IN THE MATTER OF

WILLIAM BUEHL EIDSON ET AL. DOING BUSINESS AS EIDSON PRODUCE COMPANY

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

Docket 8064. Complaint, Aug. 3, 1960—Decision, Jan. 3, 1962

Order requiring wholesale distributors of food products, including citrus fruits, vegetables, and produce, in Birmingham, Ala., to cease receiving from suppliers a commission on substantial purchases for their own account for resale, such as a discount, usually at the rate of 10¢ per 1⅘ bushel box of citrus fruit from a number of Florida packers.

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, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents William Buehl Eidson, Annie Katherine Eidson, Marie Ponder, William C. Howard, Jr., and Bennie E. Crowe are individuals and are copartners trading and doing business as the Eidson Produce Company, with their office and principal place of business located at 2525 Third Place West, Birmingham Food Terminal, Birmingham 4, Ala. Each of these respondents, individually and as copartners, are hereinafter referred to collectively as respondents.

PAR. 2. Respondents are now, and for the past several years have been, engaged in business primarily as a wholesale distributor, buying, selling and distributing citrus fruit, produce, and other food products, all of which are hereinafter sometimes referred to as

food products. Respondents purchase their food products from a large number of suppliers located in many sections of the United States. The annual volume of business done by respondents in the purchase and sale of food products is substantial.

PAR. 3. In the course and conduct of their business for the past several years, respondents have purchased and distributed, and are now purchasing and distributing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several states of the United States other than the State of Alabama, in which respondents are located. Respondents transport or cause such food products, when purchased, to be transported from the places of business or packing plants of their suppliers located in various other states of the United States to respondents who are located in the State of Alabama, or to respondents' customers located in said state, or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines between respondents and their respective suppliers of such food products.

PAR. 4. In the course and conduct of their business for the past several years, but more particularly since January 1, 1959, respondents have been and are now making substantial purchases of food products for their own account for resale from some, but not all, of their suppliers, and on a large number of these purchases respondents have received and accepted, and are now receiving and accepting, from said suppliers 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 from a number of packers or suppliers located in the State of Florida, and receive 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 supplier which reflects said commission or brokerage.

PAR. 5. The acts and practices of respondents in receiving and accepting a brokerage or a commission, or an allowance or discount in lieu thereof, on its 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, Sec. 13).

Mr. Cecil G. Miles and *Mr. Basil J. Mezines* for the Commission.

Mr. W. S. Pritchard, Jr., *Mr. Winston D. McCall*, and *Mr. R. Bruce Robertson, III*, of *Pritchard, McCall & Jones*, Birmingham, Ala., for respondents.

Initial Decision by Leon R. Gross, Hearing Examiner

PRELIMINARY STATEMENT

This complaint issued on August 3, 1960. It charges respondents with violating subsection 2(c)[1] of the Clayton Act, as amended (15 U.S.C. Sec. 13), by "receiving and accepting, from said suppliers a commission, a brokerage, or other compensation or an allowance or discount in lieu thereof," on their purchases of citrus products and other merchandise purchased by respondents, which moved in "commerce," as commerce is defined in said Act. Respondents answered the complaint and hearings were conducted at Birmingham, Alabama, on January 30, 1961, and in Tampa, Florida, on June 22 and 23, 1961. Respondents petitioned the Federal Trade Commission to enjoin the Florida hearings, but respondents' motion was denied. No one appeared on behalf of respondents at the Florida hearings even though ample notice of said hearings had been given. At the Tampa hearings counsel supporting the complaint introduced evidence into the record and completed the introduction of evidence in support of his case-in-chief. By order dated June 27, 1961, respondents were given until July 31, 1961, to designate the dates and places at which they desired hearings to offer evidence in their behalf. Thereafter respondents moved and were allowed an extension of time until August 7, 1961, in which to designate hearing dates and places. Respondents failed to file any request for hearing dates and places to introduce any evidence in their behalf, and an order was entered on August 17, 1961, fixing September 22, 1961, as the date for filing proposed findings, conclusions and order pursuant to the Commission's Rules of Practice for Adjudicative Proceedings. Such proposed findings, conclusions and order were filed by both parties.

Based upon the entire record in this proceeding, including the exhibits which have been received in evidence, the examiner makes the

[1] "That it shall be unlawful for any person engaged in commerce * * * to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation was so granted or paid."

findings and conclusions hereinafter set forth. Any findings proposed by the parties which are not hereinafter made in the form in which proposed, or in substantially that form, hereby are rejected. The fact that no finding in this opinion summarizes the evidence in the manner in which the parties have requested it to be summarized does not mean that the hearing examiner has not considered such evidence. It means merely that the examiner deems the evidence which is summarized in his findings to be sufficiently probative, substantial and material to dispose of the issues. All motions made by the parties which have not previously been ruled upon or which are not herein specifically ruled upon hereby are overruled and denied.

Based upon the entire record and the evidence, the examiner makes the following:

FINDINGS OF FACT

1. The complaint states a good cause of action against the respondents. The Federal Trade Commission has jurisdiction over the respondents and the subject matter of this proceeding; and this proceeding is in the public interest.

2. William Buehl Eidson, Annie Katherine Eidson, Marie Ponder, William C. Howard, Jr., and Bennie E. Crowe are copartners doing business as Eidson Produce Company with their principal office and place of business located at 2525 Third Place West, Birmingham Food Terminal, Birmingham 4, Ala. Respondents are now and for several years last past, including the year 1959, have been engaged primarily as wholesale distributors of food products, including citrus fruits, vegetables, and produce. Respondents were and are buying, selling and distributing the aforesaid citrus fruit and food products, which move to them across state lines. Respondents purchase their citrus fruit and other food products from a large number of suppliers located in many sections of the United States and in different states thereof.

3. Respondents are engaged in "commerce" as that term is defined in the Clayton Act, as amended.

4. The annual business transacted by respondents for the year 1959 to the present time was substantial. They were one of four business concerns conducting a similar business in the Birmingham area who had substantially the same sales volume. William Buehl Eidson is the senior and managing partner of respondents' business. John W. Ponder, husband of respondent Marie Ponder, is respondents' general office manager. William Buehl Eidson, during the period covered by the complaint, purchased most of the citrus fruit on behalf of respondents. Most of such purchases were consummated by long dis-

tance telephone conversations with suppliers located in the State of Florida. Written office memoranda of the conversations which indicated the price at which purchases were made were kept by respondents in the usual and regular course of their business. Specimen copies of such memoranda are in evidence.

5. For a period of time respondents purchased citrus fruit through William Manis, a broker. However, when respondents ascertained that they could make their purchases direct and obtain the allowance in lieu of brokerage they abandoned the practice of purchasing through brokers and purchased their fruit directly. Mr. Eidson testified that he might receive as many as 10 calls in one day from sellers and that he wanted to be sure that his company was competitive; "we buy at the lowest price we can buy; and I am sure that if William Manis is making it a dime higher, he's not getting any business."

6. The allowances made in lieu of brokerage to respondents were sometimes paid by separate remittance, and sometimes paid by deduction from the market price stated on the invoices. Sometimes prices were quoted to respondents and negotiated on a net basis, i.e., the price quoted to respondents was the price which respondents would pay net, after the allowance in lieu of brokerage had first been deducted.

7. During the year 1959 one of respondents' suppliers, Newbern Groves, Inc., of Tampa, Florida, paid to respondents in lieu of brokerage the sum of $409.78 (CX 86–J and 86–K). Although respondents deny that these payments or allowances constituted, or were in lieu of brokerage, the payments have been characterized in said exhibits as brokerage by the sellers, and the hearing examiner hereby finds that they were in lieu of brokerage.

8. During the relevant period the practice of the Florida citrus fruit producers of making an allowance in lieu of brokerage to their customers, including these respondents, was an accepted custom in that industry. The practice was generally known and followed. If the allowance were not made, the purchaser would take his business to a supplier who would make the allowance (Tr. 194).

9. In the course and conduct of their business for the past several years, but more particularly since January 1, 1959, respondents have been and are now making substantial purchases of food products including citrus fruit on their own account for resale. Respondents have received and accepted from their suppliers a commission, brokerage, or other compensation or an allowance or discount in lieu thereof, in connection therewith. Respondents either knew, or because of their many years of experience in, and knowledge of, the practices in the

produce industry should have known that they were receiving such brokerage or commission or a discount in lieu of brokerage.

10. During the relevant period the price of citrus fruit was quoted on the basis of a bruce box containing 1⅗ bushels. The price fluctuated and was usually quoted in increments of 25 cents, i.e., $2.50, $2.75, or $3 a bruce box. In the industry a carton would be half of a bruce box in content, and its price would be half the price of a bruce box. Occasionally the bruce box prices fluctuated 50 cents up or down.

11. Respondents in the course and conduct of their business during the year 1959 and thereafter received a commission, brokerage, or other compensation, or a discount in lieu thereof on their purchases of citrus fruit from the citrus fruit vendors in the State of Florida in contravention of Section 2(c) of the Clayton Act as amended.

12. The Federal Trade Commission as a part of its case-in-chief is not required to prove that these respondents had knowledge that they were being paid a commission, brokerage, or allowance in lieu thereof. However, the hearing examiner finds that these respondents knew that they were receiving a commission, brokerage, or an allowance in lieu thereof on the citrus fruit purchased by them from the Florida citrus fruit producers during the years covered by the complaint.

The acts and practices of respondents in accepting a commission, brokerage, other compensation, or allowance in lieu thereof did and does constitute a violation of Section 2(c) of the Clayton Act as amended (15 U.S.C. Sec. 13) and should be proscribed.

DISCUSSION

That section of the Clayton Act which has been invoked in this proceeding, Section 2(c), proscribes a practice which is entirely separate and distinct from the practices which are proscribed by Sections 2(a) and 2(d). It is the *receipt* or *acceptance* of the commission or allowance in lieu of brokerage which is declared to be unlawful by 2(c). Price discrimination, competitive injury, and *scienter* on the part of the person receiving the payment need not be proven.

Section 2(c) is totally independent of 2(a) of the Clayton Act. Section 2(c) creates a separate offense. The decisions in *Biddle Purchasing Co.* v. *FTC*, 96 F. 2d 687, and *Great Atlantic & Pacific Tea Co.* v. *FTC*, 106 F. 2d 667, have negated the legal duty of the Commission to make the same proof in a 2(c) proceeding as is required in a 2(a) proceeding. This examiner reads *Biddle* and *A & P* as holding that the payment or receipt of the brokerage is in itself the prohibited act; that Congress has made such prohibited act illegal per se; and the Federal Trade Commission need not prove either

price discrimination or competitive injury as part of its case in a 2(c) proceeding. In enacting 2(c) Congress determined that the receipt of the brokerage or commission in lieu thereof was the proscribed act.

As to the respondents' contention that no cease and desist order should be entered against them because they *did not know* they were being given a brokerage allowance, the recent Supreme Court decision of *FTC* v. *Broch & Co.*, 363 U.S. 166 (1960), specifically states (p. 174):

> The fact that the buyer *was not aware* that its favored price was based in part on a discriminatory reduction in respondent's brokerage commission is immaterial. (Emphasis supplied.)

In *Thomasville Chair Company*, Docket No. 7273, opinion of the Commission dated March 13, 1961, the Commission stated:

> * * * Section 2(c) does not require a showing of knowledge or intent on the part of the person charged with violation thereof, * * *.

It is not necessary to labor the point that the *scienter* of the buyer is not an essential element of proof in the Commission's case under 2(c). See also *Fitch* v. *Kentucky-Tennessee Light & Power Co.*, 136 F. 2d 12 (1943), a treble damage action.

The only other defense to this proceeding which respondents might have asserted is that the payments or deductions from the quoted prices were, in fact, not in lieu of brokerage. However, the only evidence vaguely suggesting this defense are the inferences in the testimony of Messrs. Eidson and Ponder that they were under compulsion to buy as favorably as the market would permit, and, therefore, were not greatly concerned about the characterization of the allowances which were made to them by their sellers so long as they were able to buy at the lowest available price. As this examiner understands Section 2(c) Congress did not intend that businessmen in the position of these respondents should buy at the lowest available price, and close their eyes to, or ignore, the practices by which, and the manner in which, such low price was and is obtained.

CONCLUSIONS OF LAW

1. The complaint filed herein states a good cause of action against the respondents; the Federal Trade Commission has jurisdiction over the respondents and over the subject matter of this proceeding. This proceeding is in the public interest. Respondents are engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

2. During the time covered by this complaint respondents received

and accepted from persons who sold to them citrus fruit a commission, brokerage, or other compensation or an allowance or discount in lieu thereof in connection with said purchases. Said acts by said respondents were and are in violation of, and are proscribed by, Section 2(c) of the Clayton Act, as amended (15 U.S.C. Sec. 13). Therefore,

It is ordered, That respondents William Buehl Eidson, Annie Katherine Eidson, Marie Ponder, William C. Howard, Jr., and Bennie E. Crowe, individually and as copartners, doing business as Eidson Produce 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 any other food products, in commerce, as "commerce" is defined in the amended 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 any other food products for respondents' 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come before the Commission upon its review of the hearing examiner's initial decision filed October 10, 1961; and

The Commission having considered the entire record and being of the opinion that the hearing examiner's findings of fact in the initial decision are incomplete and that his discussion of the law applicable to this proceeding is inaccurate in certain respects; and

The Commission having determined, therefore, that the initial decision should be modified:

It is ordered, That the initial decision be modified by striking therefrom paragraphs numbered 5 through 12 of the Findings of Fact and substituting therefor the following:

5. For a period of time respondents purchased citrus fruit through William Manis, a broker. However, when respondents ascertained that they could make their purchases directly from the seller and obtain a discount or allowance equal to the amount they had formerly paid as brokerage, they abandoned the practice of purchasing through brokers and purchased their fruit directly. One of the individual respondents, Mr. Eidson, testified that he was aware that he could

obtain a better price by buying directly from the shipper than he could by buying through a broker.

6. The Florida packers from whom respondents purchased citrus fruit regularly sold their products through brokers to wholesale produce houses and chain stores and directly to such purchasers without the services of brokers. On sales made through brokers, the standard brokerage fee was 10¢ per box of 1⅗ bushels or 5¢ per carton of ⅘ bushel. On sales made directly to the purchaser by the packer, it was the customary practice among packers to deduct from the prevailing market price an amount equal to the brokerage fee. There is uncontradicted testimony that this practice was a matter of common knowledge among packers and those customers who purchased directly from the packers.

7. On purchases of citrus fruit made by respondents directly from such packers, respondents received a discount or allowance equal to the brokerage fee. In most instances, the packer deducted this amount from the prevailing market price and billed respondents at the market price less an amount equal to the brokerage fee. In some instances, the packer billed respondents at the market price and respondents corrected the invoice by deducting from this price an amount equal to the brokerage fee and remitted the invoice price less this amount.

8. The discount or allowance received by respondents on purchases of citrus fruit directly from the packer was a discount or an allowance in lieu of brokerage. Because of their many years of experience in buying from Florida citrus fruit packers and since they were obviously aware that the discount or allowance received on direct purchases from these packers was equal to the brokerage fee, respondents either knew or should have known that they were receiving a discount or allowance in lieu of brokerage.

It is further ordered, That the initial decision be modified by striking therefrom that portion designated "Discussion," beginning on page 6 with the words "That section of the Clayton Act," and ending on page 7 with the words "such low price was and is obtained."

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

It is further ordered, That respondents, William Buehl Eidson, Annie Katherine Eidson, Marie Ponder, William C. Howard, Jr., and Bennie E. Crowe, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in the initial decision.

IN THE MATTER OF

A. J. HOLLANDER & CO., INC., ET AL.

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

Docket 8197. Complaint, Nov. 30, 1960—Decision, Jan. 3, 1962

Consent order requiring an importer and two distributors of Japanese baseball gloves, all of New York City, to cease representing falsely, by imprinting thereon in block letters the names of well-known players, such as "Tony Kubek Model", "Elston Howard Model", etc., that prominent baseball players used or endorsed their gloves.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the A. J. Hollander & Co., Inc., a corporation, and Martin Blumenthal, Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher, individually and as officers of the said corporation; Olympic Sporting Goods Company, Inc., a corporation, and Herman N. Ullman and Allen D. Ullman, individually and as officers of said corporation, and Cambridge Sporting Goods Corp., a corporation, and Joseph Greenberg, individually and as an officer of the 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 A. J. Hollander & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 154 Nassau Street, New York, N.Y.

Individual respondents, Martin Blumenthal, Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher are officers of the corporate respondent, A. J. Hollander & Co., Inc. They formulate, direct and control the acts and practices of the said corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as the corporate respondent.

Respondent Olympic Sporting Goods Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 598 Broadway, New York, N.Y.

Individual respondents Herman N. Ullman and Allen D. Ullman are officers of the corporate respondent, Olympic Sporting Goods Company, Inc. They formulate, direct and control the acts and practices of the said corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as the corporate respondent.

Respondent Cambridge Sporting Goods Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 625 Broadway, New York, N.Y.

Individual respondent, Joseph Greenberg, is an officer of the corporate respondent, Cambridge Sporting Goods Corp. He formulates, directs and controls the acts and practices of the said corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondent A. J. Hollander & Co., Inc., is now, and for some time last past has been, engaged, among other things, in the importation of baseball gloves from Japan and in the offering for sale, sale and distribution thereof to wholesalers for eventual resale to the public.

Respondent Olympic Sporting Goods Company, Inc., is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of sporting goods to retailers for resale to the public.

Respondent Cambridge Sporting Goods Corp. is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of sporting goods to retailers for resale to the public.

Included among the products offered for sale, sold and distributed by respondents Olympic Sporting Goods Company, Inc., and Cambridge Sporting Goods Corp. are the aforesaid baseball gloves purchased by them from respondent A. J. Hollander & Co., Inc.

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

PAR. 4. Respondent A. J. Hollander & Co., Inc., at the direction of respondents Olympic Sporting Goods Company, Inc., and Cambridge Sporting Goods Corp., has engaged in the practice of causing the manufacturer to imprint in block letters on the aforesaid imported baseball gloves the names of prominent or well-known baseball players

and other statements, all of said respondents, thereby representing, directly or by implication, that the said prominent or well-known baseball players used respondents' gloves or approve or endorse the types of said gloves. Typical but not all inclusive of such names and statements are:

Tony Kubek Model
Elston Howard Model
Rocky Calavito Model
Al Kaline Model
Whitey Ford Model
Early Wynn Model
Duke Snider Model
Bill Skowron Model
Jim Bunning Model
User Approved

In truth and in fact, the aforesaid prominent or well-known baseball players have neither used respondents' gloves nor approved nor endorsed the types of said gloves.

PAR. 5. By the aforesaid practice, respondents place in the hands of retailers means and instrumentalities by and through which they mislead the public, especially boys of teen or sub-teen age, into the belief that their imported baseball gloves are used by the aforesaid prominent or well-known baseball players or are the type or model used or approved or endorsed by said prominent or well-known baseball players.

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

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

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, un-

fair 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 agreements by and between respondents and counsel supporting the complaint, which agreements contain 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 agreements 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 provide for the dismissal of the complaint as to respondents Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher in their individual capacities; and

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

1. Respondent A. J. Hollander & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 154 Nassau Street, New York City, N.Y.

