IN THE MATTER OF

ADAMS DRUG COMPANY, INC., ET AL.

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

Docket C-114. Complaint, Apr. 16, 1962—Decision, Apr. 16, 1962

Consent order requiring the corporate operators of a number of retail drugstores in the New England States and New York to cease representing falsely, in advertisements in newspapers, that excessive amounts were usual retail prices by such statements, among others, as "Steel Construction Caulking Gun usually 1.49 88¢." ". . . Cellulose Sponge Mop Reg. 3.95 2.99", and "Electric Shavers at Discount Prices 28.50 Schick '3-Speed' . . . 18.88."

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 Adams Drug Company, Inc., a corporation, and Leonard Salmanson and Donald Salmanson, 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 as follows:

PARAGRAPH 1. Respondent Adams Drug Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 27 Mason Street, Pawtucket, R.I.

Respondents Leonard Salmanson and Donald Salmanson are individuals and are officers of said corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their addresses are the same as that of the corporate respondent.

PAR. 2. Through said corporate respondent and a wholly owned subsidiary corporation, respondents own and operate a number of retail drugstores within the States of Rhode Island, Massachusetts, New Hampshire, Connecticut, and New York.

Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of drugs, appliances, mops, wax, scales, electric razors, and other articles of general merchandise at retail to members of the purchasing public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise to be shipped from their place of business in Rhode Island to their several stores in various other States of the United States, for sale to the purchasing public. In such instances shipments are made to respondents' stores in States other than that in which such shipments have originated, and respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act. In addition to the aforesaid articles of merchandise, respondents also cause advertisements and other promotional material to be transported and shipped from their aforesaid place of business in the State of Rhode Island to the various other States in which their several stores are located.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their said articles of merchandise, respondents now make, and have made, numerous statements and representations respecting the retail price of their merchandise in advertisements published in various newspapers of general circulation.

Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

Steel Construction
Caulking Gun
Usually 1.49 88¢

O'Cedar '99'
Cellulose
Sponge Mop
Reg. 3.95 2.99

Auto Polish Sale!
J-Wax Paste
Turtle Wax
List Price 2.00 each
Choice 88¢

* * *

Made by 'Detecto'
Bathroom Scale
Mfg.'s List Price 5.95
2.99

Electric Shavers at Discount Prices

28.50 Schick "3-speed"	18.88
26.95 Remington "Roll-A-Matic"	18.88
24.95 Sunbeam "Rollmaster"	19.88
24.95 Norelco "Speedshaver"	16.88
19.50 Ronson with "Super Trim"	14.88
18.50 Lady Remington	13.88

PAR. 5. Through the use of the aforesaid statements and others similar thereto, but not included herein, respondents have represented, directly or indirectly:

a. That $1.49 is the respondent's usual and regular retail selling price for the said Caulking Gun in the recent, regular course of their business.

b. That $3.95 is the respondents' usual and regular retail selling price for the said O'Cedar Cellulose Sponge Mop in the recent, regular course of their business.

c. That the amounts designated as "Mfg.'s List Price" and "List Price" are the prices at which the merchandise so advertised is usually and regularly sold at retail in the trade areas where the representations are made.

d. That the higher stated prices for said electric razors are the prices at which the said merchandise is usually and regularly sold at retail by the respondents in the recent, regular course of their business.

e. That purchasers of the aforesaid articles of merchandise are afforded savings in amounts equal to the differences between the said higher stated prices and the corresponding lower stated price amounts.

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

a. $1.49 is not respondents' usual and regular retail selling price for the said Caulking Gun in the recent, regular course of their business, but is in excess of the actual retail selling price.

b. $3.95 is not respondents' usual and regular retail selling price for the said O'Cedar Cellulose Sponge Mop in the recent, regular course of their business, but is in excess of the actual retail selling price.

c. The amounts set out in connection with the terms "Mfg.'s List Price" and "List Price" are not the prices at which the merchandise referred to is usually and regularly sold at retail in their trade area, but are in excess of the actual retail selling prices.

d. The higher stated prices for said electric razors are not the prices for which the said merchandise is usually and regularly sold by respondents in the recent, regular course of their business, but are in excess of the actual retail selling prices.

e. Purchasers of the aforesaid articles are not afforded savings in the amounts equal to the differences between said higher prices and the corresponding lower prices.

