hollywood, Calif.
Foot-Mold Shoe Corp., New York City
Ideal Moulded Shoe Co., New York City
Classic Mold Shoe, Inc., New York City
S. & H. Elkins, Inc., Los Angeles, Calif.
Archmaster Shoe Corp., Philadelphia, Pa.
Tread Mold Shoes, Inc., New York City
Ramer Laboratories, Jamaica, N.Y.
Tru-Mold Shoes, Buffalo, N.Y.
Personal Contour Shoes, Haverhill, Mass.
Foot-Mold Shoe Corp., New York City
Dr. Scholl Foot Comfort Shop, Buffalo, N.Y.
Wright's Support and Orthopedic Appliances, Norfolk, Va.
Brockton Moulded Shoe Co., Brockton, Mass.
Foot Form Shoe Company, Canton, Ohio
Tip Top Shoe Co., New York City
True-Cast Molded Shoe Co., New York City
Contour Shoe Center, Inc., San Francisco, Calif.
Zely Molded Shoes, New Haven, Conn.
Vollbracht's, New York City
Foot-Eze Custom Molded Shoe, Los Angeles, Calif.

It is therefore found that the competition of competitors of respondents has substantially increased, both in volume of sales and in number, since 1953.

D. RESPONDENTS' SHARE OF THE MOLDED SHOE MARKET

Although the record contains no exact figures with respect to the total volume of molded shoe business in the United States, it is estimated by an informed person in the industry that the annual output in recent years is approximately 50,000 pairs.

From about 1941 until 1953, respondents were probably the only manufacturers of molded shoes of any consequence in the United States. The volume of sales of respondents, for the years 1953 to 1958, was as follows: 1953—5,154 pairs; 1954—7,750 pairs; 1955—10,934 pairs; 1956—12,550 pairs; 1957—11,921 pairs; 1958—7,742 pairs. However, as the popularity of the Murray SPACE Shoe increased among chiropodists, podiatrists and orthopedic surgeons, many of the customers of respondents who had been trained in Murray techniques began to manufacture for themselves and, despite the restrictive clauses in their contracts, as hereinbefore described, competitors of respondents increased, not only in number, as hereinbefore indicated, but also in volume of business, until by 1958 at least one of their competitors replaced them as the largest manufacturer in the industry. The volume of sales of molded shoes by Dr. Silverman, in 1958, exceeded the volume of respondents' sales during that year.

Also, the volume of sales of molded shoes of the Jerry Miller Company was approximately the same as respondents in 1958.

It is therefore found that respondents have not increased their share of the molded shoe market but, on the other hand, their share has declined since 1957.

CONCLUSIONS AS TO COUNT II

In view of the foregoing findings, it is concluded that the effect of the sale, and contracts of sale, of molded shoes by respondents, upon such conditions, as aforesaid, has not been, is not now, and may not be, to substantially lessen competition with respondents in the sale of molded shoes, or between customers of respondents, or to create a monopoly in respondents in the molded shoe industry. The allegations of the complaint to this effect are not supported by the evidence in the record.

Hence, the aforesaid acts and practices of respondents, as above set forth, as to Count II, do not constitute a violation of Section 3 of the Clayton Act.

ORDER

It is ordered, That respondents Murray SPACE Shoe Corporation, a corporation, and its officers, and Alan E. Murray and Lucille Marsh Murray, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of molded shoes, that is, custom-made shoes constructed over plaster casts of the customers' feet, or any shoe of substantially similar construction or design, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement, including pamphlets and circulars distributed to customers and prospective customers, by means of the United States mails, or by any other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents, directly or by implication:

(a) That their shoes have therapeutic qualities as to diseases, ailments, abnormalities, or disorders of the feet, unless expressly and clearly limited to relief only of said diseases, ailments, abnormalities, or disorders due to, or caused by, ill-fitting shoes.

(b) That their shoes, or the wearing thereof, will correct, prevent, or relieve swollen ankles, swollen joints, puffiness on ball of foot, pain in the hip, high blood pressure, sagging ankles, or arthritis, unless expressly and clearly limited to relief only of said diseases or ailments due to, or caused by, ill-fitting shoes.