Individual respondents Martin Blumenthal, Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher are officers of corporate respondent A. J. Hollander & Co., Inc., and their address is the same as that of said corporate respondent.

2. Respondent Olympic Sporting Goods 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 598 Broadway, New York City, N.Y.

Individual respondents Herman N. Ullman and Allen D. Ullman are officers of corporate respondent Olympic Sporting Goods Company, Inc., and their address is the same as that of said corporate respondent.

3. Respondent Cambridge Sporting Goods Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 625 Broadway, New York, N.Y.

Individual respondent, Joseph Greenberg, is an officer of corporate respondent Cambridge Sporting Goods Corp., and his address is the same as that of said corporate respondent.

4. 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 A. J. Hollander & Co., Inc., a corporation, its officers, and Martin Blumenthal, individually and as an officer of said corporation, and Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher, as officers of said corporation, Olympic Sporting Goods Company, Inc., a corporation, its officers, and Herman N. Ullman and Allen D. Ullman, individually and as officers of said corporation, and Cambridge Sporting Goods Corp., a corporation, its officers, and Joseph Greenberg, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of baseball gloves or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing baseball gloves upon which the names of prominent or well-known baseball players are printed, either accompanied or unaccompanied by the words "Model" or "User Approved," or any other words of the same import, when in fact, such baseball gloves have not been used, approved or endorsed by such persons.

2. Representing, in any manner, directly or by implication, that a person has used, approved, or endorsed a product, when such is not the fact.

3. Placing in the hands of others any means or instrumentality by or through which they may mislead the public as to any of the matters and things set out in paragraphs 1 and 2 above.

It is further ordered, That the complaint insofar as it relates to the respondents, Sidney Weingarten, Myron M. Schwarzschild and Frank J. Offenbacher, in their individual capacities, be, and the same hereby is, dismissed.

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.

Complaint

IN THE MATTER OF

PRESSING SUPPLY COMPANY ET AL.

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

Docket 8337. Complaint, Mar. 16, 1961—Decision, Jan. 3, 1962

Consent order requiring the New York City sales representative of two affiliated Philadelphia concerns—who themselves agreed to a similar order on July 25, 1961 (59 F.T.C. 146), to cease imprinting on the containers of their ironing board covers fictitiously high prices represented thereby as the usual retail prices.

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 Pressing Supply Company, a corporation, and Ironfast Products Company, a corporation, and Jerome Silk and Sidney Cozen, individually and as officers of said corporations, and Sanford A. Specht and Annette Specht, doing business as S. A. Specht Associates, 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 Pressing Supply Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its main office and principal place of business located at 1807 E. Huntington Street in Philadelphia, Pa.

Respondent Ironfast Products Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its main office and principal place of business located at 1807 E. Huntington Avenue, Philadelphia, Pa.

Individual respondents Jerome Silk and Sidney Cozen are officers of said corporations. They formulate, direct and control, the acts and practices of the said corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

PAR. 2. S. A. Specht Associates is a copartnership consisting of Sanford A. Specht and Annette Specht. S. A. Specht Associates is the sales representative of the corporate respondents. Its address is 1140 Broadway, New York, N.Y.

PAR. 3. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of ironing board covers and other merchandise to distributors, jobbers and retailers for resale to the purchasing public.

PAR. 4. 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 the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondents, before shipping said ironing board covers, imprint on the containers thereof various prices.

By means of the prices appearing on said containers, respondents represent that such are the usual and regular retail prices for said ironing board covers. Such representations are false, misleading and deceptive. In truth and in fact such amounts are fictitious and greatly in excess of the prices at which the ironing board covers are usually and regularly sold at retail.

PAR. 6. By the practice aforesaid respondents place in the hands of retailers a means and instrumentality whereby such retailers may mislead and deceive members of the purchasing public as to the usual and regular retail prices of their ironing board covers.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of ironing board covers of the same kind and general nature of those sold by respondents.

PAR. 8. The aforesaid acts and practices of respondents had, and now have, the tendency and capacity to mislead and deceive members of the purchasing public as to the usual and regular retail selling price of said ironing board covers and into the purchase of substantial quantities thereof because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been, and is being, unfairly diverted to the respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 9. The acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of their competitors and constitute unfair methods of competition and unfair acts

and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Frederick McManus for the Commission.

Mr. Murray S. Selby, of New York, N.Y., for respondents Sanford A. Specht and Annette Specht.

INITIAL DECISION AS TO RESPONDENTS SANFORD A. SPECHT AND ANNETTE SPECHT BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on March 16, 1961, charging respondents with violation of the Federal Trade Commission Act by imprinting on the containers of their ironing board covers false, misleading and deceptive representations of the regular retail prices for said ironing board covers.

Thereafter, on September 6, 1961, respondents Sanford A. Specht and Annette Specht, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Acting Chief, Division of General Advertising, and the Acting Director of the Commission's Bureau of Deceptive Practices, and thereafter, on September 7, 1961, submitted to the Hearing Examiner for consideration. As to all other respondents herein, this proceeding has been previously disposed of by an initial decision issued June 7, 1961.

The agreement identifies respondents Sanford A. Specht and Annette Specht as individuals and copartners doing business under the name of S. A. Specht Associates, with their principal place of business located at 1140 Broadway, New York, N.Y.

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 inital 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 constiute 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 respondents Sanford A. Specht and Annette Specht, individually and as copartners doing business under the name of S. A. Specht Associates, or under any other name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of ironing board covers or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, in any manner, that any amount is the usual and regular retail price of merchandise when such amount is in excess of the price at which such merchandise is usually and regularly sold at retail in the trade area or areas where the representation is made;

2. Putting any plant into operation whereby retailers or others may misrepresent the regular and usual retail prices of merchandise.

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 3d day of January 1962, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Sanford A. Specht and Annette Specht, doing business under the name of S. A. Specht Associates, 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.

Syllabus

IN THE MATTER OF

ERIE SAND AND GRAVEL COMPANY

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

Docket 6670. Complaint, Oct. 30, 1956—Order, Jan. 4, 1962

Order dismissing—following the Third Circuit's vacating of the Commission's order of divestiture (56 F.T.C. 437) and remand of the case for further consideration (291 F. 2d 279)—complaint charging illegal acquisition of competitor.

ORDER DISMISSING COMPLAINT

The Commission having placed this matter on its own docket for reconsideration in the light of the opinion of the United States Court of Appeals for the Third Circuit vacating the order of divestiture entered by the Commission October 26, 1959, and remanding the cause to the Commission for such purpose; and

It appearing in the light of additional information obtained by the Commission that respondent no longer retains any substantial part of the assets of the company it acquired which formed the basis for this proceeding; and

The Commission having determined that the case is now in essence moot and that, in the circumstances, it would not be in the public interest to take any further action in the matter:

It is ordered, That the complaint in this proceeding be, and it hereby is, dismissed.

IN THE MATTER OF

AUTOMOTIVE JOBBERS, INC., ET AL.

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

Docket 7590. Complaint, Sept. 21, 1959—Decision, Jan. 4, 1962

Order requiring a Texas association of jobbers of automotive products and supplies—which was simply a bookkeeping device and served as agent through which members were billed and made settlement for purchases—and its 19 members, to cease violating Sec. 2(f) of the Clayton Act by inducing and receiving from suppliers what they knew were "discriminatory and illegal prices, discounts, allowances and rebates" resulting from their combined bargaining power and not available to their competitors.

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

PARAGRAPH 1. Respondent Automotive Jobbers, Inc., hereinafter sometimes referred to as respondent AJI, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 2050 Irving Boulevard, Dallas, Tex.

Respondent AJI, although utilizing corporate form, is a membership organization, organized, maintained, managed, controlled, and operated by and for its members. The membership of respondent AJI is composed of corporations, partnerships, and individuals whose business consists of the jobbing of automotive products and supplies.

Respondent AJI, as constituted and operated, is known and referred to in the trade as a buying group.

PAR. 2. The following respondent corporations and individuals, sometimes hereinafter referred to as respondent jobbers, constitute respondent AJI:

Respondent Mrs. Neva Baker is a sole proprietor doing business under the firm name and style of Baker Auto Supply, with her office and principal place of business located at Hillsboro, Tex.

Respondent E. L. Bauer is a sole proprietor doing business under the firm name and style of Bauer Auto Supply, with his office and principal place of business located at 3000 West Lancaster Street, Fort Worth, Tex.

Respondent Blue Ribbon Auto Supply, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its principal office and place of business located at 1457 N.E. 23rd Street, Oklahoma City, Okla.

Respondent H. B. Braden, Jr., is a sole proprietor doing business under the firm name and style of Braden's Automotive, with his office and principal place of business located at 209 East Main Street, Waxahachie, Tex.

Respondents J. W. Mitchell and W. L. Brown are copartners doing business under the firm name and style of Brown Auto Supply, a

partnership with their office and principal place of business located at 114 Avenue D, N.W., Childress, Tex.

Respondent John M. Carter is a sole proprietor doing business under the firm name and style of Carter Auto Supply, with his office and principal place of business located at 2050 Irving Boulevard, Dallas, Tex.

Respondent James Lacey is a sole proprietor doing business under the firm name and style of Central Grinding and Auto Supply with his office and principal place of business located at 3710 Commerce Street, Dallas, Tex.

Respondent Thomas Clark is a sole proprietor doing business under the firm name and style of Clark Auto Parts Supply with his principal place of business located at Coleman, Tex.

Respondent Ralph Clark is a sole proprietor doing business under the firm name and style of Ralph Clark Company with his principal place of business located at 218 East Main Street, Grand Prairie, Tex.

Respondents C. E. Holder and M. W. Edgmon are copartners doing business under the firm name and style of Edgmon-Holder Motor Supply, a partnership with their office and principal place of business located at 1012 Scott Street, Wichita Falls, Tex.

Respondent Eugene Straach is a sole proprietor doing business under the firm name and style of Grove Auto Supply with his office and principal place of business located at 7930 Lake June Road, Dallas, Tex.

Respondent Rex Grove Auto Supply Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 4527 East Belknap Street, Fort Worth, Tex.

Respondents M. R. Walker, B. C. McKinley and J. O. Thompson are copartners doing business under the firm name and style of Jobbers Warehouse Service, a partnership, with their office and principal place of business located at 217 North Walnut Street, Sherman, Tex.

Respondent Sam Murphy is a sole proprietor doing business under the firm name and style of Murphy Automotive Supply with his office and principal place of business located at 626 West Garland Avenue, Garland, Tex.

Respondent L. E. Shafer is a sole proprietor doing business under the firm name and style of Senior Auto Parts with his office and principal place of business located at 208 East Second Street, Odessa, Tex.

Respondents Phil Crawford, O. J. Chase and R. R. Crawford are copartners doing business under the firm name and style of Texas

Automotive Supply, a partnership, with their office and principal place of business located at 3004 West Davis Street, Dallas, Tex.

Respondent Vernon Pennington is a sole proprietor doing business under the firm name and style of Vernon Parts Company with his office and principal place of business located at 1701 Marshall Street, Vernon, Tex.

Respondent James E. Walker is a sole proprietor doing business under the firm name and style of Walker Auto Parts with his office and principal place of business located at 409 East Third Street, Big Spring, Tex.

Respondents Ethel Waugh and Guy V. Cope are copartners doing business under the firm name and style of A. G. Waugh Company, a partnership, with their office and principal place of business located at 1392 Lubbock Highway, Lamesa, Tex.

Respondent Madie E. Wood is a sole proprietor doing business under the firm name and style of Wood Tire & Supply Company with his office and principal place of business located at Huntsville, Tex.

PAR. 3. The respondent jobbers set forth in paragraph 2 have purchased and now purchase in commerce from suppliers engaged in commerce numerous automotive products and supplies for use, consumption, or resale within the United States. Respondent jobbers and said suppliers cause the products and supplies so purchased to be shipped and transported among and between the several states of the United States from the respective state or states of location of said suppliers to the respective different state or states of location of the said respondent jobbers.

PAR. 4. In the purchase and the resale of said automotive products and supplies, respondent jobbers are in active competition with independent jobbers not affiliated with respondent AJI; and the suppliers selling to respondent jobbers and to their independent jobber competitors are in active competition with other suppliers of similar automotive products and supplies.

PAR. 5. Respondent AJI, since its formation in 1954, has been and is now maintained, managed, controlled, and operated by and for the respondent jobbers set forth in Paragraph Two and each said respondent, has participated in, approved, furthered, and cooperated with the other respondents in the carrying out of the procedures and activities hereinafter described.

In practice and effect, respondent AJI has been and is now serving as the medium or instrumentality by, through, or in conjunction with, which said respondent jobbers exert the influence of their combined bargaining power on the competitive suppliers hereinbefore described.

As a part of their operating procedure, said respondent jobbers direct the attention of said suppliers to their aggregate purchasing power as a buying group and, by reason of such, have knowingly demanded and received, upon their individual purchases discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale. Suppliers not acceding to such demands are usually replaced as sources of supply for the commodities concerned and such market is closed to them in favor of such suppliers as can be and are induced to afford the discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale so demanded.

Respondents jobbers demand that those suppliers who sell their products pursuant to a quantity discount schedule shall consider their several purchases in the aggregate as if made by one purchaser and grant quantity discounts, allowances, or rebates on the resultant combined purchase volume in accordance with said suppliers' schedule. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers whose quantity discounts, allowances, or rebates from such suppliers are based upon only their individual purchase volumes. From other suppliers the respondent jobbers demand the payment or allowance of trade discounts, allowances, or rebates which such suppliers do not ordinarily pay or allow to jobber customers. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers who are not afforded such trade discounts, allowances, or rebates.

When and if a demand is acceded to by a particular supplier, the subsequent purchase transactions between said supplier and the individual jobber respondents have been and are billed to, and paid for through, the aforesaid organizational device of respondent AJI. Said corporate organization thus purports to be the purchaser when in truth and in fact it has been and is now serving only as agent for the several respondent jobbers and as a mere bookkeeping device for facilitating the inducement and receipt by the afore-described respondent jobbers of the price discriminations concerned.

PAR. 6. Respondents have induced or received from their suppliers, in the manner afore-described, favorable prices, discounts, allowances, rebates, terms and conditions of sale which they knew or should have known constituted discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 7. The effect of the knowing inducement or receipt by respondents of the discriminations in price as above alleged has been and

may be substantially to lessen, injure, destroy, or prevent competition between suppliers of automotive products and supplies and between respondent jobbers and independent jobbers.

PAR. 8. The foregoing alleged acts and practices of respondents in knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, are in violation of subsection (f) of Section 2 of said Act.

Mr. Eldon P. Schrup and *Mr. John Perry* supporting the complaint.

Clark, Reed & Clark, of Dallas, Tex., by *Mr. Ramsey Clark* and *Mr. William L. Keller* for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the respondents herein, charging them with knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, in violation of subsection (f) of Section 2 of said Act.

This proceeding is before the hearing examiner for final consideration upon the complaint, answer, testimony and other evidence, and proposed findings of fact and conclusions filed by counsel supporting the complaint. Consideration has been given to the proposed findings of fact and conclusions submitted by counsel supporting the complaint, and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are rejected, and the hearing examiner, having considered the entire record herein, makes the following findings as to the facts, conclusions drawn therefrom and order:

FINDINGS AS TO THE FACTS

1. Respondent Automotive Jobbers, Inc. (hereinafter sometimes referred to as respondent AJI), is a Texas corporation with its principal office and place of business located at 2050 Irving Boulevard, Dallas, Tex.

2. Respondent AJI, although using corporate form, is a membership organization, organized, maintained, managed, controlled, and operated by and for its members. The membership of respondent AJI is composed of corporations, partnerships, firms and individuals whose business consists of the jobbing of automotive products and supplies. As constituted, respondent AJI is known and referred to in the trade as a buying group.

3. At the time of issuance of the complaint in this proceeding, or for a substantial period of time since its organization, the members of respondent AJI were as follows:

Respondent Mrs. Neva Baker, a sole proprietor doing business under the firm name and style of Baker Auto Supply, with her office and principal place of business located at Hillsboro, Tex.

Respondent E. L. Bauer, a sole proprietor doing business under the firm name and style of Bauer Auto Supply, with his office and principal place of business located at 3000 West Lancaster Street, Forth Worth, Tex.

Respondent Blue Ribbon Auto Supply, Inc., an Oklahoma corporation with its principal office and place of business located at 1457 N.E. 23rd Street, Oklahoma City, Okla.

Respondent H. B. Braden, Jr., a sole proprietor doing business under the firm name and style of Braden's Automotive, with his office and principal place of business located at 209 East Main Street, Waxahachie, Tex.

Respondents J. W. Mitchell and W. L. Brown, copartners doing business under the firm name and style of Brown Auto Supply, a partnership, with their office and principal place of business located at 114 Avenue D, N.W., Childress, Tex.

Respondent John M. Carter, a sole proprietor doing business under the firm name and style of Carter Auto Supply, with his office and principal place of business located at 2050 Irving Boulevard, Dallas, Tex.

Respondent Thomas Clark, a sole proprietor doing business under the firm name and style of Clark Auto Parts Supply with his office and principal place of business located at Coleman, Tex.

Respondent Ralph Clark, a sole proprietor doing business under the firm name and style of Ralph Clark Company with his office and principal place of business located at 218 East Main Street, Grand Prairie, Tex.

Respondents C. E. Holder and M. W. Edgmon, copartners doing business under the firm name and style of Edgmon-Holder Motor Supply, a partnership, with their office and principal place of business located at 1012 Scott Street, Wichita Falls, Tex.

Respondent Eugene Straach, a sole proprietor doing business under the firm name and style of Grove Auto Supply with his office and principal place of business located at 7930 Lake June Road, Dallas, Tex.

Respondent Rex Grove Auto Supply Company, Inc., a Texas corporation with its principal office and place of business located at 4527 East Belknap Street, Fort Worth, Tex.

Respondents M. R. Walker, B. C. McKinley and J. O. Thompson, copartners doing business under the firm name and style of Jobbers Warehouse Service, a partnership, with their office and principal place of business located at 217 North Walnut Street, Sherman, Tex.

Respondent Sam Murphy, a sole proprietor doing business under the firm name and style of Murphy Automotive Supply with his office and principal place of business located at 626 West Garland Avenue, Garland, Tex.

Respondent L. E. Shafer, a sole proprietor doing business under the firm name and style of Senior Auto Parts with his office and principal place of business located at 208 East Second Street, Odessa, Tex.

Respondents Phil Crawford, O. J. Chase and R. R. Crawford, copartners doing business under the firm name and style of Texas Automotive Supply, a partnership, with their office and principal place of business located at 3004 West Davis Street, Dallas, Tex.

Respondent Vernon Pennington, a sole proprietor doing business under the firm name and style of Vernon Parts Company with his office and principal place of business located at 1701 Marshall Street, Vernon, Tex.

Respondent James E. Walker, a sole proprietor doing business under the firm name and style of Walker Auto Parts with his office and principal place of business located at 409 East Third Street, Big Spring, Tex.

Respondents Ethel Waugh and Guy V. Cope, copartners doing business under the firm name and style of A. G. Waugh Company, a partnership, with office and principal place of business located at 1392 Lubbock Highway, Lamesa, Tex.