PAR. 7. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms, and individuals engaged in the sale of merchandise of the same general kind and nature as that sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, and practices has had, and now has, the capacity and tendency to mislead members of the general 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' articles of merchandise by reasons of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the 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 methods of competition and deceptive acts and practices in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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, Adams Drug Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 27 Mason Street in the city of Pawtucket, State of Rhode Island.

Respondents Leonard Salmanson and Donald Salmanson are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents, Adams Drug Co., Inc., a corporation, and its officers, and Leonard Salmanson and Donald Salmanson, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of drugs, appliances, mops, wax, scales, electric razors, or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly:

(a) That any amount is respondents' usual and regular retail price for said merchandise when such amount is in excess of the price at which said merchandise is usually and regularly sold by respondents in the recent regular course of business.

(b) That any amount is the usual and customary retail price for said merchandise in the trade area or areas where such representation is made, when such amount is in excess of the price at which said merchandise is usually and customarily sold at retail in said trade area or areas.

(c) That any savings are afforded in the purchase of said merchandise from the respondents' selling price or from the selling price in respondents' trade area unless the price at which the merchandise is offered constitutes a reduction from the price at which said merchandise is usually and regularly sold at retail by the respondents or at which said merchandise is usually and regularly sold at retail in said trade area.

2. (a) Using the words "usually", "reg.", or any other words of similar import or meaning in connection with a stated amount higher than that at which merchandise is being offered for sale by respondents when such stated higher amount is in excess of the price at which said merchandise has been sold at retail by respondents in the recent regular course of business.

(b) Using the words "Mfg.'s List Price", "List Price", or any other words of similar import or meaning in connection with a stated amount higher than that at which merchandise is being offered for sale by respondents when such stated higher amount is in excess of the usual and customary retail price of said merchandise in the trade area or areas where the representation is made.

3. Misrepresenting, in any manner, the amount of savings available to purchasers of respondents' merchandise or the amount by which the price of said merchandise has been reduced from the price at which it is usually and regularly sold at retail by the respondents, or in the trade area or areas where the representations are made.

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

KORMA TEXTILE MILLS, INC., ET AL.

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

Docket C-115. Complaint, Apr. 16, 1962—Decision, Apr. 16, 1962

Consent order requiring New York City jobbers of textile fabrics to cease representing falsely, through use of the word "Mills" in their corporate and trade names, that they manufactured their fabrics in their own factories.

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 Korma Textile Mills, Inc., a corporation, and Julius Mauler, 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 Korma Textile Mills, Inc., is a corporation, organized, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 457 Broadway, New York 13, N.Y.

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

PAR. 2. Respondents are jobbers of textile fabrics and are now, and for some time last past, have been engaged in the advertising, offering for sale, sale and distribution of said fabrics.

PAR. 3. In the course and conduct of their business, respondents now cause, and for sometime 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 in various other states of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business in soliciting the sale of and in selling textile fabrics, respondents do business under the name of Korma Textile Mills, Inc., and Korma Textile Mills, and use said names on letterheads, labels and in various advertisements of their products.

PAR. 5. Through the use of the word "Mills" as part of the respondents' corporate and trade names, respondents represent that they own or operate mills or factories in which the textile fabrics sold by them are manufactured.

PAR. 6. Said representation is false, misleading and deceptive. In truth and in fact, respondents do not own or operate the mills or factories in which the textile fabrics sold by them are manufactured, but they buy said fabrics from others.

PAR. 7. There is a preference on the part of many manufacturers, retailers and dealers to buy products, including textile fabrics, direct from factories or mills, believing that by so doing lower prices and other advantages thereby accrue to them.

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

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead retailers and other purchasers 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.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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 Korma Textile Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Sate of New York, with its office and principal place of business located at 457 Broadway, in the city of New York, State of New York.

Respondent Julius Mauler 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 Korma Textile Mills, Inc., a corporation, and its officers, and Julius Mauler, 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 textile fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly, using the word "Mills", or any other word of similar import or meaning, in or as a part of respondents' corporate or trade name, or respresenting in any other manner that respondents are manufacturers of the fabrics sold by them unless and until respondents own and operate, or directly and absolutely control, the manufacturing plant wherein said fabrics are woven or made.

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

ORTON P. HESSER DOING BUSINESS AS O. P. HESSER BROKER

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

Docket C-116. Complaint, Apr. 16, 1962—Decision, Apr. 16, 1962

Consent order requiring a broker in Salt Lake City, Utah, to cease violating Sec. 2(c) of the Clayton Act by receiving and accepting brokerage on numerous and substantial purchases of food products for his own account for resale, such as a discount, usually at the rate of 10¢ per 1⅗ bushel box, on purchases of citrus fruit from a number of Texas packers.