(c) That their shoes, or the wearing thereof, will correct, prevent or relieve indigestion or stomach ulcers.

(d) That their shoes, or the wearing thereof, will correct hammer toes or bunions, provided, however, that nothing contained in this paragraph shall prevent respondents from representing that their said shoes, or the wearing thereof, will give relief from pain suffered by a person with hammer toes or bunions.

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

It is further ordered, That all allegations contained in the complaint under Count I, not hereinbefore mentioned under Paragraph 1, be, and the same hereby are, dismissed.

It is further ordered, That the allegations of the Commission's complaint herein under Count II thereof be, and the same hereby are, dismissed.

OPINION OF THE COMMISSION

By KERN, Commissioner:

The complaint in this proceeding charges respondents in Count I with the dissemination of false advertisements constituting unfair and deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act, and in Count II with entering into contracts, agreements and understandings with purchasers to sell respondents' molded shoe products on the condition that such purchasers will not use or deal in the molded shoes sold or supplied by a competitor and engaging in other practices in violation of Section 3 of the Clayton Act.

The hearing examiner in his initial decision found and concluded as to Count I that respondents' unqualified representations as to therapeutic benefits as indicated constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act and ordered such practices discontinued. As to Count II, he found and concluded that the allegations of the complaint were not supported by the evidence in the record and, accordingly, dismissed these charges.

The matter is now before the Commission upon the cross-appeals of counsel in support of the complaint and the respondents. The former appeals from (1) the portion of the order which would permit qualified representations as to relief from high blood pressure and arthritis in the wearing of Murray shoes and the findings upon which this part

of the order is based, and (2) the dismissal of the allegations under Count II of the complaint. Respondents appeal from the portion of the initial decision holding them in violation of allegations under Count I of the complaint and the part of the order which requires them to cease and desist these practices. The specific grounds for each appeal will be covered below.

Respondents manufacture and sell shoes made either by using the foot of the purchaser as a last, in which case the shoes are called "Contact Shoes" or by making a cast of the foot to be used as the last in the manufacture of the shoe, in which case the shoes are called "Space Shoes". Such shoes are all in the category of molded shoes. They are in fact molded to the shape of the foot, having an unconventional foot-shaped appearance. The "Contact Shoes", while molded shoes, are not involved in this proceeding. Respondents' Space Shoe is not an orthopedic device as the examiner found and as respondents admit in their answer.

Respondents' Appeal as to Count I

Count I of the complaint charges, among other things as follows:

(a) That respondents' shoe is not a health shoe and has no therapeutic qualities directly attributable to it, as represented.

(b) That respondents' shoes will not, as represented, correct, prevent or relieve: swollen ankles, swollen joints, puffiness on ball of the foot, pain in the hip, high blood pressure, fatigue, indigestion, stomach ulcers, sagging ankles, and arthritis.

(c) That respondents' shoe will not, as represented, correct or prevent calluses. [The examiner ruled during the course of the proceeding that respondents' shoe would remove calluses and, in effect, dismissed this allegation.]

(d) That respondents' shoe will not, as represented, correct or prevent hammer toes and bunions.[1]

The hearing examiner included an order with the initial decision covering each of the matters above mentioned except "fatigue" and "calluses". The latter is out of the case as indicated. On "fatigue", while findings were made showing that the allegation of the complaint on this representation was sustained, no prohibition on it was included in the order. This oversight will be remedied in the modified order to be issued herewith.

Of the other specific allegations under Count I of the complaint, not covered above, most were stricken from the complaint during the

[1] Charged misrepresentations as to certain other diseases, abnormalities or disorders in the group (b), (c) and (d) above were dismissed by the examiner during the course of the proceeding for failure of proof.

course of the proceeding for failure of proof. One exception, the representation as to orthopedic device, was found by the examiner not to be proved in his initial decision. Other allegations were dropped without express findings. In the latter instances we do not believe the charges are sustained by the evidence of record. No appeal by counsel supporting the complaint has been taken from the disposition of the case on any of such other specific allegations. We concur in the examiner's disposition of the case as to these other matters.