Respondent Madie E. Wood, a sole proprietor doing business under the firm name and style of Wood Tire & Supply Company with his office and principal place of business located at Huntsville, Tex.

The respondent, James Lacey, was the sole proprietor doing business under the firm name and style of Central Grinding and Auto Supply with his office and principal place of business located at 3710 Commerce Street, Dallas, Tex. Shortly prior to the issuance of the complaint herein, this respondent was deceased, and the order which follows dismisses the complaint as to this respondent.

4. Respondent AJI, since its formation in 1954, has been and is now maintained, managed, controlled and operated by and for the respondent jobber members above-named, and each said respondent actively

participated in, approved, furthered and cooperated with the other respondents in carrying out the acts and practices hereinafter found which were knowingly designed and intended to induce the granting of discriminatory and illegal prices, discounts, allowances, rebates, terms and conditions of sale to the respondent jobber members. Such participation included serving as officers and directors of respondent AJI, and as members of various committees of said group organization.

The By-Laws of respondent AJI state:

> The purpose of this association shall be to purchase from manufacturers goods, wares and merchandise for such of its members who desire the same, in order to receive quantity discounts or prices.

The corporate charter of respondent AJI states that it was formed "for the purpose of purchasing from manufacturers, automotive goods, wares, and merchandise for such of its members who desire the same in order to receive quantity discounts, or prices."

5. The respondent jobber members of respondent AJI have purchased and now purchase in interstate commerce from suppliers engaged in interstate commerce numerous automotive products and supplies for use, consumption or resale within their trade areas. Respondent jobbers and said suppliers cause the automotive products and supplies so purchased to be shipped and transported among and between the several states of the United States from the respective state or states of location of said suppliers to the respective different states of location of the respondent jobbers.

The respondent jobber members of respondent AJI, in the purchase and resale of said automotive products and supplies, are and have been in active and substantial competition with other corporations, partnerships, firms and individuals who are also engaged in the purchase and resale of such automotive products and supplies of like grade and quality, in interstate commerce, which automotive products and supplies have been purchased from the same and competitive sellers. The suppliers selling to respondent jobbers and their competitors are also in active and substantial competition with other suppliers of like or similar automotive products and supplies in interstate commerce.

6. Respondent jobbers organized, and have maintained, controlled and operated, respondent AJI for the purpose of inducing the granting or allowance of lower and more favorable prices by manufacturers and sellers of automotive products and supplies. It is a membership corporation serving only jobber members. Participation of respondent jobber members in the net income of respondent AJI is based on a percentage of their individual purchases through the group organi-

zation. This is in line with the Amended Articles of Incorporation of respondent AJI which states as one of its purposes:

> To return to members the whole or any part of the net earnings or surplus resulting from its trading operations in proportion to their purchases from the corporation.

The same Amended Articles of Incorporation state that the products purchased by respondent AJI are only for "resale and distribution to its members."

7. It was the regular procedure for the respondent jobbers, acting through respondent AJI, to either notify or allow competing manufacturers of various lines of automotive products and supplies to submit prices and appear before the members of the group, or a committee named for that purpose, who would consider the offers and vote to accept one or more of the lines to the exclusion of the lines of the seller's competitors. A majority vote of the jobber members of respondent AJI was necessary before a seller's line was approved and adopted as a group line. Although it was not a rigid requirement that the jobber members handle all the group lines, in actual practice, the members of the group purchased and sold most of the particular manufacturers' lines accepted and handled by the group.

The warehouse manager for respondent AJI described the procedure followed by the members in changing over to the group lines. He described how he spent a few days helping a group member change over all the lines in an outlet which that member had recently purchased.

8. When and if a demand is acceded to by a particular supplier, the subsequent purchase transactions between the supplier and the individual jobber respondents have been, and are, billed to and paid for through the organizational device of respondent AJI. Said corporate organization thus purports to be the purchaser, when in truth and in fact it has been, and is now, serving only as agent for the several respondent jobbers and as a bookkeeping device for facilitating the inducement and receipt by the respondent jobbers of the price discriminations concerned.

The respondent jobbers order their group lines from their suppliers by using a standard form of order blank. The suppliers grant the respondents discounts and rebates on their purchases in various ways. Some deduct the discount and bill respondent AJI at "net price." Some give the discounts on the face of the invoice. Some allow rebates at various intervals of time. Respondent AJI in turn bills its members or remits rebates in the same manner as the suppliers bill respondent AJI or remit rebates to respondent AJI. This procedure is used when

the suppliers "drop ship" products to the jobber members of respondent AJI as well as when the members buy from or through the group warehouse.

9. When a seller's line was accepted by respondent AJI, notice was sent to all jobber members giving full information as to the contract terms agreed upon. These notices were in the form of "Approval Sheets" which were supplied to the jobber members. Also, respondent AJI distributed catalogs, price sheets, etc., to its jobber members, which items were sent to respondent AJI by its suppliers. On lines not handled by respondent AJI, the jobber members deal directly with the suppliers.

10. There are approximately 140 suppliers selling the group lines to respondents. The purchases of the group from group suppliers throughout the years have been substantial, ranging from $555,956.00 in 1955 to $1,019,268.00 in 1959. The rebates and discounts received from the various suppliers by respondents are also substantial. In 1957 the total rebates and discounts were $162,147.30 compared to $914,146.52 of purchases.

11. Not all the lines handled by the group were stocked in the group warehouse. A warehouse line refers to those lines which were actually carried in the AJI warehouse. When a jobber member wished to purchase products from a warehouse line, an order was sent to respondent AJI, who either procured the merchandise from the supplier or filled the order from its own warehouse stock. When a delivery had been made, respondent AJI billed the jobber member receiving the merchandise. Sometimes a jobber member would receive a so-called "slot" shipment. This meant that when a supplier shipped merchandise to the AJI warehouse, it would be immediately shipped to the jobber member in the same package. Many suppliers also "drop ship" directly to the jobber members. Between 35 percent and 50 percent of the members' purchases through respondent AJI are "drop shipped" to the members. Each jobber member settled monthly with respondent AJI for his own individual purchases. The group office in turn made monthly settlements with the suppliers for the aggregate purchases of all jobber members, and annually or periodically distributed to the jobber members all discounts and rebates received, less operating expenses, in proportion to the amount of each member's individual purchases. The jobber members of respondent AJI are charged a warehouse fee of 5 percent on purchases made from the group warehouse, and 2 percent on "slot" shipments. These fees are to help offset the cost of operating the warehouse.

12. Following is an analysis of the individual purchases of each jobber member of products purchased from or through the group warehouse for the year 1959, taken from the 1959 Annual Report of respondent AJI:

AUTOMOTIVE JOBBERS, INC.

MEMBER PURCHASES ANALYSIS

YEAR 1959

	Direct and Slot	*From Warehouse*	*Total Purchases*	*Percent from Whse.*
Jobbers Warehouse Service	$72,847.14	$20,483.24	$93,330.38	21.95
Senior Auto Parts	69,679.39	22,545.84	92,225.23	24.45
Tillman Auto Parts	60,568.50	29,506.91	90,075.41	32.76
Wood Tire & Supply	51,987.13	25,067.16	77,045.29	32.54
McDonald Automotive	53,850.15	21,548.83	75,398.98	28.58
Rex Grove Auto Supply	30,591.49	27,478.33	58,069.82	47.32
Brown Auto Supply	34,431.26	21,095.17	55,526.43	37.99
McKissack Auto Supply Co.	39,014.22	15,838.86	54,853.08	28.88
Carter Auto Supply	15,395.31	33,051.61	48,446.92	68.22
City Motor Supply	30,510.51	10,192.05	40,702.56	25.04
Hutson Automotive	22,735.22	17,422.53	40,157.75	23.05
Texas Automotive	20,577.13	15,171.91	35,749.04	42.44
The Murphy Co	19,337.72	14,768.11	34,105.83	43.30
A. G. Waugh Co	20,794.68	13,148.67	33,943.35	38.74
The Bauer Co	18,410.14	12,543.09	30,953.23	40.52
Economy Auto Supply	19,298.60	10,700.98	29,999.58	35.67
Ralph Clark Co	14,224.39	10,342.81	24,567.20	42.10
Clark Auto Parts Supply	13,547.98	10,938.35	24,486.33	44.67
Suit's Auto Supply	15,741.70	4,433.89	20,175.59	21.98
Grove Auto Supply	8,082.46	6,301.84	14,384.30	43.81
Central Grinding Auto Supply	9,585.02	4,236.19	13,821.21	30.65
H. Brown Supply House	7,649.72	4,441.93	12,091.65	36.74
Capitol Auto Supply	6,013.69	5,042.47	11,056.16	45.61
Baker Auto Supply	4,007.36	4,095.39	8,102.75	50.54
	658,871.91	360,396.16	1,019,268.07	35.43

13. Respondent jobbers demand that those suppliers who sell their products pursuant to a quantity discount schedule shall consider their several purchases in the aggregate as if made by one purchaser and grant quantity discounts, allowances, or rebates on the resultant combined purchase volume in accordance with said suppliers' schedule. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers whose quantity discounts, allowances, or rebates from such suppliers are based upon only their individual purchase volumes.

From other suppliers the respondent jobbers demand the payment or allowance of trade discounts, allowances, or rebates which such suppliers do not ordinarily pay or allow to jobber customers. They demand to be classified as a warehouse distributor. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing jobbers who are not afforded such trade discounts, allowances, or rebates.

14. The volume rebate granted by certain suppliers to respondent jobber members was a retroactive volume rebate based upon the aggregate purchases of all the jobber members. Typical of such practices is the agreement with Standard Motor Products, Inc., which generally maintains a sliding scale of volume rebates on net amount purchased per year as follows:

	Percent
Under $1,800	3
$2,800	5
$4,200	10
$7,200	12
$9,000	13
$12,000	15
$25,000	16
$50,000	17
$75,000	18
$100,000	20

In the case of Automotive Jobbers, Inc., these rebates were not based on the purchases of the individual respondent jobber member, but instead were based upon the total purchases of all the members of the group organization.

15. When respondent AJI made payment to Standard Motor Products, Inc., for purchases made during the month by the respondent jobber members, it was permitted to deduct the maximum rebate of 20 percent on paying the invoices. While the aggregate purchases of the jobber members reached the maximum volume of $100,000 required for the 20 percent discount, no individual jobber member purchased near this amount. In fact, in 1959 the purchases of only two jobber members reached the 15 percent bracket, and four members earned no discount whatever, and yet all members received the maximum 20 percent volume rebate. In the same trading area there were competitors of respondent jobbers purchasing merchandise of like grade and quality from Standard Motor Products, Inc., who received no discount, or a lower discount, based upon the actual amount of their purchases as provided by Standard's volume rebate discount schedule.

16. The warehouse distributor's discount was a discount paid to distributors on automotive products resold to other jobbers. A warehouse distributor usually maintained at least a minimum stock of the suppliers' automotive products in his warehouse. Sales made to other jobbers were generally made at jobber's list price and the distributor relied upon the warehouse distributor discount for his compensation. In granting this discount to the respondent jobbers, the supplier treated the respondent AJI as a purchaser and reseller to respondent jobber members, and granted the discount or rebate on all products purchased by the respondent jobber members through the respondent AJI. This warehouse distributor's rebate on the aggregate purchases of the respondent jobbers was paid over to respondent AJI who, in turn, distributed the net after deduction of operating expenses to the jobber members in proportion to their individual purchases. In the same trading area there were competitors of respondent jobbers, purchasing products of like grade and quality from the same, and other, suppliers, and who received no discount as warehouse distributors.

17. In practice and effect, respondent AJI has been, and is now, serving as the medium or instrumentality by, through, or in conjunction with, which said respondent jobbers exert the influence of their combined bargaining power on the competitive suppliers hereinbefore described. As a part of their operating procedure, respondent jobbers direct the attention of suppliers to their aggregate purchasing power as a buying group and, by reason of such, have knowingly demanded and received, upon their individual purchases, discriminatory prices, discounts, allowances and rebates. Suppliers not acceding to such demands are usually replaced as sources of supply for the commodities concerned and such market is closed to them in favor of such suppliers as can be, and are, induced to afford the discriminatory prices, discounts, allowances and rebates so demanded.

18. The respondent jobbers knew they were receiving discriminatory and illegal prices, discounts, allowances and rebates from their suppliers. They know that the rebates allowed them were based not on the quantities or other factors involved in a particular sale, and not upon quantities sold by them to other jobbers, but rather upon the combined dollar amount of all sales to the respondent jobber members through the group organization and bear relationship to factors other than the actual costs of sale and delivery. They were successful operators in a highly competitive market and knew that no cost justification could be maintained by the sellers, since in many instances no difference in the cost of sale or delivery was involved.

Furthermore, the respondent jobber members were placed upon notice as to the illegality of price discriminations received through the medium of group-buying organizations similar to Automotive Jobbers, Inc., through knowledge of Federal Trade Commission orders involving other buying groups and various suppliers of those groups who were also suppliers of respondent AJI and its members. Those cases were discussed by the respondent jobbers at various times. The minutes of the meetings of the members are replete with such discussions. Aside from imputed knowledge, there is substantial evidence of actual knowledge shown in the record.

19. The automotive parts industry is a highly competitive business, involving small margins of profit. The net margin of profit of a number of respondent jobber witnesses, as well as non-member jobber witnesses, who testified, was from one (1) percent to four (4) percent after taxes. The importance of the discriminatory prices allowed by the various suppliers is pointed up by the importance given by respondent jobbers, and non-member jobbers, to the 2 percent cash discount allowed by their suppliers as increasing their margin of profit and reducing the cost of acquisition of their merchandise. Through the lower cost of merchandise, resulting from such discriminatory prices, the respondent jobbers obtained a substantial competitive advantage over their competitors who sell the same and comparable merchandise in the same trade areas and who received discounts or rebates based only upon their own individual purchases.

CONCLUSIONS

1. Respondents have induced and received from their suppliers, as herein found, discriminatory prices, discounts, allowances, rebates and terms and conditions of sale which they know, or should have known, constituted price discriminations prohibited by Section 2(a) of the Clayton Act, as amended.

2. The acts and practices of the respondent jobbers in knowingly inducing and receiving discriminations in price through the use of the group-buying organization, Automotive Jobbers, Inc., prohibited by Section 2(a) of the amended Clayton Act, as herein found, are in violation of Section 2(f) of the amended Clayton Act.

ORDER

It is ordered, That respondent Automotive Jobbers, Inc., a corporation; Mrs. Neva Baker, doing business under the firm name and style of Baker Auto Supply, a sole proprietorship; E. L. Bauer, doing

business under the firm name and style of Bauer Auto Supply, a sole proprietorship; Blue Ribbon Auto Supply, Inc., a corporation; H. B. Braden, Jr., doing business under the firm name and style of Braden's Automotive, a sole proprietorship; J. W. Mitchell and W. L. Brown, copartners doing business under the firm name and style of Brown Auto Supply; John M. Carter, doing business under the firm name and style of Carter Auto Supply, a sole proprietorship; Thomas Clark, doing business under the firm name and style of Clark Auto Parts Supply, a sole proprietorship; Ralph Clark doing business under the firm name and style of Ralph Clark Company, a sole proprietorship; C. E. Holder and M. W. Edgmon, copartners doing business under the firm name and style of Edgmon-Holder Motor Supply; Eugene Straach, doing business under the firm name and style of Grove Auto Supply, a sole proprietorship; Rex Grove Auto Supply Company, Inc., a corporation; M. R. Walker, B. C. McKinley and J. O. Thompson, copartners doing business under the firm name and style of Jobbers Warehouse Service; Sam Murphy, doing business under the firm name and style of Murphy Automotive Supply, a sole proprietorship; L. E. Shafer, doing business under the firm name and style of Senior Auto Parts, a sole proprietorship; Phil Crawford, O. J. Chase and R. R. Crawford, copartners doing business under the firm name and style of Texas Automotive Supply; Vernon Pennington, doing business under the firm name and style of Vernon Parts Company, a sole proprietorship; James E. Walker, doing business under the firm name and style of Walker Auto Parts, a sole proprietorship; Ethel Waugh and Guy V. Cope, copartners doing business under the firm name and style of A. G. Waugh Company; and Madie E. Wood, doing business under the firm name and style of Wood Tire & Supply Company, a sole proprietorship; and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering to purchase or purchase of any automotive products or supplies in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Knowingly inducing or knowingly receiving or accepting any discrimination in the price of such products and supplies, by directly or indirectly inducing, receiving, or accepting from any seller a net price known by respondents to be below the net price at which said products and supplies of like grade and quality are being sold by such seller to other customers, where the seller is competing with any other seller for respondents' business, or where respondents are competing with other customers of the seller.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are effected.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to James Lacey, now deceased.

FINAL ORDER

By its order of November 28, 1961, the Commission extended until further order the date on which the initial decision of the hearing examiner herein would become the decision of the Commission; and

The Commission now having concluded that said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed October 13, 1961, be, and it hereby is, adopted as the decision of the Commission.

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

In the Matter of

PATI-PORT, INC., ET AL.

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

Docket 7665. Complaint, Nov. 24, 1959—Decision, Jan. 4, 1962

Order requiring Baltimore installers of patios and carports to cease using bait advertisements to get leads to prospects whom they then urged and frequently persuaded to buy much higher priced items; and representing falsely that the usual price of their carport or patio was $249 but they were offering it at a special low price of $77, that the merchandise was guaranteed, and that it was "all aluminum".

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 Pati-Port, Inc., a corporation, and Al B. Wolf, 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 Pati-Port, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 3110 Fleet Street, in the city of Baltimore, State of Maryland.

Respondent Al B. Wolf 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 4 Carlton Street, Floral Park, N.Y.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of, among other things, carports or patios to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Maryland 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 products, respondents have made certain statements and representations with respect thereto in newspapers of general circulation and through other advertising medias. By and through the use of such statements and representations, and through oral statements made by their salesmen, respondents have represented, directly or by implication:

(1) That they are making a bona fide offer to sell carports or patios for the full price of $77.00;

(2) That respondents' usual and regular retail selling price of the carport or patio advertised is $249.00 but is offered for sale at a special low price of $77.00;

(3) That persons who allowed the carport or patio installed by respondents to be used for model home demonstration purposes in selling to others, would receive a reduction in price;

(4) That said carport or patio is unconditionally guaranteed;

(5) That the carport or patio referred to in subparagraph (1) above was "all aluminum";

(6) Through the use of pictures in advertisements, the carport or patio referred to in subparagraph (1) includes a supporting foundation wall and a completed floor.

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

(1) The offer to sell carports or patios for the full price of $77.00 was not a genuine or bona fide offer but was made for the purpose of obtaining leads and information as to persons interested in the purchase of said merchandise. After obtaining such leads through response of such advertisements and calling upon such persons, respondents and their salesmen made no effort to sell the carport or patio at the advertised price, but instead, disparaged such merchandise in such a manner as to discourage its purchase and attempted to, and frequently did, sell much higher priced carports or patios.

(2) The carport or patio advertised for sale at $77.00 is not a special sale price reduced from the usual and regular retail price of $249.00. In fact, said merchandise offered is advertised regularly at the price of $77.00. This practice is used in conjunction with the charge set forth in subparagraph (1) above.