COMPLAINT

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

PARAGRAPH 1. Respondent Orton P. Hesser is an individual doing business as O. P. Hesser Broker under and by virtue of the laws of the State of Utah, with his office and principal place of business located at 428 Southwest Temple Street, Salt Lake City, Utah.

PAR. 2. Respondent is now, and for the past several years has been, engaged primarily in the brokerage business, representing a number of packer-principals located in various sections of the United States, in connection with the sale and distribution of citrus fruit and produce, hereinafter sometimes referred to as food products. In particular, respondent represents a number of citrus fruit packers located in the State of Texas in the sale and distribution of citrus fruit, for which respondent was and is paid for his services in connection therewith a brokerage or commission, usually at the rate of ten cents per $1\frac{3}{5}$ bushel box, or equivalent. A substantial part of respondent's business is acting in the capacity of a buying broker, purchasing citrus fruit and produce for his own account for resale.

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

PAR. 4. In the course and conduct of his business in commerce, as aforesaid, during the past several years, but more particularly since January 1, 1960, to the present time, respondent has made, and is now making, numerous and substantial purchases of food products for his own account for resale from various packers or sellers on which purchases he has received and accepted, and is now receiving and accepting, directly or indirectly, something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith. For example, respondent has made, and is now making, substantial purchases of citrus fruit for his own account from a number of packers located in the State of Texas, which fruit is shipped and transported to customers located outside the State of Texas, and on said purchases respondent receives from the packer a brokerage or commission, or a discount in lieu thereof, usually at the rate of ten cents per $1\frac{3}{5}$ bushel box, or equivalent. In other instances respondent receives a lower price from the packer, which reflects said brokerage or commission.

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

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, 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 to issue herein, 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 such 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 Orton P. Hesser is an individual doing business as O. P. Hesser Broker under and by virtue of the laws of the State of Utah, with his office and prinicpal place of business located at 428 Southwest Temple Street, Salt Lake City, Utah.

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

ORDER

It is ordered, That respondent Orton P. Hesser, individually and doing business as O. P. Hesser Broker, and respondent's agents, representatives, and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the purchase of citrus fruit or produce in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

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

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

IN THE MATTER OF

BGS SHOE CORPORATION ET AL.

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

Docket C-117. Complaint, Apr. 16, 1962—Decision, Apr. 16, 1962

Consent order requiring manufacturers of ladies' shoes and slippers in Manchester, N.H., to cease representing falsely in advertisements in trade publications and on their shoe boxes—by such wording as ". . . DEERSKIN casuals . . ." and ". . . fabulous DEERTAN casuals . . ."—that their shoes were made from leather produced from deer hides.

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 BGS Shoe Corporation, a corporation, and Eli A. Cohen, William Lubell, Peter S. Freedman, and Arnold J. Cohen, individually and as officers of BGS Shoe 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 BGS Shoe Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Hampshire with its principal office and place of business located at Millyard at Stark Street, Manchester, N.H. Individual respondents Eli A. Cohen, William Lubell, Peter S. Freedman and Arnold J. Cohen are officers of said corporation. They formulate, direct and control the policies of the corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, advertising, offering for sale, sale and distribution of ladies' shoes and slippers 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, said ladies' shoes and slippers, when sold, to be shipped from their place of business in the State of New Hampshire to the purchasers thereof located in other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said shoes and slippers in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business done by respondents in said shoes and slippers in commerce is now, and has been, substantial.

PAR. 4. Respondents in the course and conduct of their business have been, and are, engaged in substantial competition in commerce, with corporations, firms and individuals engaged in the sale and distribution of ladies' shoes and slippers.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the purchase of ladies' shoes, respondents have advertised in trade publications, and on their shoe boxes. Among and typical, but not all inclusive, of the statements appearing in said advertisements are the following:

DEER TAN

A complete family of fabulous DEERSKIN casuals in the popular priced field.

Another sensational show stopper: fabulous DEERTAN* casuals in the popular price field

(At the bottom of the page in small print the following appears:

*A soft supple tannage of fine quality, top-grained cowhide)

PAR. 6. By and through the use of the aforesaid statements respondents represented, and now represent, that their ladies' shoes are made from leather produced from deer hides.