As to the remaining charges, the respondents' advertisements in the record show, as found by the examiner, that they have unqualifiedly represented their shoe as having therapeutic qualities and that they have made the other specific representations still in issue. The examiner on the question of therapeutic qualities found as follows:

It is also found that the Murray Space Shoe may be referred to as having therapeutic qualities only in those cases where they are prescribed by chiropodists or orthopedic surgeons to relieve pain and give comfort when the ailment is caused by the wearing of ordinary conventional stock shoes, and in the cases of certain deformities or abnormal conditions of the feet.

The pertinent provision of the order in the initial decision prohibits the representation:

(a) That their shoes have therapeutic qualities as to diseases, ailments, abnormalities, or disorders of the feet, unless expressly and clearly limited to relief only of said diseases, ailments, abnormalities or disorders due to, or caused by, ill-fitting shoes.

Orthopedic surgeons, Dr. Gordon, Dr. Herzmark and Dr. Sugar, called by counsel supporting the complaint, all testified to the effect that Murray Space Shoes have no direct therapeutic qualities, although they did further testify that where pains or disorders of the feet are caused by ill-fitting shoes, Murray Space Shoes will afford relief from such pains or disorders. Evaluating this evidence with other evidence of record, we believe that substantial probative evidence supports a finding that Murray Space Shoes have no therapeutic qualities, exclusive of the merit which the shoes may have in affording relief as to pains or disorders of the feet caused by ill-fitting shoes. Accordingly, the initial decision, including the order, will be modified to conform to this view.

On representations as to certain specific ailments or disorders, namely, swollen ankles, swollen joints, puffiness on ball of foot, pain in the hip, fatigue, sagging ankles, hammer toes and bunions, the record supports a finding that Murray Space Shoes will give relief only when these conditions are caused by ill-fitting shoes, or shoes that do not conform to the shape of the foot. Otherwise as to these and the other specific conditions at issue herein, Murray Space Shoes will not cor-

rect, prevent or relieve. The questions raised as to high blood pressure and arthritis will be discussed below.

Respondents in their appeal take a number of exceptions to the examiner's findings contending, it appears, that he gave too much weight to the medical witnesses called by counsel supporting the complaint, that he should not have found that respondents made representations charged in the complaint and that he should not have found that the respondents' shoes fail to have the merits or qualities so claimed for them.

We have considered the evidence on the questions so raised, and except as otherwise noted, we concur with the examiner's findings. On the exception taken as to the weight given to the medical witnesses, we observe that the examiner has considered all the testimony including that of the medical witnesses called by the respondents. The medical witnesses called by counsel supporting the complaint were shown to be highly qualified witnesses, a fact apparently not in dispute, and we cannot say the examiner erred in the weight he gave to their testimony. Respondents argue that these witnesses, except for Dr. Sugar, had not prescribed the Murray Space Shoe and therefore lacked experience with the product. It is clear, however, that these three orthopedic specialists are widely experienced in their field. It is well settled that the testimony of such experts as to the merits of a product is properly considered substantial evidence, even though they have had no personal experience with it. *Bristol-Myers Co.* v. *Federal Trade Commission*, 185 F. 2d 58, 62 (4th Cir. 1950) and pertinent cases cited therein; *Charles of the Ritz Dist. Corp.* v. *Federal Trade Commission*, 143 F. 2d 676, 678–679 (2d Cir. 1944).

Another contention made by the respondents on their appeal seems to be that the terms or form of the complaint misled them as to the issues involved so that they did not make the defense they would otherwise have made and that they were therefore denied a fair hearing. This argument is partly based on the contention that respondents were not apprised of the fact that the claim against them was a charge that their advertisements failed to reveal that the ills therein mentioned to be benefitted were only those caused by ill-fitting shoes. It is likewise partly based on the contention that they were deceived into the belief that the charges against them in subparagraph 3 of paragraphs 6 and 7 would be defeated if it were proved that wearing Murray Space Shoes would either "correct, prevent or relieve" the items mentioned, which they assert they have done.