(3) Respondents did not intend to use, nor did they use, the home of any of their purchasers for demonstration purposes, this statement being used only as a means to induce resistant purchasers into the buying of said merchandise under the mistaken impression that they were receiving some sort of a special price because of their willingness to allow their homes to be used for this purpose.

(4) Respondents' guarantee is not unconditional. It is limited in certain respects and this limitation is not disclosed to the purchaser.

(5) The carport and patio referred to in subparagraph (5) of paragraph 4 above is not all-aluminum but instead has wooden supporting rafters and wooden supporting posts.

(6) The carport or patio depicted in the advertisement and offered for sale at $77.00 does not include a supporting foundation wall or a floor.

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

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such state-

ments 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 competiton in commerce.

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

Mr. Michael J. Vitale supporting the complaint.
Mr. Walter G. Horowitz for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On November 24, 1959, the Federal Trade Commission issued a complaint charging the respondents named in the caption hereof with false and deceptive advertising in violation of the Federal Trade Commission Act. Hearings have been completed and proposed findings of fact, conclusions and order filed by counsel supporting the complaint. Proposed findings of fact, conclusions and order have not been filed by or on behalf of respondents. All findings of fact proposed by counsel supporting the complaint have been adopted with the exception of those proposed in subparagraph (6) of Proposed Findings Four and Five. These proposed findings are not established by a preponderance of the evidence.

Upon the basis of the entire record, the undersigned Hearing Examiner makes the following findings of fact and conclusions of law and issues the following order:

1. The respondent Pati-Port, Inc., is a corporation organized and doing business under the laws of the State of Maryland with its office and principal place of business located at 3110 Fleet Street, Baltimore, Md. The individual respondent Abraham B. Wolf, also known as Al B. Wolf, is president of the respondent corporation and formulates, directs and controls the acts and practices of said corporation, including those hereinafter found. His business address is 4 Carlton Street, Floral Park, N.Y. His residence is 80 Carol Lane, New Rochelle, N.Y.

2. The respondents are now and for sometime last past have been engaged in the advertising, offering for sale, sale and distribution of, among other things, carports and patios to the public.

3. In the course and conduct of their business, respondents cause and have caused their said products when sold to be shipped from their place of business in the State of Maryland to purchasers thereof located in various 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 carports and patios in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their business, and for the purpose of inducing the sale of their products, respondents have made certain statements and representations with respect thereto in newspapers of general circulation and through other advertising media, including oral statements by their salesmen. By and through their use of such statements and representations, respondents have represented, directly or by implication:

(1) That they are making a bona fide offer to sell carports or patios for the price of $77 for any size up to eight feet by 20 feet, and with no additional charge for installation;

(2) That respondents' usual and regular retail sale price of the carports or patios advertised is $249 but are offered for sale at a special price of $77;

(3) That persons who would allow the carports or patios installed by respondents to be used for demonstration purposes in selling to others, would receive a reduction in price;

(4) That said carports or patios were unconditionally guaranteed.

(5) That the carports or patios referred to in subparagraph (1) above were "all aluminum."

5. Whereas, in truth and in fact:

(1) The offer to sell carports or patios for the full price of $77 was not a genuine and bona fide offer but was made for the purpose of obtaining leads and information with respect to persons interested in the purchase of carports or patios. After obtaining such leads through response to such advertisements and calling upon such persons, respondents and their salesmen made no effort to sell the carport or patio at the advertised price of $77, but instead, disparaged such merchandise in such a manner as to discourage its purchase and attempted to, and frequently did, sell carports or patios at substantially higher prices than the advertised price of $77. Although the evidence discloses numerous sales of carports or patios at prices substantially in excess of the advertised price of $77, only one sale at the advertised price of $77 is disclosed by the record and this sale was canceled before its consummation. Furthermore, the evidence does not show a sale at the advertised so-called "regular" price of $249 but does show

sales at prices above and below said so-called "regular" price of $249. The evidence of record of actual sales of carports and patios by respondents do not establish a regular or standard price but sales were made at various prices in excess of $130.

(2) The price of $77 advertised for said carports or patios is not a special sale price reduced from the usual and regular retail price of $249 but was frequently advertised for sale at the price of $77.

(3) Respondents did not use nor did they intend to use the home of any of their customer purchasers for demonstration purposes, but used this statement and representation as a means to induce prospective customers to purchase respondents' merchandise under the mistaken belief that they were receiving some sort of special price by reason of their agreement to permit their homes to be used for demonstration of respondents' merchandise.

(4) Respondents' guarantee is not unconditional but is limited in certain respects. Such limitation is not disclosed to the purchaser.

(5) The carports and patios referred to in subparagraph 5 of paragraph 4 above were not "all aluminum," but have wooden supporting rafters and wooden supporting posts at the corners and sides.

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

7. The use by respondents of the false, misleading and deceptive statements, representations and practices herein found has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true and into the buying 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 been and is being done to competition in commerce.

8. The individual respondent Abraham B. Wolf, sometimes known as Al B. Wolf, denies that he controlled the activities of the respondent corporation or participated in the unlawful acts and practices found herein and alleged in the complaint, and says that said acts and practices were committed under the direction of one Bernard Weissman, an officer of respondent Pati-Port, Inc., and one Charles Berman, who succeeded Mr. Weissman as director of sales for respondent corporation. The individual respondent Wolf was the first secretary

of the respondent corporation and remained as secretary until he became president in November, 1958. The violations alleged in the complaint cover the period of time subsequent to the time when Bernard Weissman left the employ of the respondent corporation and after the respondent Abraham B. Wolf became president in 1958. Approximately one or two weeks before Mr. Weissman severed his connection with the respondent corporation in 1958, the individual respondent Wolf employed Mr. Charles Berman to replace Mr. Weissman, and Mr. Weissman trained Mr. Berman in the method of operations of the respondent corporation, including advertising and sales promotion. Mr. Berman was made vice-president of the respondent corporation. When Mr. Weissman left the respondent corporation, Mr. Wolf succeeded him as president and Mr. Wolf authorized Mr. Berman to handle advertising and sales of respondent corporation. Mr. Wolf is an accountant by profession. Some of the other original stockholders of the respondent corporation were: Louis Wolf, cousin of the individual respondent Abraham B. Wolf; Corinne Wolf, a cousin; Milton Wolf, brother; Sarah Wolf, wife of the individual respondent Abraham B. Wolf; Bernard Weissman, formerly president, and Myron C. Gelrod, who is under a Commission cease and desist order in *Universal Educational Guild, Inc., et al*, Docket No. 5938, (1954), 51 FTC 452. Mr. Wolf countersigned most of the checks issued by the corporate respondent and periodically visited the corporate office in Baltimore for the purpose of examining its books and records. Mr. Wolf testified that the respondent corporation was dissolved in May or June, 1959, but advertisements for the sale of carports and patios appeared in newspapers, including the Washington Post, as late as July 19, 1959 and checks were written and issued against corporate funds as late as December 1959. The complaint herein was issued under date of November 24, 1959. These facts and circumstances demonstrate that the individual respondent Abraham B. Wolf was responsible for the activities and operations of the corporation and its employees after he became president on or about the month of November, 1958. The cease and desist order to be issued herein should include the respondent Al B. Wolf as an officer of said corporation as well as in his individual capacity.

CONCLUSIONS

The acts and practices of respondents as herein found, were, and are, 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.

ORDER

It is ordered, That respondent, Pati-Port, Inc., a corporation, and its officers, and respondent Abraham B. Wolf, also known as Al B. Wolf, 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 carports, patios 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 any merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered;

2. That any amount is respondents' usual and regular retail price of merchandise, when such amounts are in excess of the price at which said merchandise is usually and regularly sold at retail by respondents in the trade area or areas where the representations are made;

3. That merchandise is sold at a special or reduced price unless such price constitutes a reduction from the price at which the merchandise has been usually and regularly sold by respondents in the recent regular course of business;

4. That any merchandise sold or offered for sale is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;

5. That said merchandise is of all-aluminum construction, or otherwise misrepresenting the materials of which any product is made.

ORDER DENYING PETITION FOR REVIEW, DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The initial decision of the hearing examiner having been filed in this matter on November 27, 1961, and respondent Abraham B. Wolf, also known as Al B. Wolf, on December 18, 1961, having filed a petition for review of said initial decision pursuant to Section 4.20 of the Commission's Rules of Practice; and

The Commission having examined said petition and the entire record and being of the opinion that no substantial questions of law or fact are presented, and that granting of the petition for review is not necessary or appropriate under the law to insure a just and proper dis-

position of the proceeding and to protect the rights of the petitioner; and

The Commission having also determined that said initial decision is appropriate in all respects to dispose of this proceeding as to respondent Pati-Port, Inc.:

It is ordered, That said petition for review, filed December 18, 1961, be, and it hereby is, denied.

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

It is further ordered, That respondents Pati-Port, Inc., and Abraham B. Wolf, also known as Al B. Wolf, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in the initial decision.

IN THE MATTER OF

SIMPSON TIMBER COMPANY ET AL.

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

Docket 7713. Complaint, Jan. 4, 1960—Decision, Jan. 4, 1962

Consent order requiring a substantial producer of redwood lumber and its wholly-owned subsidiary, both of Seattle, Wash.—which in 1955 occupied fourth position among major sellers of redwood and in 1956 acquired companies rating sixth and fifteenth, respectively, as well as another company's extensive redwood timber and timberlands, combined 1955 sales for which merging companies exceeded sales of the industry leader—to divest themselves of ownership of 500 million board feet of redwood lumber within a 13-year period, as in the order below in detail set out.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, have violated and are now violating the provisions of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18) as amended and approved December 29, 1950, hereby issues its complaint, pursuant to Section 11 of the aforesaid Act (U.S.C. Title 15, Sec. 21) charging as follows:

PARAGRAPH 1. Respondent Simpson Timber Company, herein referred to as Simpson, is a corporation organized and existing under

the laws of the State of Washington since 1896, with its principal place of business located at 1010 White Building, Seattle, Wash. During the course of years the title of the corporation has been Simpson Logging Company, but it has operated under various trade names, and has operated various divisions under different trade names. On April 10, 1956, the official title of said corporate respondent was changed to Simpson Timber Company. Simpson Redwood Company is a wholly-owned subsidiary of Simpson Timber Company, with its principal place of business located at the same address.

Simpson owns substantial tracts of redwood and other timberlands and is engaged in conducting logging operations and producing green lumber, finished lumber, green veneer, plywood, plywood products, panel and flush doors, insulating board, book and fine paper, and converted paper products out of Douglas fir, redwood and hemlock timber from plants and facilities located in the States of Washington and California. As of December 31, 1955, assets of this respondent corporation were listed at $50,678,000, of which $8,425,000 constituted standing timber, and income from products sold amounted to $52,968,000.

Simpson is engaged in the distribution and sale of its products, including redwood, in commerce, as "commerce" is defined in the Clayton Act. It sells and distributes its products throughout the United States and for export through wholesalers and distributors.

In 1947 Simpson began limited logging operations on a redwood tract previously acquired in Northern California. In 1951, Simpson effected a major acquisition, *i.e.*, the cash purchase of all assets of Everett Pulp and Paper Company, the operation of which company was continued as a division of Simpson. By this time Simpson's operations in the Northern California redwood area had become well established, with logging operations, a sawmill at Klamath, Calif., and a finishing plant at Arcata, Calif.

A wholly owned subsidiary, Simpson Industries, Inc., was organized in 1954 for the purpose of acquiring the capital stock and assets of Shafer Bros. Logging Company near Shelton, Washington. The assets included a sawmill, timberlands, logging equipment, a railroad and a forest service contract adjacent to the Shelton Working Circle. On November 11, 1954, Simpson Logging Company, Ltd., was incorporated under the laws of British Columbia, Canada, as an operating subsidiary for the sale of insulating board products. Thereafter, on August 12, 1955, Simpson Logging Company of Michigan was incorporated under the laws of the State of Michigan as a wholly owned subsidiary for the purpose of operating an accoustical tile plant in

Michigan. On December 13, 1955, the Simpson Lumber Company was incorporated under the laws of the State of Washington; and on April 10, 1956, the name of this corporation was changed to Simpson Redwood Company, which company became the facility through which the acquisition involved herein was accomplished.

On or about February 21, 1956, Simpson, through its wholly owned subsidiary, respondent Simpson Redwood Company, acquired a controlling stock interest in Northern Redwood Lumber Company, and on March 26, 1956, Simpson purchased all the assets of Northern and assumed all its outstanding liabilities. This acquisition included Northern's subsidiary, The Arcata and Mad River Railroad Company of Korbel, Calif., as well as substantial timber holdings of redwood and Douglas fir in Northern California, a remanufacturing plant, a sawmill, and a service railroad. The property has been estimated to contain 345,000,000 board feet net merchantable recoverable redwood and 205,000,000 board feet net merchantable recoverable Douglas fir. The purchasing price was approximately $11,000,000. These properties were integrated into the operations of Simpson.

On or about May 21, 1956, Simpson Redwood acquired a controlling stock interest in Sage Land and Lumber Company, Inc., a New York corporation. This company, the properties of which consisted entirely of timber and timberlands including redwood timber, has been liquidated into Simpson Redwood. No production facilities were involved in the acquisition, however the market value of the Sage timber was appraised at approximately $8,000,000. The land was estimated to contain 285,000,000 board feet net merchantable recoverable redwood and 106,000,000 board feet net merchantable recoverable Douglas fir.

PAR. 2. M&M Woodworking Company, hereinafter referred to as M&M, was an Oregon corporation organized in June 1918. It was a fully integrated forest product company engaged in logging and production of lumber and forest products. M&M was engaged in the production for sale of fir, redwood, and hardwood plywood and veneers, flush doors, wood pipe and tanks; rough green and finished redwood and fir lumber and other related products. Plants and facilities of various types were located in the Willamette Valley of Oregon from Portland to Eugene, and in the Eureka, Calif., area. Timber holdings consisting primarily of Douglas fir were located in West Central Oregon; and holdings consisting primarily of redwood and Douglas fir were in the redwood belt of Del Norte and Humboldt Counties in Northern California. Total assets in 1955 were listed at $45,964,000, of which $18,160,000 constituted timber, timberlands, and related facilities. In 1956 net merchantable recoverable redwood

from timberlands of M&M were estimated at 1,537,000,000 board feet. Total sales for the fiscal year amounted to $42,708,000. Plants, locations, and commodities produced by M&M were as follows:

Plant designation	*Location*	*Products*
M&M Woodworking Co	Portland, Oreg	Fir and hardwood plywood.
Lyons Plant	Lyons, Oreg	Fir plywood.
Albany Plylock	Albany, Oreg	Fir plywood.
Idanha Veneer	Near Salem, Oreg	Fir veneer.
National Pipe & Tank	Portland, Oreg	Wood pipe and tanks.
Eureka Plywood Plant	Eureka, Calif	Fir and redwood plywood.
Eureka Redwood Lumber Co. (wholly owned subsidiary of M&M).		
Eureka Redwood Lumber	Eureka, Calif	Rough green and finished redwood and fir lumber.
Eureka Redwood Lumber Company (No. 2)	Redwood Creek, Calif.	Rough green redwood and fir lumber.
Springfield Lumber Mills Inc. (50 percent owned by M&M)		
Springfield Mills "A"	Springfield, Oreg	Finished green lumber.
Springfield Mills "B"	Springfield, Oreg	Finished green lumber.

M&M was engaged in the production and sale of the above-named products, among others, and in particular redwood lumber and products manufactured therefrom, in commerce, as "commerce" is defined in the Clayton Act. M&M sold and distributed its products in commerce throughout the United States through wholesalers and distributors.

PAR. 3. On August 17, 1956, respondent Simpson Timber Company, through its wholly-owned subsidiary, Simpson Redwood Company, acquired the M&M common stock and assets. The purchase price was in excess of $50,000,000.

PAR. 4. (a) With the exception of a small quantity of redwood in the State of Oregon, Northern California contains the entire world's supply of redwood timber. Natural phenomena, such as the long growth period, limit the supply of mechantable redwood timber. Redwood timber is being logged at a rate considerably greater than the growth rate. The number of producers has declined substantially since 1947 and some of the principal producers have increased their redwood timber holdings. Both Simpson and M&M were and are substantial "producers" of redwood lumber, *i.e.*, operators of sawmills which saw redwood logs into rough green timber and board from timberland owned or upon which they have cutting rights.

(b) For the year 1955, prior to the merger of Simpson Timber Co. (including Sage), M&M and Northern Redwood, sales of redwood

lumber by these companies, respectively, totaled approximately 45.9 MM bd. feet, 44.3 MM bd. feet and 21.0 MM bd. feet. Said sales established each of the herein-named companies in fourth, sixth and fifteenth position, respectively, among the major sellers of redwood lumber and products for the year 1955. Combined sales of the merged companies for the year 1955 exceeded that of the industry sales leader, Hammond Lumber Co., which had sales of 91.2 MM bd. feet.

(c) Approximately 50 percent of redwood sales are made outside the State of California to various designated regions throughout the United States. During 1955, the combined sales of the merged companies represented approximately 18.3 percent of that market. Hammond Lumber Co., the merged companies' principal competitor and a leading producer in the redwood industry, held a market share in 1955 of approximately 18.1 percent. In addition, combined market shares of the merged companies within the State of California were substantial.

(d) For the year 1955, the respective production shares of the merged companies were: Simpson (including Sage) approximately 4.3 percent; Northern Redwood approximately 2.1 percent; and M&M approximately 4.6 percent. This combined total of 11 percent of redwood production placed respondent in a leadership position with the then principal producer, Hammond Lumber Co.

PAR. 5. The effect of the aforesaid acquisition of M&M Woodworking Company by Simpson, through its subsidiary Simpson Redwood Company, may be substantially to lessen competition or tend toward a monopoly in the redwood lumber industry within the United States. More specifically, the aforesaid effects include the actual or potential lessening of competition or a tendency to create a monopoly in violation of Section 7 of the Clayton Act, as amended, in the following ways, among others:

1. Respondents' competitive position in the production and sale of redwood lumber and its by-products has been enhanced to the detriment of actual and potential competition in the industry.

2. Actual and potential competition between respondents and M&M Woodworking Company has been and will be eliminated in the production and sale of redwood lumber and its by-products.

3. Industry-wide concentration of the production and sale of redwood lumber has been and may be increased.

4. Respondents' competitive position in the sale of redwood lumber and its by-products in the continental United States outside the State of California, such as in the Eastern States, has been enhanced to the detriment of actual and potential competition, and M&M

Woodworking Company has been eliminated as a substantial independent competitor.

5. This acquisition has and may have the effect of substantially increasing the concentration of ownership and control of the limited supply of standing redwood timber in the United States.

PAR. 6. The foregoing acquisition, acts and practices of respondent as hereinbefore alleged and set forth constitute a violation of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18) as amended and approved December 29, 1950.

Mr. J. Wallace Adair and *Mr. Eugene Kaplan* for the Commission.