PAR. 7. In truth and in fact the said ladies' shoe are made from a leather material other than the hide of a deer.

PAR. 8. Respondents by means of the aforesaid acts and practices have furnished to others the means and instrumentalities of deceiving the public as to the composition of said shoes.

PAR. 9. The aforesaid acts and practices of the respondents have the capacity and tendency to confuse the public as to the composition of their shoes and to mislead the public into the erroneous and mistaken belief that the shoes are produced from deer hides and into the purchase thereof by reason of such erroneous and mistaken belief.

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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 BGS Shoe Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Hampshire, with its office and principal place of business located at Millyard at Stark Street, in the city of Manchester, State of New Hampshire.

Respondents Eli A. Cohen, William Lubell, Peter S. Freedman and Arnold J. Cohen are officers of said corporation, and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents BGS Shoe Corporation, a corporation, and its officers, and Eli A. Cohen, William Lubell, Peter S. Freedman and Arnold J. Cohen, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of shoes or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words DEERSKIN, DEERTAN, DEER TAN, or any other word or words of similar import or meaning, to designate or describe products which are not in fact made from the hides of deer; or otherwise misrepresenting in any manner the composition of any of their products.

2. Furnishing to others any means or instrumentalities by or through which the public may be misled with respect to any of the representations prohibited in paragraph 1 hereof.

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

IN THE MATTER OF

BERDAV, INC., ET AL.

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

Docket C-118. Complaint, Apr. 16, 1962—Decision, Apr. 16, 1962

Consent order requiring New York City distributors of wool products to cease violating the Wool Products Labeling Act by labeling "Made in England", woolen fabrics which were made in Japan; representing falsely that they had a place of business in London through use on labels of the name "London" and an emblem resembling the Royal Arms of the British Empire in conjunction with their corporate name; and labeling certain fabrics "Mohair and Wool" without setting forth the percentages of such fibers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by the said Acts, the Federal Trade Commission, having reason to believe that Berdav, Inc., a corporation, and Kenneth Rivlin and Shirley Rivlin, individually and as officers of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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 Berdav, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Individual respondents Kenneth Rivlin and Shirley Rivlin are President and Secretary, respectively, of the corporate respondent. Said individual respondents, cooperate in formulating, directing and controlling the acts, policies and practices of the said corporate respondent, including the acts and practices hereinafter referred to. All respondents have their offices and principal place of business at 238 Fourth Avenue, New York, N.Y.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since 1948, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale, in commerce, wool products, as the terms "commerce" and "wool product" are defined in the said Act.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a) (1) of the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the country of manufacture.

Among such misbranded wool products, but not limited thereto, were fabrics labeled "Made in England", whereas in truth and in fact, said woolen fabrics were made in Japan.

PAR. 4. Certain of said wool products were further misbranded by the respondents within the intent and meaning of Section 4(a) (1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were tagged or labeled with tags which represented, directly or by implication, that the respondents owned, operated or controlled a place of business in London, England, whereas in truth and in fact, respondents do not own, operate or control a place of business in London, England.

Among such misbranded wool products, but not limited thereto, were fabrics with labels on which the name "London" appeared in conjunction with the name of corporate respondent Berdav, Inc. together with the depiction of an emblem which resembles the Royal Arms of the British Empire.

PAR. 5. Certain of said wool products were further misbranded by respondents in that they were stamped, tagged or labeled as required under the provisions of Section 4(a) (2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were fabrics with labels which set forth the fiber content of such fabrics as "Mohair and Wool" without setting forth the percentages of such fibers.

PAR. 6. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that labels attached to the wool products represented the fiber content of such products as "Mohair and Wool" without setting forth the actual percentage of mohair contained therein, in violation of Rule 19 of the aforesaid Rules and Regulations.

PAR. 7. The acts and practices of respondents as set forth above, were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 8. Respondents are now, and for some time last past, have been engaged in the offering for sale, sale and distribution of certain products, namely woolen fabrics, to tailors and suit manufacturers who in turn manufacture the fabrics into suits and sell the same to the public.

PAR. 9. 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 located in various other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 10. Respondents in the course and conduct of their business, as aforesaid, have made statements on invoices and shipping memoranda to their customers misrepresenting the country of manufacture of certain of their said products. Among such misrepresentations, but not limited thereto, were statements representing woolen fabrics as having been "Made in England" where as in truth and in fact, the said woolen fabrics were made in Japan.