On the first point, respondents cannot claim lack of knowledge of the charges when the complaint fully covers the practices in issue.

On the second point, we do not believe that respondents were misled

in spite of the apparent position taken by the examiner on this question. This case was clearly tried on the basis that respondents had misrepresented that their shoes would variously correct, prevent or relieve the ailments mentioned, and that in fact they would not do so. Thus, proof of the representation and the failure to perform as to any one of the three things—correct, prevent or relieve—would sustain the charge to that exent. Respondents' awareness of this is well demonstrated by the manner in which they made their defense.

We conclude that respondents were adequately and appropriately advised of the charges against them, that they were given full opportunity to defend themselves against these charges, and that they have availed themselves of this opportunity. We reject their argument that they were denied a fair hearing. Other contentions of the respondents not specifically mentioned above are also rejected.

Respondents' appeal from the examiner's initial decision as to Count I, accordingly, is denied.

APPEAL OF COUNSEL SUPPORTING THE COMPLAINT AS TO COUNT I

Counsel supporting the complaint appeal from the examiner's finding that the wearing of the Murray Space Shoe will relieve as to *high blood pressure* and *arthritis* "when, and only when, these conditions are caused by ill-fitting shoes or shoes that do not conform to the shape of the foot" and the portion of the order partly excepting representations on these ailments. The medical witnesses called in support of the complaint testified to the effect that the Murray Space Shoe would not correct, prevent or relieve arthritis or high blood pressure, although not without some apparent qualification.

We have considered this testimony in the light of other evidence of record and particularly the testimony that respondents' shoes will do no more than give relief from pain or disorders caused by ill-fitting shoes and have concluded that the possible relief which might be provided as to such systemic disorders, if any, would be entirely too remote or indirect to justify even qualified references thereto. We believe that the examiner erred in his findings and order covering these ailments. The appeal of counsel supporting the complaint on this question is granted.

APPEAL OF COUNSEL SUPPORTING THE COMPLAINT AS TO COUNT II

The complaint alleges in Count II that respondents in the course of commerce have entered into contracts, agreements or understandings to sell their molded shoes on the condition that the purchasers thereof would not use or deal in molded shoes sold or supplied by a competitor of respondents and that they have refused to sell to cus-

tomers unwilling to restrict themselves to respondents' products. It is further alleged that these acts or practices may be to substantially lessen competition or tend to monopoly and, therefore, violate Section 3 of the Clayton Act. The hearing examiner in his Initial Decision dismissed this Count.

The written agreements introduced in support of this charge are identified as Commission Exhibits 3, 6–12, and 36.

Commission Exhibit 3 is an agreement dated November 21, 1955, between Alan E. Murray and R. H. Macy & Co., Inc., New York City, relative to the sale of Murray shoes. Macy's agreed "To sell shoes manufactured by Murray and no other shoes contoured to the human foot."

Murray, between 1942 and 1958, entered into agreements with chiropodists and podiatrists and others regarding the manufacture, sale and distribution of shoes and certain materials. Commission Exhibits 6–12 are illustrative of contracts made in this group. These agreements vary in their terms, having been modified from time to time through the indicated period. They cover not only Murray Space Shoes but the so-called "Contact Shoes" as well. The latter are not involved in this case.

One form of the chiropodist agreement used in 1958 contains this provision:

I recognize and agree that the ideas, methods and techniques and the like which I have learned from MURRAY are an integral part of the process employed by MURRAY in the manufacture of Murray SPACE Shoes and I agree that I will use such ideas, methods and techniques only to assist in the manufacture of SPACE Shoes which are to be completed or caused to be completed by MURRAY and that I will not use such techniques to assist others in the manufacture of shoes of the same type as made by MURRAY. (Commission Exhibit 12)

In 1953, Dr. Sanford E. Solomon of Hartford, Connecticut, representing respondents, conducted a school in Murray shoe casting techniques for podiatrists and chiropodists. Those taking the course were required to sign a letter addressed to respondents which included the following statements:

I promise not to make use of these techniques except under the provisions of our contract in making casts for the Murray Laboratories, and in case I should take employment or become part of any concern, I will not disclose or make use of the techniques taught me without your written permission.