Howery, Simon, Baker & Murchison, by *Mr. Edward F. Howery* and *Mr. Harold F. Baker*, of Washington, D.C.; *Evans, McLaren, Lane, Powell & Beeks*, by *Mr. George V. Powell*, of Seattle, Wash.; and *Pillsbury, Madison & Sutro*, by *Mr. Francis R. Kirkham* and *Mr. George A. Sears*, of San Francisco, Calif., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

The complaint issued by the Commission on January 4, 1960, charges the respondents with violation of Section 7 of the Clayton Act, as amended, in connection with the acquisition of the M&M Woodworking Company.

Following a pre-hearing conference, hearings were held at Eureka, California, San Francisco, California, New York, N.Y., and Washington, D.C., after which counsel in support of the complaint rested their case in chief.

Thereafter, on September 19, 1961, there was submitted to the hearing examiner an agreement by and between respondents, by their duly authorized officers and their attorneys, and by counsel supporting the complaint providing for entry of a consent order to cease and desist and to divest. In accordance therewith, the parties agree that:

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.

The agreement disposes of all of this proceeding as to all parties. The parties agree that the order contained therein is in the public interest for the reasons set forth in Appendix A which is attached to and made a part of the agreement.

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 entered in accordance with this agreement.

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.

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

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

The order agreed upon 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.

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, the following jurisdictional findings made, and the following order issued.

1. Respondent Simpson Timber Company is a corporation existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 2000 Washington Building, Seattle, Wash. (its former address was 1010 White Building, Seattle, Wash., as designated in the complaint).

Respondent Simpson Redwood Company is a wholly owned subsidiary of Simpson Timber Company, and is a corporation existing and doing buisness under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 2000 Washington Building, Seattle, Wash. (its former address was 1010 White Building, Seattle, Wash., as designated in the complaint).

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

ORDER

I

1. *It is ordered*, That respondents, Simpson Timber Company and Simpson Redwood Company, corporations, their subsidiaries, officers, directors, agents, representatives, and employees shall sell and divest themselves absolutely and in good faith within 13 years from January 1, 1961, of ownership of an amount of redwood timber and/or redwood logs equal to 500,000,000 board feet, not less than 90% of which shall be old growth and 10% of which may be second growth, in accordance with the following provisions of this order.

2. In disposing of the total amount required to be divested by this order, respondents, during each twelve-month period beginning January 1, 1961, shall sell and divest to purchasers, as purchasers are hereinafter defined, not less than 35,000,000 board feet of redwood timber and/or redwood logs. In the event respondents shall sell more than 55,000,000 board feet of redwood cutting rights and/or redwood logs in any one year, the amount by which such sales exceed 55,000,000 board feet shall not be credited against the total amount to be divested pursuant to this order. Respondents may average sales of redwood timber and/or logs over any three consecutive calendar years in complying with this order; provided however, that any three consecutive years may exclude any year or years in which respondents are unable to sell 35,000,000 board feet at prices equal to or above the minimum prices specified in paragraph 5 of this section of this order. Sales to others than purchasers shall not be credited against the total amount to be divested.

3. The redwood timber and/or logs to be divested by respondents pursuant to this order may be any redwood timber and/or logs owned by respondents, whether or not acquired as a result of respondents' acquisition of M&M Woodworking Company.

4. In the event respondents shall sell redwood-type timberlands to purchasers during the period of this order, the board feet of redwood timber so sold may be credited against the total board feet required to be divested by this order or may be apportioned equally over the period ending December 31, 1973, in determining the minimum amount which respondents are required to sell and the maximum amount permitted to be credited in each calendar year. In the event respondents shall enter into cutting contracts for the sale of timber or into long term contracts for the sale of logs with purchasers during the period of this order, the board feet of redwood timber and/or logs so sold or contracted to be sold may be apportioned equally over the term of

such contracts or over the period ending December 31, 1973 in determining the minimum amount which respondents are required to sell and the maximum amount permitted to be credited in each calendar year. In the event respondents elect to apportion sales of redwood timber and/or logs under this paragraph 4 of this section of this order, all such amounts apportioned shall be credited against the total amount to be divested pursuant to this order, except to the extent that such apportionment results in a total amount for any calendar year which is greater than 55,000,000 board feet.

5. Respondents shall not be required during the 13-year period beginning January 1, 1961, to sell and divest redwood timber and/or logs at prices which are less than $20.00 per thousand board feet for stumpage, plus 8% per annum compounded from January 1, 1961, to cover actual carrying costs. In the event respondents perform the logging function of such redwood logs, the cost of logging shall be added to said price. Such costs of logging to be applied in determining said minimum price shall be the actual logging costs of respondent Simpson Redwood Company for the preceding calendar year, and shall be verified by reports of independent certified public accountants of recognized standing from the books and records of respondent Simpson Redwood Company.

6. In the event respondents have not divested the total amount of 500 million board feet during the 13-year period January 1, 1961, to December 31, 1973, this order shall remain in full force and effect until such date as total divestiture is completed or until December 31, 1980, whichever date is earlier, whereupon this order shall terminate; provided however that for any amount in excess of 100 million board feet which has not been sold and divested by December 31, 1973, the minimum prices shall be reduced to an amount equal to 80% of the minimum prices provided for in paragraph 5 of this section of this order.

7. In the event respondents, acting in accordance with the provisions of this order, have divested the total of 500 million board feet required to be divested prior to the expiration of 13 years from January 1, 1961, then, and in that event, this order shall terminate.

II

It is further ordered:

1. For the duration of this order respondents shall not acquire any interest whatsoever in redwood-type timberlands, old growth redwood cutting rights or old growth redwood logs containing a combined total of more than 100 million board feet of old growth redwood during the

period of this order, and in the event respondents purchase redwood-type timberlands, old growth redwood cutting right or old growth redwood logs containing in excess of 50 million board feet of old growth redwood during the period of this order, respondents shall divest themselves of an amount of old growth redwood timber and/or logs equal to the amount by which such purchases exceed 50 million board feet in accordance with the terms of this order.

In determining whether timberlands are redwood-type, such determination shall be made on the basis of forty(40) acre parcels.

2. For a period of 10 years from January 1, 1961, respondents shall not acquire any interest whatsoever in any old growth redwood sawmill; nor in any plant or company producing more than 10% old growth redwood plywood; nor in any plant or company producing more than 10% redwood pipes and tanks.

3. During the effective period of this order respondents' ownership of redwood-type timberlands shall not exceed 202,000 acres.

4. Nothing contained in this order shall apply to purchases by respondents of redwood timber or logs from lands owned or controlled by the United States Forest Service, Bureau of Indian Affairs, Bureau of Land Management, or the State of California.

5. In the event respondents make trades with purchasers, as purchasers are defined herein, of any of their old growth redwood timber or redwood-type timberlands for other timber or timberlands, including old growth redwood timber and redwood-type timberlands, the net balance of old growth redwood and/or redwood-type timberlands disposed of or obtained shall be subject to all of the terms and conditions of this order with such net balance being credited as either a divestiture or acquisition.

6. In the event of an act of God or major catastrophe, including but not limited to, fire, insect infestation or disease, which the respondents allege results in a substantial change of conditions in reference to their redwood timber holdings, the Commission shall, upon respondents' petition and affidavit, reopen the proceeding for reception of evidence as to whether the changed conditions require an alteration or modification of this order.

III

It is further ordered, That by such divestitures none of the redwood timber and/or logs required to be divested by this order shall be sold or transferred, directly or indirectly, to anyone who at the time of the divestiture is a stockholder, officer, director, employee, or agent of, or otherwise directly or indirectly connected with or under the

control of, respondents or any of their subsidiaries or affiliated companies.

DEFINITIONS

1. "Purchasers" as referred to herein, shall include any person, partnership or firm engaging in the ownership or cutting of old growth redwood logs or timber or the production of redwood lumber therefrom, and shall exclude the following-named companies and their subsidiaries, affiliates, agents or representatives:

The Pacific Lumber Company
The Georgia Pacific Corporation
Union Lumber Company
Arcata Redwood Company
Willits Redwood Products Company.

2. "Old growth" redwood timber means timber which is described interchangeably as "old growth" or "virgin" timber, as distinguished from what is commonly referred to as "young growth" or "second growth" timber. This includes redwood logs produced from felled redwood trees and timber cutting contracts as well as uncut redwood trees on the stump. "Old growth" redwood excludes "second growth" or "young growth" redwood timber which has grown on fully or partially cut-over lands subsequent to the logging of such lands and which is less than one hundred years of age.

3. "Cutting rights" or "cutting contracts" mean contracts for the purchase and sale of uncut redwood trees. Such contracts may or may not specify a third party, individual or firm who shall perform the logging, that is, the cutting and removal of the trees. They may or may not specify that the logging shall be done by the seller or purchaser.

4. "Redwood-type" timberlands means redwood timberlands, as defined by the U.S. Forest Service in Forest Survey Release No. 25, page 56, that is, forests in which 20% or more of the original stand is or was redwood.

5. "Board feet" means the unit of measure of volume of redwood timber and/or logs based on the Humboldt scale.

FINAL ORDER

By its order of October 31, 1961, the Commission extended until further order the date on which the initial decision of the hearing examiner herein would become the decision of the Commission; and

The Commission now having concluded that said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed September 22, 1961, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents Simpson Timber Company, a corporation, and Simpson Redwood Company, a corporation, shall, on March 1, 1962, and at the expiration of each calendar year until termination of the order contained in the initial decision as provided by the terms thereof, 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 said initial decision.

IN THE MATTER OF

ROBOT TIME, INC., ET AL.

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

Docket 8403. Complaint, May 19, 1961—Decision, Jan. 5, 1962

Order requiring New York City assemblers of so-called "Robot watches" from imported movements with cases, dials, bracelets, and other parts purchased from other manufacturers, to cease using fictitious prices in connection with the sale of their watches to wholesalers, retailers, etc., through such practices as affixing to each watch a ticket or metallic tag printed with an excessive amount, represented thus as the usual retail price.

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 Robot Time, Inc., a corporation, and Louis Silverman and Pearl Silverman, 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 Robot Time, 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 580 5th Avenue, New York, N.Y.

Respondents Louis Silverman and Pearl Silverman 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 sale and distribution of watches to retailers for resale to the public.

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

PAR. 4. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of using fictitious prices in connection therewith by attaching or causing to be attached tickets to their said watches upon which certain amounts are printed, thereby representing, directly or by implication, that said amounts are the usual and customary retail prices of said watches in the trade areas where the representation is made. In truth and in fact, the said amounts are fictitious and in excess of the usual and customary retail prices of said watches in the trade areas where the representation is made.

PAR. 5. By the aforesaid acts and practices respondents furnish means and instrumentalities whereby dealers may mislead the public as to the usual and regular retail prices of their watches.

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

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

PAR. 8. The aforesaid acts and practices of respondents as herein alleged, were, and are, all to the prejudice and injury to 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. Harry E. Middleton, Jr., supporting the complaint.
Mr. Louis Silverman, of New York, N.Y., *pro se*.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

This proceeding was brought under Section 5 of the Federal Trade Commission Act by the issuance of a complaint on May 19, 1961, charging the above-named corporate respondent and the individual respondents, its officers, with unfair acts and practices in the pricing of their watches which are sold in interstate commerce. Paragraphs 4 and 5 of the complaint charge specifically that respondents preticket their watches with fictitious prices which are in excess of the usual and customary retail prices of said watches in the trade areas where the representation is made, thereby furnishing the means and instrumentalities by which the purchasing public may be misled as to the regular and usual retail prices of respondents' watches.

Hearings were held in this matter on September 6 and 7, 1961, at New York, New York, at which oral testimony and documentary evidence were received in support of and in opposition to the allegations set forth in the complaint. Proposed findings of fact, brief and order have been submitted by counsel in support of the complaint and a brief in opposition thereto by Louis Silverman on behalf of the corporate and individual respondents. Consideration has been given to the proposed findings of fact and briefs submitted by the parties, and all proposed findings of fact not hereinafter specifically found are rejected. The hearing examiner having considered the entire record herein makes the following findings as to the facts, conclusions drawn therefrom and order.

FINDINGS OF FACT

1. Respondent, Robot Time, Inc., is a corporation organized 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 580 Fifth Avenue, New York, N.Y.

2. The individual respondent, Louis Silverman, is an officer of the corporate respondent and in said capacity formulates, directs and con-

trols the policies, acts and practices of the corporate respondent. His address is the same as the corporate respondent.

3. The individual respondent, Pearl Silverman, is an officer in name only and does not formulate, direct or control the policies, acts and practices of the corporate respondent.

4. Respondents are now, and for some time last past have been, engaged in the assembly, sale and distribution of watches, known as "Robot watches," to jobbers, wholesalers and to various types of retail stores for resale to the public.

5. In the regular and usual course and conduct of their business respondents cause, and for some time last past have caused, their "Robot watches," 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 respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said watches in commerce, as "commerce" is defined in the Federal Trade Commission Act.

6. Respondents, in the course and conduct of their business, are in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the sale and distribution of the same general kind and nature of watches as sold by respondent.

7. Respondents' operation consists of buying imported movements in the open market in New York as well as importing movements directly, purchasing cases and dials from other manufacturers, assembling the various component parts, attaching a bracelet and placing the assembled watch in a box. At the time respondents assemble their watches and package them for sale, they affix to each watch a ticket or metallic tag. On the face of each metallic tag or ticket is an amount in figures purporting to represent the regular and customary retail price of the particular watch. These pre-tickets are on each "Robot watch" when it is shipped from respondents' place of business to jobbers, wholesalers and the various types of retail establishments with whom they do business, and it is still attached to the watches when they are sold to the ultimate consumer or user.

8. Meyer Gillespie, one of respondents' customers, testified that he never sells respondents' "Robot watches" to retail customers at the Robot ticketed prices. For example, one customer of Gillespie testified she purchased a Robot watch, Model #617X, from Gillespie in June of 1959 for $15.00 which bore a Robot ticket of $49.75. Illustrative of other retail sales made by Gillespie to ultimate purchasers of Model #617X "Robot watches" were two at $14.00 and $18.00, which also had been preticketed by Robot at $49.75.

Blanche Ring, employed by another one of respondents' customers, testified that they also never sold "Robot watches" to retail customers at the Robot preticketed prices. For example, one Robot watch, preticketed by respondents at $71.50, was sold by this witness for $24.88, plus tax, admittedly a slight reduction from her tagged price of $27.50.

9. On the basis of the entire record the examiner finds that respondents have engaged in the practice of using fictitious prices in connection with the sale of their watches by attaching or causing to be attached thereto metallic tags or tickets upon which certain amounts are imprinted, thereby representing directly or by implication that said amounts are the usual and customary retail prices of said watches in the trade areas where the representations are made; whereas, in fact, the said amounts are fictitious and in excess of the usual and regular retail prices of said watches in the trade areas where the representations are made.

10. By pre-ticketing their watches, as aforesaid, respondents furnish the means and instrumentalities by which others may mislead the purchasing public as to the usual and regular prices of respondents' watches.

11. The use by respondents of the aforesaid practice of pre-ticketing has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the said pre-ticketed prices are the usual and regular retail prices of respondents' watches. Respondents' false, misleading and deceptive pre-ticketing of their watches induces the public to purchase substantial quantities of respondents' watches by reason of said erroneous and mistaken belief as to their true prices. As a consequence thereof, substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors, and substantial injury has been and is being done to competition in commerce.

12. The aforesaid acts and practices of respondents in pre-ticketing their watches 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.

CONCLUSIONS OF LAW

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

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

3. Counsel supporting the complaint has proved by reliable, probative, and substantial evidence that respondents, by pre-ticketing their watches with fictitious prices which are not the usual and regular retail prices of said watches in the trade areas where the representations are made, put into the hands of retailers who buy the watches from them, the means whereby such persons may mislead and deceive members of the purchasing public into the erroneous belief that the "retail" price or pre-ticketed price is the usual and regular retail price in the trade area where the representations are made. Respondents' acts and practices in pre-ticketing their watches are unfair and deceptive and constitute violations of the Federal Trade Commission Act. *The Clinton Watch Company, et al* v. *F. T. C.*, 291 F. 2d 838 (CA 7, June 1961); *Niresk Industries, Inc.* v. *F.T.C.*, 278 F. 2d 337 (CA 7, March 1960), cert. denied, 364 U.S. 883; *Rudin & Roth, et al.*, 53 F.T.C. 207 (1956), and *The Orloff Co., Inc., et al*, 52 F.T.C. 709 (1956).

4. The fact that others in the watch industry may be engaged in activities which are substantially similar does not justify respondents adopting a similar method or practice. *F.T.C.* v. *A. E. Staley Mfg. Co., et al*, 324 U.S. 746 (1945) and *International Art Co., et al.* v. *F.T.C.* 109 F. 2d 393, cert. denied 310 U.S. 632.

5. A pre-ticket, showing a fictitious price, has a tendency to mislead a purchaser into believing that the reduced price which he is securing from one of respondents' various retailers is a saving from the prevailing price for the watch elsewhere in the same trade area, and it is immaterial that in other trade areas the pre-ticketed price may be charged. *The Baltimore Luggage Company, et al.*, Docket No. 7683, March 15, 1961.

6. "Retail sales" are direct sales to the ultimate consumer or user. Similarly "retail prices" are the prices paid by the ultimate purchaser or user. A "retail sale" is nonetheless a retail sale because the ultimate consumer purchases the article in a "discount house" or "cut-rate store." *White Motor Co.* v. *Littleton*, 124 F. 2d 92 (CA 5); *Guess* v. *Montague*, 51 F. Supp. 61; *Garlock Packing Co.* v. *Glander*, 80 N.E. 2d 718; *Stolze Lumber Co.* v. *Stratton*, 54 N.E. 2d 554, 386 Ill. 334; *Palmer* v. *Perkins*, 205 P. 2d 785; 119 Colo. 533, and *Scott* v. *Daggett*, 226 S.W. 2d 183.

ORDER

It is ordered, That Robot Time, Inc., a corporation, Louis Silverman, individually and as an officer of said corporation, and Pearl

Silverman, as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of watches, or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing by pre-ticketing or in any other manner, that any amount is the usual and regular retail price of any product when such amount is in excess of the price at which such product is usually and regularly sold at retail in the trade area or areas where the representation is made; and

2. Furnishing any means or instrumentality to others by and through which they may misrepresent the usual and regular retail price of any of respondents' products; and

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as respects respondent Pearl Silverman, in her individual capacity, but not to the extent that she may be subject to this order as an officer or agent of the corporate respondent.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 5th day of January 1962, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

L. HART AND SON CO., INC., ET AL.

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

Docket C–56. Complaint, Jan. 5, 1962—Decision, Jan. 5, 1962

Consent order requiring furriers in San Jose, Calif., to cease violating the Fur Products Labeling Act by failing to show on labels and invoices the true animal name of the fur used in fur products; failing to disclose on invoices the country of origin of furs used, when the fur was artificially colored, and when fur products were composed wholly or substantially of flanks;

failing to comply in other respects with labeling and invoicing requirements; by advertising in newspapers which represented prices of fur products as reduced from previous higher prices without giving the time of such compared higher prices; and failing to maintain adequate records disclosing the facts upon which such pricing claims were based.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that L. Hart and Son Co., Inc., a corporation, and Alexander J. Hart, Jr., individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent L. Hart and Son Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at Santa Clara and Market Streets, San Jose, Calif.