I will not make use of any other moulded shoes in my practice during my association with the Alan E. Murray Laboratories. If after one year I wish to terminate my use of the Murray Shoe. I shall notify you and the public and guarantee not to use any product that violates Murray patents or that might confuse the public into believing it was a Murray product. (Commission Exhibit 36)

While not passing upon each of the agreement forms challenged in this proceeding, we believe it is sufficiently shown, as in the above cited

instances, that respondents have required in certain written agreements that purchasers of its molded shoes will not deal in molded shoes of respondents' competitors.

The hearing examiner found that the "line of commerce" involved in this case is the manufacture and sale of molded shoes, that is, shoes custom-made over plaster casts of customers' feet, to follow all the contours of their feet. We will use the term "molded shoes" in referring to this market. The examiner also found that this industry extends over all parts of the United States. Respondents take the position that the line of commerce should be the whole industry involving the manufacture and sale of shoes or, separately, men's shoes, women's shoes and children's shoes. In view of our disposition of Count II, we will assume, without deciding, that the line of commerce is molded shoes since even in this limited area a violation has not been shown.

The molded shoe business is of relatively recent origin. The record establishes that Murray was the first to manufacture and sell such shoes beginning about 1941. From about 1941 to 1953, as the examiner finds, respondents were probably the only manufacturers of molded shoes of any consequence in the United States. However, as the popularity of the molded shoe increased, customers of respondents who had been trained in Murray techniques began to manufacture molded shoes for themselves and became competitors of respondents.

The examiner has listed seven concerns as the principal competitors of respondents. These and their 1958 outputs are as follows:

Competitor	*Sales in Pairs*
(1) Jerry Miller I. D. Shoe	6–7,000 pairs (annually)
(2) Naturalmold Shoe Company and Ortho Shoes, Inc. (enterprises owned by Dr. Silverman)	8,000 pairs
(3) T. O. Dey Service Corporation	2,100 pairs
(4) Jack C. Rich, Rich Therapeutic Shoe Laboratories	2,000 pairs, plus
(5) B. Nelson Company, New York City	About 275 pairs
(6) Ralph W. Merians	1,000 pairs (annually)
(7) Dr. Nathan Fink	300 pairs

The examiner has also listed 23 other competitors, but in the latter instances the record is silent as to their sales volumes or market shares.

Respondents' output from 1953 to 1958 was as follows:

	Pairs
1953	5,154
1954	7,750
1955	10,934
1956	12,550
1957	11,921
1958	7,742

On molded shoes the price in the period 1953 to 1957, although differing somewhat, was commonly $45 per pair to the podiatrist or chiropodist and $70 per pair to the patient.

The only information in the record as to the market size is the statement of a witness, Jerome Miller, of Jerry Miller I.D. Shoe, a podiatrist and a manufacturer of molded shoes in competition with respondents. He testified that the annual output of the industry is approximately 50,000 pairs of molded shoes. The hearing examiner termed the witness' statement on total output an estimate by an informed person in the industry. The witness himself called it a "guess".

Whether this was a guess or an informed estimate, it is very little standing alone upon which to make a finding as to market size or the total sales in the market. There is nothing further in the record to corroborate the testimony on this point nor is there any other information in the record as to total market sales.

The witness did not relate his statement on annual output to any particular year. In an industry in which many new manufacturers are quickly getting into the business and in which sales rapidly expand for individual firms, as in the case of Dr. Silverman from 2,000 pairs in 1955 to 8,000 pairs in 1958, a proper estimate for one year might be totally off for another period of time. Moreover in a number of instances this witness substantially underestimated the volume of business done by several of respondents' competitors.

This record shows very little about the structure or make-up of the molded shoe industry, that is, the number of competitors, who and where they are, and their relative positions in the industry.