Individual respondent Alexander J. Hart, Jr., is president of the said corporate respondent and controls, directs and formulates the acts, practices and policies of the said corporate respondent. His office and principal place of business is the same as that of the said corporate respondent.

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

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

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed:

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

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

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

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

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

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

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

(2) To disclose that the fur contained in the fur products was bleached, dyed or otherwise artificially colored, when such was the fact.

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

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

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

(2) The disclosure that fur products were composed in whole or substantial part of flanks was not set forth in violation of Rule 20 of said Rules and Regulations.

PAR. 7. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended too aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 8. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the San Jose Mercury News, a newspaper published in the city of San Jose, State of California, and having a wide circulation in said State and various other States of the United States.

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

(a) Represented prices of fur products as having been reduced from previous higher prices without giving the time of such compared higher prices in violation of Rule 44(b) of said Rules and Regulations.

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

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

DECISION AND ORDER

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

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

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

1. Respondent L. Hart and Son Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at Santa Clara and Market Streets, San Jose, Calif.

Respondent Alexander J. Hart, Jr., is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That L. Hart and Son Co., Inc., a corporation, and Alexander J. Hart, Jr., individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation, or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

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

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

2. Falsely or deceptively invoicing fur products by:

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

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

C. Failing to disclose that fur products are composed in whole or in substantial part of flanks when such is the fact.

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

(a) Uses previous higher prices as comparatives without giving the time of such higher compared prices.

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

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

STANDARD HANDKERCHIEF CO., INC., ET AL.

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

Docket C-57. Complaint, Jan. 5, 1962—Decision, Jan. 5, 1962

Consent order requiring New York City manufacturers to cease violating the Textile Fiber Products Identification Act by failing to label handkerchiefs as required, failing to label each individual product contained in a package, and furnishing false guaranties that their products were not misbranded.

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 Standard Handkerchief Co., Inc., a corporation, and Henry Smooke and Joseph Dickstien, 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 Standard Handkerchief Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 1220 Broadway, New York, N.Y.

Respondents Henry Smooke and Joseph Dickstien are officers of said corporate respondent. They formulate, control and direct the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of said 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, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which had been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state, or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondents 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 were handkerchiefs which had no stamp, tag, label or other means of identification on or affixed to such products.

PAR. 4. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respect:

Respondents failed to label each individual product contained in packages where it was the common or accepted practice of distributors of such products to break the packages and sell or deliver individual products therefrom, in violation of Rule 28 of the said Rules and Regulations.

PAR. 5. The respondents have furnished false guaranties that their textile fiber products were not misbranded in violation of Section 10 of the Textile Fiber Products Identification Act.

PAR. 6. The acts and practices of respondents, as set forth herein, were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations thereunder; and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent, Standard Hankerchief Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1220 Broadway, in the city of New York, State of New York.

Respondents Henry Smooke and Joseph Dickstien are officers of said corporation, and their address is the same as that of said corporation.

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

ORDER

It is orderd, That respondents Standard Handkerchief Co., Inc., a corporation, and its officers, and Henry Smooke and Joseph Dickstien, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce", and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. 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.

2. Failing to label each individual product contained in packages where it is the common or accepted practice to break the package and sell or deliver individual products therefrom.

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

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Com-

mission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

WARSHAUER & FRANCK, INC., ET AL.

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

Docket C—58. Complaint, Jan. 5, 1962—Decision, Jan. 5, 1962

Consent order requiring Boston manufacturers to cease violating the Flammable Fabrics Act by manufacturing, importing, and selling in commerce dresses that were so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Warshauer & Franck, Inc., a corporation, Jerome J. Franck and Leonard Windheim, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Warshauer & Franck, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Massachusetts. Respondents Jerome J. Franck and Leonard Windheim are President, and Treasurer-Clerk, respectively of Warshauer & Franck, Inc. The individual respondents formulate, direct and control the policies, acts and practices of said corporate respondent. The business address of all respondents is 75 Kneeland Street, Boston, Mass.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported and caused to be transported, in commerce; and have transported and caused to be transported for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act,

articles of wearing apparel, as the term "article of wearing apparel" is defined therein, which articles of wearing apparel were, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

Among the articles of wearing apparel mentioned hereinabove were dresses.

PAR. 3. Respondents subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold and offered for sale, articles of wearing apparel made of fabric which was, under Section 4 of the Act, as amended, so highly flammable as to be dangerous when worn by individuals, which fabric had been shipped and received in commerce, as the terms "article of wearing apparel," "fabric" and "commerce" are defined in the Flammable Fabrics Act.

Among the articles of wearing apparel mentioned above were dresses.

PAR. 4. The acts and practices of respondents herein alleged were and are in violation of the Flammable Fabrics Act and of the Rules and Regulations promulgated thereunder and as such constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent, Warshauer & Franck, Inc., is a corporation duly organized, existing and doing business under and by virtue of the

laws of the State of Massachusetts, its business address being 75 Kneeland Street, Boston, Mass.

Respondents Jerome J. Franck and Leonard Windheim are officers of said corporation, and their business address is the same as that of said corporation.

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

ORDER

It is ordered, That the respondent Warshauer & Franck, Inc., a corporation, and its officers, and respondents Jerome J. Franck and Leonard Windheim, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. (a) Importing into the United States; or

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

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

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

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

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

IN THE MATTER OF

IRVING LIPPE TRADING AS MARCH PREMIUM COMPANY

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

Docket C-59. Complaint, Jan. 5, 1962—Decision, Jan. 5, 1962

Consent order requiring a New York City distributor of a variety of merchandise including transistor radios, fountain pens, and dolls, who accepted orders at a Chicago post office box, to cease supplying means of conducting games of chance by his practice of distributing to operators and members of the public push cards or punch boards along with instructions for their use in selling the aforesaid merchandise.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Irving Lippe, an individual, trading as March Premium 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 Irving Lippe is an individual trading as March Premium Company. Respondent has no office address but accepts orders for merchandise at Post Office Box 8528, Chicago 80, Illinois. His home address is 124 West 93rd Street, New York, N.Y.

PAR. 2. Respondent is now, and for several months last past has been, engaged in the sale and distribution, through others, of transistor radios, fountain pens, dolls, and other articles of merchandise.

PAR. 3. In the course and conduct of his said business, respondent causes, and during the past several months has caused, his said products, when sold, to be shipped from New York, New York, or Chicago, Illinois, to the 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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his business, as described above, in soliciting the sale of and in selling and distributing his said merchandise, the respondent furnishes various plans of merchandising which involve the operation of games of chance, gift enterprise or

lottery schemes when said merchandise is sold and distributed to the purchasing and consuming public. Among the methods or sales plans adopted and used by respondent and which is typical of the practices engaged in by respondent is the following:

Respondent distributes, and has distributed, to operators and to members of the public certain literature including, among other things, push cards or punch boards with instructions as to their use, order blanks, circulars which feature depictions of the merchandise involved in the scheme and circulars explaining respondent's plan of selling and distributing his merchandise and of allotting it as premiums or prizes to operators of said push cards and also as prizes to members of the consuming public who purchase chances or pushes on said cards. Some of respondent's said cards bear a number of perforated discs with feminine names printed thereon and a corresponding number of ruled columns on the back of said cards for writing in the names of the purchasers of the pushes or discs corresponding to the feminine names selected. Concealed within each disc is a number which is disclosed only when the disc is separated from the card and opened. The push card also bears a large master seal within which is concealed a name which appears on one of the discs. The person selecting the name corresponding to the one contained within the master seal receives a prize such as a transistor radio or a doll, depicted on the push card. For example, one of said push cards bears the following, among other things:

Lucky Name Under Large Seal Receives This

TRANSISTOR

Radio

(Picture of Radio)
No. 1 Pays 1 c
No. 4 Pays 4 c
No. 12 Pays 12 c
No. 18 Pays 18 c
All others
Pay Only 49 c
None Higher

Nos. 40, 50 Each
Receive Ball Pen

(Panel bearing seal and discs)

Write Your Name on Reverse Side Opposite Name You Select.

Sales of respondent's merchandise by means of said push cards are made in accordance with the above described legend or instructions and said prizes or premiums are allotted to the customers or purchasers from said card in accordance with the above legend or instructions.

Whether a purchaser receives an article of merchandise or nothing for the amount of money paid and the amount to be paid for the merchandise or the chance to receive said merchandise are thus determined wholly by lot or chance. The articles of merchandise have a value substantially greater than the price paid for the chances or pushes.

Respondent furnishes and has furnished various other push cards accompanied by order blanks, instructions and other printed matter for use in the sale and distribution of his merchandise by means of games of chance, gift enterprises or lottery schemes. The sales plans or methods involved in the sale of all of said merchandise by means of said other push cards is the same as that hereinabove described varying only in detail as to the merchandise distributed and the prizes or chances and the number of chances on each card.

PAR. 5. The persons to whom respondent furnishes and has furnished said push cards use the same in selling and distributing respondent's merchandise in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting games of chance, gift enterprises or lottery schemes in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plans or methods in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 6. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondent and the element of chance involved therein and thereby are induced to buy and sell respondent's merchandise.

The use by respondent of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and constituted, and now constitute unfair acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent, Irving Lippe, is an individual trading as March Premium Company. Respondent has no office address but accepts orders for merchandise at Post Office Box 8528, Chicago 80, Illinois. His home address is 124 West 93rd Street, New York, N.Y.

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, Irving Lippe, trading as March Premium Company or under any other name or names, his representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of radios, dolls, pens or other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards or any other lottery device or devices which are designed or intended to be used in selling or distributing said merchandise to the public by means of games of chance, gift enterprises, or lottery schemes.

2. Shipping, mailing or transporting to agents or distributors, or to members of the purchasing public, push cards or any other lottery device or devices which are designed or intended to be used in the

sale or distribution of respondent's merchandise to the public by means of games of chance, gift enterprises or lottery schemes.

3. Selling or otherwise disposing of any merchandise by means of or under a plan involving a game of chance, gift enterprise, or lottery scheme.

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

JOSEPH J. RAMIA DOING BUSINESS AS UNITED FORWARDING SERVICE

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

Docket C-60. Complaint, Jan. 5, 1962—Decision, Jan. 5, 1962

Consent order requiring an individual in Concord, Calif., engaged in selling a printed mailing form for use by collection agencies and merchants in tracing delinquent debtors, to cease representing falsely, through use of his trade name, the statement "We are holding a package consigned to you," and the general format, that a package of value was being held for the addressee and would be forwarded upon return of the filled-in form.

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 Joseph J. Ramia, an individual, trading and doing business as United Forwarding Service, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Joseph J. Ramia, is an individual trading and doing business under the name of United Forwarding Service with his office and principal place of business located at 2175 Pacheco Street, Concord, Calif.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the business of selling a printed mailing form under his trade name. Respondent causes said printed material when sold, to be

transported from his place of business in the State of California to purchasers thereof at their respective points of location in various other states of the United States. Respondent maintains, and at all times hereinafter mentioned has maintained, a course of trade in his said form in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. The said printed form sold by the respondent, as heretofore alleged, is designed and intended to be used, and has been used, by collection agencies, merchants and others to whom it is sold for the purpose of obtaining information concerning alleged delinquent debtors with the aid and assistance of respondent as hereinafter set forth.

The said printed material consists of a double post card perforated so as to permit the two parts to be easily separated. The detachable portion of the card gives the address, "United Forwarding Service, 600—16th Street, Oakland, California", which was the former address of the respondent. The part of the card retained by the addressee has affixed thereto a three-cent stamp and the portion to be detached and returned to the respondent bears a notice that the postage will be paid by the addressee. Said form sets out questions which, if answered, will provide information which is considered to be of value in the collection of accounts owed or alleged to be owed by the addressee. The purchaser of respondent's printed material, above referred to, fills in the name and address of the alleged debtors and/or the name and address of a known relative of the debtor and sends the forms in bulk to respondent. Respondent then mails the form individually from his aforesaid place of business. If the addressee completes the form and returns it, an envelope containing a marble and a leaflet, or flyer, advertising a "personality course", which respondent does not have to offer, is sent to the person filling in the form. Respondent then forwards the completed form to the purchaser.

PAR. 4. The following is typical of the printed form sold by respondent and used in the aforesaid manner:

UNITED FORWARDING SERVICE
600—16th Street
Oakland, California

Date 19

Our Ref. No. 000100

Article PACKAGE (Stamped)

3¢ STAMP

This Side of Card for Address

We are holding a package consigned to you. We will forward package only upon completion of attached form.

Express Chgs.

Add. Del. Chg.

C.O.D.

C.O.D. Serv. Chg.

Total to Pay

JOHN DOE

ADDRESS

CITY, STATE

Reason Held IMPROPER INFORMATION (Stamped)

SEE OTHER SIDE

ALL CHARGES PREPAID
(Stamped in box)

UNITED FORWARDING SERVICE
600–16th Street
Oakland, California

We have shipment described on reverse side which is being held at address shown below and would appreciate it if you will assist us in forwarding package to you.

In order to avoid crowded condition in our facility and so that we will not be obliged to assess storage charges will you please arrange to have your package delivered to you by filling in the attached form properly and completely. It is understood that the information on the business reply card can be used in any manner by United Forwarding Service. Such information is necessary to locate, expedite package delivery, to correct current improper information, etc.

Any information you may desire will be gladly given if you will communicate with our office.

Postage
Will Be Paid
by
Addressee

No
Postage Stamp
Necessary
If Mailed in the
United States

BUSINESS REPLY MAIL
First Class Permit No. 5111 Oakland, Calif.

UNITED FORWARDING SERVICE
600—16th Street
Oakland, California

SEND NO MONEY—PACKAGE PREPAID

Package No.
000100

We are holding a package consigned to you; it is necessary for you to fill out the following information in order to assist us in forwarding this package to you. PLEASE PRINT—Information must be complete in order to properly receive package.

Name JOHN DOE

Address

In the Event We Cannot Contact You—

Employer

Address

Wife's Employer

Address

Bank Reference
Branch

UNITED FORWARDING SERVICE

PAR. 5. By the use of the name "United Forwarding Service," the printing on the cards of the words "We are holding a package consigned to you," and by other words on said card and the general format thereof, respondent represents, directly or by implication, to those to whom the form is mailed that the respondent is in some capacity, connected with the movement and transportation of goods and their delivery to the proper consignees, and that a package of value is being held which will be forwarded upon filling in said form.

PAR. 6. The aforesaid and implications were, and are, false, misleading and deceptive. In truth and in fact, respondent's business has, so far as the recipients of said cards are concerned, nothing to do with the movement or transportation of goods, or their delivery to the proper consignees. The persons from whom the said cards are intended to obtain information are not consignees of packages sent by others and in the hands of respondent for delivery. The packages to which the cards refer are those made up by respondent containing the marble and the circular referred to in paragraph 3 hereof. The sole business of respondent, conducted as aforesaid, is to sell the printed form to others to be used by them for the purpose of obtaining information concerning alleged delinquent debtors by subterfuge. This practice constitutes a scheme to mislead and conceal the purpose for which the information is sought.

PAR. 7. The use, as hereinbefore set forth, of said form has had, and now has, the tendency and capacity to mislead and deceive persons to whom said form is sent into the erroneous and mistaken belief that the said representations and implications are true and induce the recipients thereof to supply information which they otherwise would not have supplied.

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 constituted, and now constitute, unfair and deceptive acts and practices, in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

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

1. Respondent, Joseph J. Ramia, is an individual, trading and doing business as United Forwarding Service, with his office and principal place of business located at 2175 Pacheco Street, Concord, Calif.

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 the respondent, Joseph J. Ramia, an individual, trading and doing business as United Forwarding Service, 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 business of obtaining information concerning delinquent debtors, or the offering for sale, sale or distribution of forms, or other material, for use in obtaining information concerning delinquent debtors, or in the collection of, or attempting to collect, delinquent accounts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, or placing in the hands of others for use, any form, questionnaire or other material, printed or written, which does not clearly reveal that the purpose for which the information is requested is that of obtaining information concerning delinquent debtors, or in the collection of, or attempting to collect, delinquent accounts.

2. Representing, or placing in the hands of others, any means by which they may represent, directly or by implication, that a package, or other thing of value, is being held for the persons from whom information is sought, unless respondent then has in his possession such package, or other thing of value, intended for such person and then

only when the contents of the package, or other thing of value, is clearly and expressly disclosed and described.

3. Using the name United Forwarding Service or any other name of similar import to designate, describe or refer to respondent's business.

It is further ordered, That the respondent herein, Joseph J. Ramia, an individual trading and doing business as United Forwarding Service, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

JOSEPH KUSIN ET AL. TRADING AS DIXIE BEDDING & FURNITURE CO.

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

Docket C-61. Complaint, Jan. 5, 1962—Decision, Jan. 5, 1962

Consent order requiring a Monroe, La., co-partnership to cease violating the Textile Fiber Products Identification Act by labeling and advertising as "70% virgin wool and 30% nylon", floor coverings which contained substantially less nylon than thus represented; failing to indicate on labels and in advertising that the fiber content information did not apply to the exempted backings, fillings, or paddings; using the name of the fur-bearing animal nutria deceptively in advertising in that the products concerned did not contain hair of the nutria; removing the required labels or other identification from textile products prior to delivery to the consumer; and using fictitious prices preceded by the term "Orig." in advertising carpeting.

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 Joseph Kusin, Louis M. Kusin and Mrs. Irving Bloom, individually and as co-partners trading as Dixie Bedding & Furniture Co., hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated 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. Respondents Joseph Kusin, Louis M. Kusin and Mrs. Irving Bloom are individuals and co-partners trading as Dixie Bedding & Furniture Co. The partnership has its office and principal place of business at 811 Washington Street, Monroe, La.

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

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 stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were floor coverings which were falsely and deceptively advertised in the Monroe Morning World, a newspaper published in the city of Monroe, State of Louisiana, and having a wide circulation in said State and various other states of the United States, in the following respects:

1. Certain of said floor coverings were advertised as containing "70% virgin wool and 30% nylon", whereas in truth and in fact such floor coverings contained substantially less nylon than represented.

2. Respondents in disclosing the fiber content information as to floor coverings containing exempted backings, fillings, or paddings, failed to set forth such fiber content information in such a manner as to indicate that it applied only to the face, pile, or outer surface of the floor coverings and not to the exempted backings, fillings or paddings.

PAR. 4. Certain of said textile fiber products were further misbranded by respondents in that there was not on or affixed to the said textile fiber products any stamp, tag, label or other means of identification showing the required information in violation of Section 4(b) of the Textile Fiber Products Identification Act.

PAR. 5. Certain of said textile fiber products were falsely and deceptively advertised in that respondent in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and assist directly or indirectly in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto, were floor coverings which were falsely and deceptively advertised in the Monroe Morning World, a newspaper published in the city of Monroe, State of Louisiana, and having a wide circulation in said State and various other states of the United States, in the following respects:

(1) Certain of said floor coverings were advertised as containing "70% Virgin Wool and 30% Nylon", whereas in truth and in fact such floor coverings contained substantially less nylon than represented.

(2) Respondents in disclosing the fiber content information as to floor coverings containing exempted backings, fillings or paddings failed to set forth such fiber content information in such a manner as to indicate that it related only to the face, pile or outer surface of such floor coverings and not to the exempted backings, fillings or paddings.