There is some testimony from several molded shoe manufacturers as to the companies they consider their principal competitors. These lists are not generally uniform although most named Murray Space Shoe and Jerry Miller I.D. Shoe as principal competitors. Several witnesses listed Dr. Jack Silverman's shoe ("Naturalmold" and "Pedimold") as a principal competitor. Some also listed T. O. Dey Corporation. Otherwise the lists vary considerably.

Witness Jerome Miller (Jerry Miller I.D. Shoe) listed the following, other than Murray, as principal competitors, along with estimated outputs:

Competitor	*Estimated annual output (pairs)*
Rube Shoe, Bronx, N.Y.	1,000
Natural Mold, Mount Vernon, N.Y.	5–6,000
Shultz, Buffalo, N.Y.	1,000
Classic Mold Shoe, New York, N.Y.	1,000
Rich, New York, N.Y.	1,000

The competitors of respondents listed by the examiner in his initial decision as principal competitors were Jerry Miller I.D. Shoe, Dr. Silverman ("Naturalmold" and "Pedimold"), T. O. Dey Service Corporation, Rich Therapeutic Shoe Laboratories, B. Nelson Company, Ralph W. Merians and Dr. Nathan Fink. They apparently are at least not all of the principal competitors. It is noted that witness Jerome Miller listed, in addition to others, three principal competitors not so termed by the examiner and estimated their sales volumes as each 1,000 pairs annually, which is as much or more than the sales volumes of three of the companies which the examiner lists as principal competitors. It is not clear from this record who the leading competitors are in the industry.

The record is seriously deficient as to evidence on the general structure of the industry including the total output and relative shares of the output by leading or principal competitors. It is also insufficient or unsatisfactory on other factual details which need not here be covered in detail. The record on the question of establishing respondents' market share and the substantiality of the competition foreclosed when boiled down consists of little more than the testimony of several of respondents' competitors that they consider respondents to be their "largest" competitor. This is a singularly slim evidentiary showing. On the basis of this flimsy record we are unable to reach any determination as to competitive effects. Clearly the tests laid down by the Supreme Court defining the "substantiality of market foreclosure" under Section 3 of the Clayton Act have not been met by this record. *Standard Oil Co.* v. *United States*, 337 U.S. 293 (1949); *Tampa Electric Co.* v. *Nashville Coal Co.*, 365 U.S. 320 (1961).

The appeal of counsel supporting the complaint from the hearing examiner's Initial Decision dismissing Count II is therefore denied. However, we do not adopt all of the examiner's findings and conclusions on this issue and the Initial Decision will be modified to conform to our views. Under the circumstances, we conclude that the charges under Count II of the complaint have not been sustained. We adopt the hearing examiner's Initial Decision on this Count II charge so far as it concludes that the allegation should be dismissed.

It is directed that an appropriate order be entered modifying the Initial Decision including the order in conformity with the views herein expressed and adopting the Initial Decision, as so modified, as the decision of the Commission.

Commissioner MacIntyre did not participate in the decision of this case.

693-490—64——54

FINAL ORDER

This matter having been heard by the Commission upon the cross-appeals of counsel in support of the complaint and the respondents from the hearing examiner's initial decision, and upon the briefs and oral argument in support thereof and in opposition thereto; and

The Commission, for the reasons stated in the accompanying opinion, having granted in part and denied in part the appeal of counsel in support of the complaint and having denied respondents' appeal, and having directed that an appropriate order be entered modifying the initial decision including the order in conformity with the views expressed in the opinion, and adopting the initial decision, as so modified, as the decision of the Commission:

It is ordered, That the last subparagraph of Paragraph Five of the FINDINGS AS TO THE FACTS (COUNT I) of the initial decision be, and it hereby is, modified to read as follows:

Therefore, considering the foregoing testimony, it is found that the Murray Space Shoe is not an orthopedic device and has not been so represented by respondents. It is also found that the wearing of Murray Space Shoes will relieve swollen ankles, swollen joints, puffiness on ball of foot, pain in the hip, fatigue, sagging ankles, hammer toes and bunions when, and only when, these conditions are caused by ill-fitting shoes, or shoes that do not conform to the shape of the foot. The wearing of the Murray Space Shoe will not correct, prevent or otherwise relieve such conditions. As to indigestion, stomach ulcers, high blood pressure and arthritis, it is found that any beneficial effect which the wearer of Murray Space Shoes might receive would be too indirect, or too remote, to be attributed to the wearing of the Murray Space Shoe. It is also found that the Murray Space Shoes have no therapeutic qualities, exclusive of the merit which the shoes may have in affording relief as to pains or disorders of the feet caused by ill-fitting shoes.

It is further ordered, That the last paragraph under "B. Respondents' Methods of Distribution—Use of Restrictive Agreements" of the FINDINGS AS TO THE FACTS (COUNT II) of the initial decision be, and it hereby is, stricken.

It is further ordered, That the paragraphs under "D. Respondents' Share of the Molded Shoe Market" of the FINDINGS AS TO THE FACTS (COUNT II) of the initial decision be, and they hereby are, modified to read as follows:

The record is seriously deficient as to evidence on the general structure of the industry including the total output and the relative shares of the output by leading or principal producers. It is also insufficient or unsatisfactory on other factual details. The record on the question

of establishing respondents' market share and the substantiality of the competition foreclosed when boiled down consists of little more than the testimony of several of respondents' competitors that they consider respondents to be their "largest" competitor. This is an inadequate basis for making a determination as to competitive effect.

It is further ordered, That the paragraphs under the heading "CONCLUSIONS AS TO COUNT II" contained in the initial decision be, and they hereby are, modified to read as follows:

In view of the foregoing findings, it is concluded that the allegations of the complaint as to Count II are not supported by substantial evidence, and that, accordingly, these allegations should be dismissed.

It is further ordered, That the order contained in the initial decision be, and it hereby is, modified to read as follows:

It is ordered, That respondents Murray Space Shoe Corporation, a corporation, and its officers, and Alan E. Murray and Lucille Marsh Murray, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of molded shoes, that is, custom-made shoes constructed over plaster casts of the customers' feet, or any shoe of substantially similar construction or design, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement, including pamphlets and circulars distributed to customers and prospective customers, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents, directly or by implication:

(a) That their shoes have therapeutic qualities, except that nothing herein contained shall prevent respondents from making representations permitted under subparagraphs (b) and (d) hereof, and provided further that nothing herein contained shall prevent respondents from representing that said shoes, or the wearing thereof, will give relief from pains or disorders of the feet due to, or caused by, ill-fitting shoes, to the extent not prohibited by subparagraph (c) hereof.

(b) That their shoes, or the wearing thereof, will correct, prevent, or relieve swollen ankles, swollen joints, puffiness on ball of foot, pain in the hip, fatigue, or sagging ankles unless expressly and clearly limited to relief only of said diseases or ailments due to, or caused by, ill-fitting shoes.

(c) That their shoes, or the wearing thereof, will correct, prevent or relieve indigestion, stomach ulcers, high blood pressure or arthritis.

(d) That their shoes, or the wearing thereof, will correct hammer toes or bunions, provided, however, that nothing contained in this paragraph shall prevent respondents from representing that their said

shoes, or the wearing thereof, will give relief from pain suffered by a person with hammer toes or bunions.

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

It is further ordered, That all allegations contained in the complaint under Count I, not hereinbefore mentioned under Paragraph 1, be, and the same hereby are, dismissed.

It is further ordered, That the allegations of the Commission's complaint herein under Count II thereof be, and the same hereby are, dismissed.

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

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

By the Commission, Commissioner MacIntyre not participating.

IN THE MATTER OF

STAR FRUIT COMPANY ET AL.

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

Docket 8408. Complaint, June 1, 1961—Decision, Oct. 17, 1961

Consent order requiring packer-distributors of citrus fruit in Lake Alfred, Fla., to cease violating Sec. 2(c) of the Clayton Act by paying commissions or brokerage to some of their brokers and direct buyers purchasing for their own accounts for resale.