PAR. 6. Certain of said textile fiber products were falsely and deceptively advertised in that the name of a fur-bearing animal, namely nutria, was used in the advertisement of such products when said products or parts thereof in connection with which the name of the fur-bearing animal was used, were not furs or fur products within the meaning of the Fur Products Labeling Act, and did not contain the hair or fiber of the nutria in violation of Section 4(g) of the Textile Fiber Products Identification Act and Rule 9 of the Rules and Regulations promulgated thereunder.

PAR. 7. In disclosing the required fiber content information in advertising certain textile fiber products, namely floor coverings, containing exempted backings, fillings, or paddings, respondents failed to set forth that such disclosure related only to the face, pile, or outer surface of the floor covering and not to be exempted backing,

filling, or padding in violation of Rule 11 of the Rules and Regulations promulgated under the Textile Fiber Products Identification Act.

PAR. 8. After shipment of textile fiber products in commerce and prior to the time such textile fiber products were sold and delivered to the ultimate consumer, respondents removed or caused or participated in the removal of the stamps, tags, labels, or other means of identification required by the Textile Fiber Products Identification Act to be affixed to such textile fiber products, in violation of Section 5(a) of said Act and the Rules and Regulations promulgated thereunder.

PAR. 9. The acts and practices of respondents, as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 10. In the course and conduct of their business respondents have been and are engaged in disseminating and in causing to be disseminated in newspapers of interstate circulation, advertisements intended to induce sales of its merchandise.

PAR. 11. Among and typical, but not all inclusive of the statements appearing in the advertisements described in paragraph 10 are the following:

Prices Slashed on Fine BROADLOOM CARPETING! Wool and nylon broadlooms. A blend of 70% virgin wool for stability of colors and 30% nylon for added wear. Rose beige, martini and Roman beige in 12-foot widths. For living area, bedroom, dining room. Orig. 9.95 sq. yd.

Sq. Yd. $4.99

perfect quality 12' broadloom all wool Wiltons, textured uncut twist, twist frieze, cut & uncut Wilton. Short rolls. Orig. 7.95 to 10.95 sq. yd.

Sq. Yd. $5.99

100% wool Wilton Truly the luxurious carpet you have always wanted at a budget price: Rose beige, nutria, sandalwood. 12-foot width. Orig. to 14.95 sq. yd.

Sq. Yd. $6.99

PAR. 12. Through the use of the amounts in connection with the term "Orig." the respondents represented that said amounts were the prices at which the merchandise referred to was usually and customarily sold by respondents in the recent and regular course of business, and through the use of said amounts and the lesser amounts that the differences between said amounts represented a saving to the purchaser from the price at which said merchandise was usually

and customarily sold by respondents in the recent and regular course of business.

PAR. 13. The aforesaid representations were false, misleading and deceptive.

In truth and in fact, the amounts set out in connection with the term "Orig." were in excess of the prices at which the articles of merchandise referred to were usually and customarily sold at retail, by respondents' in the recent and regular course of business and the difference between such amounts and the lesser amounts did not represent savings from the prices at which the merchandise had been usually and customarily sold by respondents in the recent and regular course of business.

PAR. 14. The acts and practices of the respondents set out in paragraphs 10 through 13, 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

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

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

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

1. Respondents Joseph Kusin, Louis M. Kusin and Mrs. Irving Bloom are individuals and co-partners trading as Dixie Bedding & Furniture Co. The co-partnership has its office and principal place of business at 811 Washington Street, Monroe, La.

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 Joseph Kusin, Louis M. Kusin and Mrs. Irving Bloom, individually and as co-partners trading as Dixie Bedding & Furniture Co., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported, in commerce, or the importation into the United States of textile fiber products; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of textile fiber products which have been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of textile fiber products, whether in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products:

1. As to the name or amount of constituent fibers contained therein.

2. By failing to set forth that the required disclosure as to the fiber content of floor coverings relates only to the face, pile, or outer surface of such products and not to exempted backing, filling, or padding when such is the case.

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

C. Falsely and deceptively advertising textile fiber products by:

1. 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 Sections 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.

2. Failing to set forth that the disclosure of the fiber content of floor coverings relates only to the face, pile or outer surface and not to the exempted backing, filling or padding of such products where such is the case.

3. Using any names, words, depictions, descriptive matter or other symbols, which connote or signify a fur bearing animal, unless such products or parts thereof in connection with which the names, words, depictions, descriptive matter or other symbols are used, are furs or fur products within the meaning of the Fur Products Labeling Act, provided, however, that where a textile fiber product contains the hair or fiber of a fur-bearing animal, the name of such animal, in conjunction with the word "fiber", "hair", or "blend", may be used.

D. Failing to set forth that the disclosure of the required fiber content information as to floor coverings containing exempted backings, fillings, or paddings, relates only to the face, pile or outer surface of such textile fiber products and not to the exempted backings, fillings or paddings.

E. Removing, causing or participating in the removal or mutilation of any stamp, tag, label, or other identification required to be affixed to textile fiber products, after shipment of such textile fiber products in commerce and prior to the time such textile fiber products are sold and delivered to the ultimate consumer, except as permitted by the Textile Fiber Products Identification Act.

It is further ordered, That respondents Joseph Kusin, Louis M. Kusin and Mrs. Irving Bloom, individually and as copartners, trading as Dixie Bedding & Furniture Co., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of their floor coverings or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. Misrepresenting in any manner, the savings available to purchasers of respondents' products.

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.

Complaint

IN THE MATTER OF

THE RUBBER MANUFACTURERS ASSOCIATION, INC., ET AL.

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

Docket 7505. Complaint, June 2, 1959—Decision, Jan. 6, 1962

Consent order requiring two trade associations and 15 manufacturers, accounting for substantially all the domestic production of rubber tires and tubes and with annual sales approximating two billion dollars, to cease engaging in a price-fixing conspiracy in the course of which they agreed upon and maintained a single zone delivered price system for tires and tubes—with the "Big Four" quoting identical prices to all customers of a class throughout the United States, and the others quoting prices lower by agreed-upon differentials—and engaged in other contributing illegal practices as in the order below indicated.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the party respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent The Rubber Manufacturers Association, Inc., hereinafter referred to as respondent RMA, is an incorporated trade association organized and existing under and by virtue of the laws of the State of Connecticut, with its principal office located at 444 Madison Avenue, New York, N.Y. Said trade association was originally organized in 1900. After undergoing changes in name and organizational structure, it was incorporated under the laws of the State of Connecticut in 1915, under the name "The Rubber Club of America", which name was changed to "The Rubber Association of America, Inc." in 1917, and to its present corporate title in 1929.

Respondent The Tire and Rim Association, Inc., hereinafter referred to as respondent TRA, is an incorporated trade association organized and existing under and by virtue of the laws of the State of Ohio, with its principal office located at 2001 First National Tower, Akron, Ohio. Said trade association was originally organized in 1903

under a different name. After undergoing several changes in name and organizational structure, it was incorporated under its present corporate title in 1933.

Respondent The Goodyear Tire and Rubber Company, hereinafter referred to as respondent Goodyear, 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 1144 East Market Street, Akron, Ohio.

Respondent The Firestone Tire and Rubber Company, hereinafter referred to as respondent Firestone, 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 1200 Firestone Parkway, Akron, Ohio.

Respondent United States Rubber Company, hereinafter referred to as respondent U.S., 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 1230 Avenue of the Americas, New York, N.Y.

Respondent The B. F. Goodrich Company, hereinafter referred to as respondent B. F. Goodrich, 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 500 South Main Street, Akron, Ohio.

Respondent The General Tire and Rubber Company, hereinafter referred to as respondent General, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with is principal office and place of business located at 1708 Englewood Avenue, Akron, Ohio.

Respondent The Armstrong Rubber 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 475 Elm Street, West Haven, Conn. Said respondent was incorporated in 1940 as successor in interest to Armstrong Rubber Company, Inc., incorporated under the laws of the State of New Jersey in 1916.

Respondent Cooper Tire and Rubber Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Lima and Western Avenues, Findlay, Ohio.

Respondent The Dayton Rubber Company 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 2342 Riverview Avenue, Dayton, Ohio.

Respondent Dunlop Tire and Rubber Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at River Road and Sheridan Drive, Buffalo, N.Y.

Respondent The Gates Rubber Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 999 South Broadway, Denver, Colo.

Respondent Lee Rubber and Tire Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at Conshohocken, Pa.

Respondent The Mansfield Tire and Rubber Company 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 515 Newman Street, Mansfield, Ohio.

Respondent McCreary Tire and Rubber Company 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 Indiana, Pa.

Respondent The Mohawk Rubber Corporation 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 1325 Second Avenue, East Akron, Ohio.

Respondent Seiberling Rubber Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 345 15th Street, Northwest, Barberton, Ohio.

All of the respondents named herein, other than respondents RMA and TRA, are collectively referred to hereinafter as "respondent manufacturers". Each of said respondent manufacturers is a member or contributing nonmember, of respondents RMA and TRA, and has for a number of years, through such membership and otherwise, directly or indirectly, participated in the cooperative and collective action of all of those named herein as respondents in formulating, engaging in and making effective the methods, systems, acts, practices and policies which are alleged herein to be unlawful.

PAR. 2. Respondent manufacturers, either directly or indirectly through subsidiary or affiliated corporations or operating divisions, are engaged in the manufacture, sale and distribution of a great

variety of rubber and associated products, including tires and inner tubes and items related thereto, hereinafter referred to as "tires and tubes", for use on automobiles, trucks, buses, tractors and other vehicles.

PAR. 3. Respondent RMA is a trade association whose membership is composed of manufacturers of tires and tubes and various other types of rubber products. Said respondent has been and now is engaged, through divisions, committees and other operating units, in a wide range of activities of mutual interest to its members, including standardization and simplification programs and the formulation and promotion of uniform accounting practices in the rubber industry. Respondent TRA is a trade association whose membership is composed of manufacturers of tires and tubes, rims, wheels, and their component parts. Said respondent "is the technical standardizing body of the tire and rim manufacturers of the United States", and has been and now is principally engaged, through committees and other operating units, in the formulation and adoption of standardization and simplification programs for the mutual interests of its members. Respondent manufacturers are among the principal members of repondents RMA and TRA (except respondent The Gates Rubber Company, which is a contributing nonmember of respondent RMA) and actively participate in the management, operations, policies, discussions, meetings and programs thereof.

PAR. 4. Total sales of tires and tubes by domestic manufacturers thereof approximate two billion dollars annually, substantially all of which is accounted for by respondent manufacturers. To the extent that said respondent manufacturers act collectively or cooperatively in the pricing of tires and tubes, they are in a position to dominate and control the prices at which said products are sold by them to purchases in the original equipment and replacement markets. The latter includes independent dealers and distributors, federal, state and local government agencies and departments, and other classes of customers.

PAR. 5. The leading manufacturers of tires and tubes in the United States are respondents Goodyear, Firestone, U.S., and B. F. Goodrich. Said respondents collectively have been referred to in the industry for many years as the "Big Four", and are hereinafter so designated. The next leading manufacturer of said products for many years has been, and now is, respondent General. The Big Four and respondent General collectively have been referred to in the industry for many years as the "majors", and are hereinafter so designated. All other respondent manufacturers collectively have been, and now are, re-

ferred to in the industry as the "minors", and are hereinafter so designated.

PAR. 6. Respondent manufacturers produce tires and tubes in factories located in various parts of the United States, with many of said respondents having factories in more than one locality, from which points such products are transported, when sold or consigned, either directly or through numerous field warehouses or the company-owned stores of certain of said respondents, to their respective customers located throughout the United States. Among such customers are thousands of independent tire dealers or distributors who purchase tires and tubes from respondent manufacturers for resale at the wholesale level to automobile dealers, service stations, garages, fleet operators, and others, as well as for resale at the retail level. Respondent manufacturers also solicit business at the wholesale level from automobile dealers, service stations, garages, fleet operators, and others, and certain of said respondents have numerous stores located throughout the United States which resell tires and tubes at the wholesale level to the foregoing classes of customers, as well as at the retail level. Other important customer classes include the manufacturers of motor and other vehicles, who purchase tires and tubes primarily for use as original equipment on said vehicles; and federal, state and local governments, many of whom purchase tires and tubes on a sealed bid basis. The "majors" are the leading suppliers of tires and tubes to the original equipment market, although all respondent manufacturers solicit the business of, and sell tires and tubes to, purchasers in said market.

PAR. 7. Respondent manufacturers maintain, and at all times mentioned herein have maintained either directly or indirectly through subsidiary or affiliated corporations or operating divisions, a substantial and continuous course of trade in tires and tubes in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various states of the United States and the District of Columbia. Respondents RMA and TRA have been and now are engaged in aiding respondent manufacturers in carrying out the unlawful methods, acts and practices as alleged herein, which directly and substantially have affected and now affect competition between and among said respondent manufacturers.

PAR. 8. Respondent manufacturers have been and now are in competition with each other, and with others, in the manufacture, sale and distribution of tires and tubes to purchasers thereof, except insofar as actual and potential competition has been hindered, lessened.

restricted, restrained, suppressed or eliminated by the unlawful and unfair methods, acts and practices hereinafter alleged.

PAR. 9. Respondent manufacturers, either directly or indirectly through subsidiary or affiliated corporations or operating divisions, acting between and among themselves and through and by means of respondents RMA and TRA, for many years last past and continuing to the present time, have maintained and now maintain and have in effect an understanding, agreement, combination and conspiracy to pursue, and they have pursued, a planned common course of action between and among themselves to adopt and adhere to certain practices and policies to hinder, lessen, restrict, restrain, suppress and eliminate competition in the manufacture, sale and distribution of tires and tubes in the course of the aforesaid commerce.

PAR. 10. Pursuant to and in furtherance of said understanding, agreement, combination, conspiracy and planned common course of action, respondent manufacturers, either directly or indirectly through subsidiary or affiliated corporations or operating divisions, acting between and among themselves and through and by means of respondents RMA and TRA, for many years last past and continuing to the present time, have engaged in and carried out by various methods and means the following acts, practices, methods, systems and policies, among others:

(1) Agreed to adopt, and have adopted, maintained and made effective, a system of delivered price quotations for tires and tubes, designed to prevent, and which does prevent, reflection in such quotations of any differences in cost of raw materials, factory overhead, depreciation or other items, as between respondent manufacturers, or any differences in the cost of delivery between the respective places of manufacture, or other shipping points, of said respondents to the respective locations of the purchasers or prospective purchasers of tires and tubes. Said system also prevents any advantage to many of said purchasers in delivered cost which would otherwise result because of their proximity to the places of production or shipping point, thereby discriminating against such purchasers.

(2) Agreed to adopt, and have adopted, maintained and made effective, a single zone delivered price system for tires and tubes whereby price offers made by all respondent manufacturers to all purchasers of a class throughout the United States, regardless of location and any differences in freight rates from shipping point to destination, are identically or substantially matched, except to the extent that by prearrangement and understanding the price offers made by respondent General and by each of respondent "minors" are permitted to be made

and maintained at recognized differentials below the identically or substantially matched offers of the "Big Four" respondents.

(3) For many years prior to about November 1955, respondent manufacturers of industrial solid tires adopted, maintained and made effective a system whereby the United States was divided into two zones, designated by certain of said respondents as East and West zones, which operated in the same manner and with the same effect within each zone, with a price differential between zones, as the single zone delivered price system set forth in subparagraph (2) above. Since about November 1955, industrial solid tires have been offered for sale and have been sold by said respondent manufacturers in the same manner and with the same effect as all other tires and tubes, as set forth in subparagraph (2) above.

(4) Beginning about 1923, respondent manufacturers, with the active participation and cooperation of respondent RMA, prepared and made effective a uniform system of accounting for the tire and tube industry. Said accounting system has been continually used, as revised from time to time, by respondent manufacturers since its inception. In or about 1933, a "Cost Accounting Formula for the Calculation of Rubber Product Costs for Establishment of Selling Prices", hereinafter referred to as "Cost Formula", was included in said system "as a vitally essential and integral part of the uniform cost accounting plan". Said "Cost Formula" was adopted and has been continued in effect since its inception by respondent manufacturers by agreement, understanding and concerted action between and among themselves for utilization, together with other price-fixing formulae, in calculating, fixing, establishing and maintaining identical or substantially identical delivered price quotations in the sale of tires and tubes, except to the extent that agreed upon recognized price differentials are permitted for respondent General and respondent "minors", as described in subparagraph (2) above.

(5) In furtherance of their utilization of the "Cost Formula" in the manner and for the purposes described in subparagraph (4) above, and since the inception thereof, respondent manufacturers have submitted confidential accounting data to respondent RMA for the determination by the latter of arbitrary and artificial pricing factors which it has disseminated to them and which have been and now are used by said respondent manfacturers in the establishment of selling prices for tires and tubes.

(6) Agreed to fix, adopt and maintain, and have fixed, adopted, maintained, and made effective, identical or substantially uniform customer classifications, list prices, trade discounts, promotional dis-

counts, carload and truckload discounts, cumulative annual volume bonuses and allowances, transportation terms, other terms and conditions of sale, and all other factors affecting the selling prices of tires and tubes, all for the purpose and with the effect of either identically or substantially matching delivered price quotations, except to the extent that agreed upon recognized price differentials are permitted for respondent General and respondent "minors", as described in subparagraph (2) above.

(7) Agreed to adopt, and have adopted, maintained and continued in effect, at times through and by means of respondent RMA, uniform or substantially similar policies and terms of sale and delivery with respect to Spring (and Winter) Dating Plans, whereby tires and tubes are delivered to purchasers thereof during specified periods on a deferred payment basis.

(8) Respondent "majors" agreed to adopt, and have adopted, maintained and made effective, uniform policies and practices for special sales promotions of tires and tubes, including the types and sizes of said products featured during such promotions, the applicable terms and conditions of sale and delivery, and the identical or substantially similar prices at which such tires and tubes are sold at retail by said respondent "majors" through their company-owned stores and other outlets. For example, such special sales promotions are conducted during certain National Holiday periods, generally at or about Decoration Day (May), July Fourth, and Labor Day (September).

(9) Agreed to fix and maintain, and have fixed, maintained and made effective, price-fixing formulae for calculating, determining and establishing identical or substantially similar prices for tires and tubes at which sales or offers of sale, by sealed bid or otherwise, have been and now are made or submitted by respondent manufacturers to federal and state, and certain county, city and other local, governmental agencies and departments, and to original equipment manufacturers, except to the extent that agreed upon recognized price differentials are permitted for respondent General and respondent "minors", as described in subparagraph (2) above.

(10) Respondent "majors" agreed to adopt, and have adopted, maintained and continued in effect, a system, method or plan for policing, controlling and enforcing adherence to identical or substantially similar prices, as set forth in Net State Price Lists, on sales, or offers of sale, by sealed bid or otherwise, of tires and tubes by said respondents, and their respective company-owned stores and independent dealers, to state, and certain county, city and other local, governmental agencies and departments.