COMPLAINT

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

PARAGRAPH 1. Respondent Star Fruit Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its offices and principal place of business located at Lake Alfred, Florida, with mailing address at Post Office Box 998, Lake Alfred, Florida.

Respondent Norman V. Huff is an individual and is president of respondent Star Fruit Company. Respondent Robert V. Huff is an individual and is vice president and treasurer of respondent Star Fruit Company. Respondent Mary H. Grantham is also an individual and is secretary of respondent Star Fruit Company. The business address of said individual respondents is the same as that of the corporate respondent. Said individual respondents, at all times hereinafter mentioned, have directed and controlled the acts and practices and policies of corporate respondent Star Fruit Company including the acts and practices hereinafter mentioned. Said corporate respondent and individual respondents are hereinafter collectively referred to as respondents.

PAR. 2. Respondents are now, and for the past several years have been, engaged in the business of packing, selling and distributing citrus fruit, such as oranges, tangerines, and grapefruit, all of which are hereinafter sometimes referred to as citrus fruit or fruit products. Respondents sell and distribute citrus fruit directly, and in many instances through brokers, to buyers located in various sections of the United States. When brokers are utilized in making sales, respondents pay said brokers for their services a brokerage or commission, usually at the rate of 5 cents per carton or 10 cents per 1⅗ bushel box or equivalent. Respondent's annual volume of business in the sale and distribution of citrus fruit is substantial.

PAR. 3. In the course and conduct of their business over the past several years, respondents have sold and distributed and are now selling and distributing citrus fruit in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, to buyers located in the several states of the United States other than the State of Florida in which respondents are located. Respondents transport, or cause such citrus fruit, when sold, to be transported from their place of business or packing plant in the State of Florida, or from other places within said State, to such buyers or to the buyers' customers located in various other states of the United States. Thus there has been, at all times mentioned herein, a continuous course of trade in commerce in citrus fruit across state lines between said respondents and the respective buyers thereof.

PAR. 4. In the course and conduct of their business as aforesaid, respondents, have been and are now making substantial sales of citrus fruit to some, but not all, of their brokers and direct buyers purchas-

ing for their own account for resale, and on a large number of these sales respondents paid, granted or allowed, and are now paying, granting or allowing to these brokers and other direct buyers on their purchases, a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

PAR. 5. The acts and practices of respondents in paying, granting or allowing to brokers and direct buyers a commission, brokerage or other compensation, or an allowance or discount in lieu thereof, on their own purchases, as above 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).

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondent, Star Fruit Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its offices and principal place of business located at Lake Alfred, Florida, with mailing address as P.O. Box 998, Lake Alfred, Florida.

Respondents Norman V. Huff, Robert V. Huff, and Mary H. Grantham are individuals and are officers of and maintain the same business address as that of said corporate respondent.

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

ORDER

It is ordered, That respondents Star Fruit Company, a corporation, and its officers, and Norman V. Huff, Robert V. Huff, and Mary H. Grantham, individually and as officers of Star Fruit Company, and

respondents' agents, representatives and employees, directly or through any corporate, partnership, sole proprietorship, or other device in connection with the sale of citrus fruit or fruit products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Paying, granting or allowing, directly or indirectly, to any buyer or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of citrus fruit or fruit products to such buyer for his own account.

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

IN THE MATTER OF

RU-EX, INC., ET AL.

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

Docket C-1. Complaint, Oct. 17, 1961—Decision, Oct. 17, 1961

Consent order requiring St. Paul, Minn., distributors of their "Ru-Ex Compound" to cease falsely representing in advertising the therapeutic effect of lemon juice used with the preparation in the treatment of arthritis and related diseases.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commisison Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Ru-Ex, Inc., a corporation and William H. Fraser and Reggie L. Fraser, 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 Ru-Ex, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 2457 University Avenue, St. Paul, Minnesota.

Respondents William H. Fraser and Reggie L. Fraser are officers of the corporate respondent. They formulate, direct and control the