(11) Agreed to adopt, and have adopted, maintained and continued in effect, a price leadership plan whereby one of the "Big Four" respondents generally leads in the announcement of tire and tube list price increases and decreases, as well as in the announcement of changes in all other factors or policies which affect the selling prices of said products, such as, but not limited to, discounts, bonuses and allowances, terms and conditions of sale and delivery, customer classifications, and Spring (and Winter) Dating Plans. Thereafter, respondent General and respondent "minors", by agreement, follow in the adoption and announcement of either identical or substantially similar prices or pricing factors or policies, except to the extent that agreed upon recognized price differentials are permitted for said respondents, as described in subparagraph (2) above.

(12) Respondent manufacturers have communicated between and among themselves and filed and exchanged with each other, through correspondence, telegraph, telephone and otherwise, confidential and other information concerning past, current and future prices and price quotations, terms and conditions of sale and delivery which have been and now are, or are to be, quoted and charged by said respondents to purchasers or prospective purchasers of tires and tubes. Through and by means of such acts, practices and methods, all respondent manufacturers keep informed and have a common understanding of the prices and pricing factors and policies expected to be, and which have been, used by each of them in the sale, or offering for sale, of tires and tubes.

(13) Respondent manufacturers, with the active cooperation and assistance, through meetings and otherwise, of respondent RMA and respondent TRA, have planned, adopted and made effective, simplification and standardization programs and policies for the purpose and with the effect of fixing, establishing and maintaining identical or substantially similar prices and price quotations, terms and conditions of sale and delivery and other factors affecting prices at which tires and tubes and related products, such as, but not limited to, valves for tubeless tires, are sold or offered for sale by respondent manufacturers, except insofar as agreed upon recognized price differentials are permitted for respondent General and respondent "minors", as described in subparagraph (2) above.

(14) Respondent manufacturers have held and continue to hold meetings from time to time under the auspices and supervision of respondent RMA and of respondent TRA, during the course of which, and at other times, said trade associations have cooperated with and assisted, and continue to cooperate with and assist, said respondent

manufacturers in furthering and carrying out the unlawful acts, practices and methods set forth herein.

PAR. 11. The inherent and necessary effects of the adoption and maintenance by respondent manufacturers of the zone delivered price systems of pricing and other acts, practices and methods set forth in paragraph 10 herein include the following, among others:

(1) The elimination of price competition between and among respondent manufacturers in the sale of tires and tubes;

(2) A substantial lessening of competition between and among respondent manufacturers in all parts of the United States by virtue of each of them voluntarily and reciprocally surrendering and cancelling the inherent advantage it has over other respondent manufacturers within the market area nearer freight-wise to its factory or factories than to a factory of another respondent manufacturer in consideration of a similar surrender and cancellation by each of said other respondent manufacturers;

(3) The fixing and using of certain arbitrary or average costs in determining selling prices of tires and tubes rather than any respondent manufacturer using its own such costs;

(4) The maintenance of monopolistic unfair and oppressive discrimination against purchasers of tires and tubes in large areas of the United States by depriving such purchasers of the advantage in cost otherwise accruing to them by reason of their proximity to the factories of respondent manufacturers, and by compelling such purchasers to pay portions of the cost of transportation of such products to other purchasers more distantly located from the respective factories of said respondents, all in the accomplishment of said respondents' unlawful purpose to destroy price competition in the sale of tires and tubes in commerce and to create for said respondents a monopoly therein and thereof.

PAR. 12. The combination and conspiracy and the acts, practices, methods, policies, agreements and understandings of the respondents as hereinbefore alleged, all and singularly, are unfair and to the prejudice of the public; deprive the public of the benefits of competition in the sale of tires and tubes; prevent price competition among respondent manufacturers in the sale of said products; deprive purchasers of said products of the benefits of competition in price; are discriminatory against some buyers and users of said products; maintain artificial and monopolistic methods and prices in the sale and distribution of said products; have a dangerous tendency and capacity to hinder, frustrate, suppress and eliminate, and have actually hindered, frustrated, suppressed and eliminated, competition in the

sale of tires and tubes in commerce; have a dangerous tendency and capacity to restrain unreasonably, and have restrained unreasonably, commerce in said products; have a dangerous tendency and capacity to create in respondent manufacturers a monopoly in the sale and distribution of such products; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. James S. Kelaher, Sr., and *Mr. James P. Timony* supporting the complaint.

Alexander & Green, New York, N.Y., by *Mr. Edward E. Rigney* for respondent The Rubber Manufacturers Association, Inc.

Wise, Roetzel, Maxon, Kelly & Andress, Akron, O., by *Mr. John M. Ulman* for respondent The Tire and Rim Association, Inc.

Cahill, Gordon, Reindel & Ohl, New York, N.Y., by *Mathias F. Correa*, for respondent The Goodyear Tire & Rubber Company.

Gravelle, Whitlock, Markey & Tait, Washington, D.C., by *Mr. Thomas S. Markey* for respondent The Firestone Tire and Rubber Company.

Arthur, Dry & Dole, New York, N.Y., by *Mr. Myron Kalish*, for respondent United States Rubber Company.

White & Case, New York, N.Y., by *Mr. Edgar Barton* for respondent The B. F. Goodrich Company.

Sullivan & Cromwell, New York, N.Y., by *Mr. William E. Willis*, and *Mr. Frank W. Knowlton* and *Mr. John J. Dalton*, Akron, O., for respondent The General Tire & Rubber Company.

Thompson, Weir & Barclay, New Haven, Conn., by *Mr. John W. Barclay* for respondent The Armstrong Rubber Company.

Marshall, Melhorn, Bloch & Belt, Toledo, O., by *Mr. W. A. Belt*, for respondent Cooper Tire & Rubber Company.

Pickrel, Schaeffer & Ebeling, Dayton, O., by *Mr. James E. Corkey* and *Mr. William G. Pickrel*, and *Gravelle, Whitlock, Markey & Tait*, Washington, D.C., by *Mr. Thomas S. Markey* for respondent Dayco Corporation.

Phillips, Mahoney, Lytle, Yorkey & Letchworth, Buffalo, N.Y., by *Mr. Robert M. Hitchcock* for respondent Dunlop Tire and Rubber Corporation.

Mr. Dayton Denious, Denver, Colo., for respondent The Gates Rubber Company.

Satterlee, Browne, Cherbonnier & Dickerson, New York, N.Y., by *Mr. Paul Van Anda* for respondent Lee Rubber and Tire Corporation.

Baker, Hostetler & Patterson, Cleveland, O., by *Mr. Ezra K. Bryan* for respondent The Mansfield Tire and Rubber Company.

Reed, Smith, Shaw & McClay, Pittsburgh, Pa., by *Mr. Edmund K. Trent* for respondent McCreary Tire and Rubber Company.

Brouse, McDowell, May, Bierce & Wortman, Akron, O., by *Mr. C. Blake McDowell, Jr.*, for respondent The Mohawk Rubber Company.

Buckingham, Doolittle & Burroughs, Akron, O., by *Mr. Richard A. Chenoweth*, for respondent Seiberling Rubber Company.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the respondents in this proceeding, charging that fifteen tire and tube manufacturers, accounting for substantially all of the industry's domestic production, and two trade associations had conspired to fix prices on tires and tubes.

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

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

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission, published May 6, 1955, as amended.

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 The Rubber Manufacturers Association, Inc. (hereinafter sometimes referred to as RMA), is an incorporated trade association organized and existing under and by virtue of the laws of the State of Connecticut, with its principal office located at 444 Madison Avenue, New York, N.Y.

Respondent The Tire and Rim Association, Inc. (hereinafter sometimes referred to as TRA), is an incorporated association organized and existing under and by virtue of the laws of the State of Ohio, with its principal office located at 2001 First National Tower, Akron, Ohio.

Respondent The Goodyear Tire & Rubber Company, referred to in the complaint as The Goodyear Tire and Rubber Company, is an Ohio corporation with its principal office and place of business located at 1144 East Market Street, Akron, Ohio.

Respondent The Firestone Tire and Rubber Company is an Ohio corporation with its principal office and place of business located at 1200 Firestone Parkway, Akron, Ohio.

Respondent United States Rubber Company is a New Jersey corporation with its principal office and place of business located at 1230 Avenue of the Americas, New York, N.Y.

Respondent The B. F. Goodrich Company is a New York corporation (referred to in the complaint as an Ohio corporation) with its principal office and place of business located at 500 South Main Street, Akron, Ohio.

Respondent The General Tire & Rubber Company, referred to in the complaint as The General Tire and Rubber Company, is an Ohio corporation with its principal office and place of business located at 1708 Englewood Avenue, Akron, Ohio.

Respondent The Armstrong Rubber Company is a Connecticut corporation with its principal office and place of business located at 475 Elm Street, West Haven, Conn.

Respondent Cooper Tire & Rubber Company, referred to in the complaint as Cooper Tire and Rubber Company, is a Delaware corporation with its principal office and place of business located at Lima and Western Avenues, Findlay, Ohio.

Respondent Dayco Corporation, formerly known as and named in the complaint as The Dayton Rubber Company, is an Ohio corporation with its principal office and place of business presently located at 333 West First Street, Dayton, Ohio.

Respondent Dunlop Tire and Rubber Corporation is a New York corporation with its principal office and place of business located at River Road and Sheridan Drive, Buffalo, N.Y.

Respondent The Gates Rubber Company is a Colorado corporation with its principal office and place of business located at 999 South Broadway, Denver, Colo.

Respondent Lee Rubber and Tire Corporation is a New York corporation with its principal office and place of business located at Conshohocken, Pa.

719-603—64——8

Respondent The Mansfield Tire and Rubber Company is an Ohio corporation with its principal office and place of business located at 515 Newman Street, Mansfield, Ohio.

Respondent McCreary Tire and Rubber Company is a Pennsylvania corporation with its principal office and place of business located at Indiana, Pa.

Respondent The Mohawk Rubber Company, referred to in the complaint as The Mohawk Rubber Corporation, is an Ohio corporation with its principal office and place of business located at 1325 Second Avenue, Akron, Ohio.

Respondent Seiberling Rubber Company is a Delaware corporation with its principal office and place of business located at 345 15th Street, Northwest, Barberton, Ohio.

All of the respondents named herein, other than respondents RMA and TRA, are collectively sometimes referred to hereinafter as respondent manufacturers.

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

I

A. *It is ordered*, That respondents, The Rubber Manufacturers Association, Inc., The Tire and Rim Association, Inc., The Goodyear Tire & Rubber Company, The Firestone Tire and Rubber Company, United States Rubber Company, The B. F. Goodrich Company, The General Tire & Rubber Company, The Armstrong Rubber Company, Cooper Tire & Rubber Company, Dunlop Tire and Rubber Corporation, The Gates Rubber Company, Lee Rubber and Tire Corporation, The Mansfield Tire and Rubber Company, McCreary Tire and Rubber Company, The Mohawk Rubber Company, and Seiberling Rubber Company, their respective officers, representatives, agents, employees, subsidiaries, successors and assigns, directly or through any corporate or other device in or in connection with the manufacture, offering for sale, sale or distribution of rubber tires and tubes, tire valves, retread materials and repair materials (all of which products are hereinafter referred to as tires and tubes) in interstate commerce, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between or among any two or more of the said respondents, or between any one

or more of said respondents and any others not parties hereto, to do or perform any of the following things:

1. Establish, fix or maintain prices, discounts, bonuses, allowances, terms or conditions of sale, or any other pricing policies or adhere to or follow any prices, discounts, bonuses, allowances, terms or conditions of sale, or any other pricing policies so established, fixed or maintained.

2. Quote, bid or sell at prices calculated or determined pursuant to or in accordance with a single zone delivered price system, or pursuant to or in accordance with any other plan or system of delivered prices.

3. Adopt, use or in any way follow any prices, discounts, bonuses, allowances, terms or conditions of sale, or any other pricing policies, announced by a particular respondent or respondents, or any of them, whereby prices, discounts, bonuses, allowances, terms or conditions of sale, or any other pricing policies are made identical or substantially uniform or matched, or reflect agreed upon price differentials.

4. Quote, bid or sell at prices calculated or determined in whole or in part through the use of a system of accounting or a cost formula.

5. Circulate or communicate cost data to respondent RMA or to any other trade association, business organization or non-governmental agency.

6. Establish, fix, maintain or adopt customer classifications, list prices, discounts, bonuses, warranties, guarantees, allowances, transportation terms, sales promotion plans (such as Labor Day sales or liquidation sales), payment plans (such as Spring Dating Plans), terms or conditions of sale, or any other pricing policies.

7. Quote, bid or sell to federal, state, county, or municipal governments, or any agencies thereof, or to original equipment manufacturers, at prices arrived at through any agreed upon formulae, or by any other agreed upon methods or means, whereby prices are made identical or substantially uniform or matched, or reflect agreed upon price differentials.

8. Establish or maintain a system, method or plan for policing, controlling, or enforcing adherence to any prices or pricing policies to any class of customers.

9. Exchange, distribute or circulate with, between or among respondents any information concerning prices, discounts, bonuses, allowances, terms or conditions of sale, or any other pricing policies before announcement thereof to respondent's customers or the public.

10. Plan, adopt or make effective, through respondent RMA, or any other trade association or business organization, or through respondent

TRA, or through any other non-governmental agency, any standardization or simplification programs or policies for the purposes of fixing, maintaining or tampering with prices or pricing policies.

11. Establish, fix, maintain, adopt or suggest any resale price to be maintained by any dealer; or police, control or enforce adherence to any resale price.

12. Allocate or designate the business of a specific purchaser, governmental or other, to or for a particular respondent or respondents.

13. Use or maintain respondent RMA or respondent TRA or any other agency as an instrument or medium for promoting, aiding, or rendering more effective, any cooperative or concerted effort or efforts to suppress or eliminate competition by or through any of the means or methods set forth in this order.

B. It is understood that nothing contained in the foregoing or Paragraph III hereof shall prevent any respondent manufacturer from negotiating or carrying out in good faith a contract to manufacture, or to sell to or buy from any bona fide customer or supplier, whether such customer or supplier is or is not a respondent herein.

II

It is further ordered, That each manufacturing respondent, and subsidiary thereof, shall, within ninety (90) days after the date of service of this Order, individually and independently revise its prices and pricing factors and policies on tires and tubes in the following manner:

A. Independently review its prices, price lists, discounts, bonuses and allowances, and other pricing factors and policies, on the basis of its own costs, the margin of profit individually desired, and other lawful considerations including outstanding contractual commitments;

B. Withdraw its presently effective prices, price lists, discounts, bonuses and allowances;

C. Establish new prices, price lists, discounts, bonuses and allowances on the basis of such an independent review;

D. In the event any prices, price lists, discounts, bonuses or allowances thus established are changed within the period of six (6) months following their adoption, the respondent making such change shall have the burden of establishing that such change was made in good faith to meet a competitive pricing situation. For a period of two years following the adoption of the prices, price lists, discounts, bonuses or allowances provided for in subparagraph C hereof, any respondent who has made changes therein during the above-noted six-

month period shall have the burden of documenting all evidence relied upon in making such change and retaining and making available to the Commission upon request all such documentation; and

E. Within one hundred and twenty (120) days after the date of service of this Order, file with the Commission an affidavit setting forth the fact and manner of compliance with subparagraph C hereof.

III

It is further ordered, That each of the respondents, its officers, representatives, agents, employees, subsidiaries, successors and assigns, directly or through any corporate or other device, in connection with the sale of tires and tubes in interstate commerce, do forthwith cease and desist from:

A. Disseminating any information or data as to prices, discounts, bonuses, allowances, terms or conditions of sale, or any other pricing policies to any other of the respondents before announcement thereof to respondent's customers or to the public.

B. Attending any meeting with another respondent or respondents at which prices, discounts, bonuses, allowances, terms or conditions of sale, or any other pricing policies are discussed or considered.

IV

It is further ordered, That respondent The Rubber Manufacturers Association, Inc., its officers, representatives, agents, employees, subsidiaries, successors and assigns, directly or through any divisions, committees or other operating units or devices, formally or informally, in connection with the manufacture, offering for sale, sale or distribution of tires and tubes, do forthwith cease and desist and permanently refrain from planning or performing any of the following things:

A. Obtaining or disseminating any information as to prices, discounts, bonuses, allowances, warranties, guarantees, sales promotion plans (such as Labor Day sales or liquidation sales), payment plans (such as Spring Dating plans), terms or conditions of sale, or customer classifications in connection therewith, or any other pricing policies.

B. Conducting or holding any meeting at which discussion is had or consideration is given concerning information as to prices, discounts, bonuses, allowances, warranties, guarantees, sales promotion plans (such as Labor Day sales), payment plans (such as Spring Dating plans), terms or conditions of sale, or customer classification in connection therewith, or any other pricing policies.

C. Obtaining, compiling, retaining or disseminating any uniform accounting manuals or any cost data relating to accounting practices or procedures, including but not limited to cost accounting data, cost accounting surveys, cost formulae, or any accounting data relating to prices.

D. Cooperating in the formulation of any standardization or simplification programs or policies with the purpose of fixing, maintaining or tampering with prices or pricing policies.

E. Obtaining or collecting any information on nonpublic freight rates or transportation charges from any tire and tube manufacturer, or disseminating any information on any fictitious or averaged freight rates, or any zone pricing plan or system.

F. Acting as an instrument or medium for promoting, aiding or rendering more effective any cooperative or concerted effort to suppress or eliminate competition, or to cooperate with any of the other respondents herein in carrying out any of the acts prohibited by this Order.

V

It is further ordered, That respondent The Tire and Rim Association, Inc., its officers, representatives, agents, employees, subsidiaries, successors and assigns, directly or through any divisions, committees, or other operating units or devices, formally or informally, in connection with the manufacture, offering for sale, sale or distribution of tires and tubes, do forthwith cease and desist and permanently refrain from planning or performing any of the following things:

A. Cooperating in the formulation of any standardization or simplification programs or policies with the purpose of fixing, maintaining or tampering with prices or pricing policies.

B. Acting as an instrument or medium for the purpose of promoting, aiding or rendering more effective any cooperative or concerted effort to suppress or eliminate competition, or to cooperate with any of the other respondents herein in carrying out any of the acts prohibited by this Order.

VI

It is further ordered, That the complaint be, and it is hereby, dismissed as to respondent Dayco Corporation (formerly operating as The Dayton Rubber Company).

VII

It is further ordered, That each of the respondents shall within sixty (60) days after service upon it of this order file with the Com-

mission a report in writing setting forth in detail the manner and form in which it has complied with Paragraphs I, III, IV and V of this Order to cease and desist.

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 6th day of January 1962, become the decision of the Commission; and, accordingly:

It is therefore ordered, That respondents shall, within the times provided for in the order contained in the initial decision herein, file with the Commission reports, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

THE NATIONAL SCHOOL OF CONSTRUCTION, INC., ET AL.

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

Docket C-62. Complaint, Jan. 8, 1962—Decision, Jan. 8, 1962

Consent order requiring Milwaukee sellers of a correspondence course in the operation and maintenance of heavy construction equipment, to cease using false representations in advertising in newpapers and periodicals, leaflets, form letters, etc., to sell its courses, including false employment offers and opportunities, exaggerated earnings claims, GI and Justice Department approval, operation of several branches, etc., as in the order below indicated.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The National School of Construction, Inc., a corporation, and Raymond F. Watt and Richard Kolpin, individually and as officers of said corporation; and James Haig Advertising, a corporation, and James Haig, 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