PAR. 11. There is a preference among a substantial number of the American purchasing public for woolen fabrics manufactured in England over those manufactured in Japan.

PAR. 12. By and through the use of the aforesaid misrepresentations on invoices to their customers, respondents placed in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public as to the origin of their woolen fabrics.

PAR. 13. 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 woolen fabrics of the same general kind and nature as that sold by respondents.

PAR. 14. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices as aforesaid, has had, and now has, the capacity and tendency to mislead respondents' customers and 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 the respondents' products by reason of such 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. 15. The aforesaid acts and practices of respondents, as herein alleged, were and and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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 Wool Products Labeling Act of 1939, 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 to issue herein, 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 such 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, Berdav, 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 238 Fourth Avenue, in the city of New York, State of New York.

Respondents Kenneth Rivlin and Shirley Rivlin are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Berdav, Inc., a corporation, and its officers, and Kenneth Rivlin and Shirley Rivlin, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment, or shipment in commerce, of wool products, as the terms "commerce" and "wool products" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding wool products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the country of manufacture.

2. Falsely or deceptively, stamping, tagging, labeling or otherwise identifying such products so as to represent in any manner, directly or by implication, contrary to fact, that respondents own, operate or control a place of business in London, England, or any other place.

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

4. Stamping, tagging, labeling or otherwise identifying such products as containing "mohair" without setting forth the actual percentage of the mohair contained therein.

It is further ordered, That the respondents Berdav, Inc., a corporation, and its officers, and Kenneth Rivlin and Shirley Rivlin, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of fabrics or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting the country of manufacture of such products on invoices, shipping memoranda or in any other manner.

B. Furnishing means and instrumentalities to others by and through which they may mislead the public as to the country of origin of such 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.

IN THE MATTER OF

RAILROAD COMMUNICATIONS SCHOOL, INC., ET AL.

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

Docket C-119. Complaint, Apr. 16, 1962—Decision, Apr. 16, 1962

Consent order requiring Kansas City, Mo., sellers of correspondence courses intended to prepare students for jobs with railroads as telegraph operators, station agents, etc., to cease representing falsely by such means as advertisements in the "Help Wanted" columns of newspapers and statements of solicitors that they were offering employment and guaranteeing jobs in chosen areas and at high starting salaries to trainees, among other false claims, 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 Railroad Communications School, Inc. a corporation, Arthur C. Henry, Victor Pardun and Eugene Kane, 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 Railroad Communications School, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its prinicipal place of business located at 1302 McGee Street, Kansas City, Mo.

Respondents Arthur C. Henry, Victor Pardon and Eugene Kane are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the sale and distribution of a course of study and instruction intended to prepare students thereof for employment as telegraph operators, station agents and kindred employment by railroad companies, which said course is pursued by correspondence through the United States mail, as well as in residence training at the school.

PAR. 3. In the course and conduct of their business respondents have caused said course of study and instruction to be sent from their place of business in the State of Missouri to, into and through states of the United States other than the State of Missouri, to purchasers thereof located in such other states. There has been at all times mentioned herein a substantial course of trade in said course of study and instruction, so sold and distributed by respondents in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their said business, as aforesaid, respondents have published and cause to be published, advertisements in the "Help Wanted" and other columns of newspapers distributed through the United States mail, and by other means, to prospective enrollees and students in the several states in which said course is sold, of which the following is typical:

OPPORTUNITY

MEN 18 TO 35

With high school education and no physical defects for lifetime career as

RAILROAD

AGENTS-OPERATORS

if not experienced, must be willing to spend minimum of 15 hours per week training at home and night school until qualified. Arrangements will be made for those accepted so training will not interfere with present employment. Positions pay from

$400 TO $450 MONTHLY

PLUS—Free medical care and transportation, outstanding pension plan and many other railroad benefits. Opportunity for advancement into $525 to $775 positions. For confidential interview Call LI 9-1802, Sunday, Nov. 1, 9:30 a.m. 6 p.m.

MEN
WANTED
FOR

Station Agents-Operators

Starting salary $400-450 per month. No experience necessary for those willing to train at own expense under the supervision and guidance of experienced railroad men. Your training will be arranged at home and night school so not to interfere with your present job. QUALIFICATIONS—Ages 17-35, high school education, no physical defects. For interview write Box ----, c/o ____________________, give age, race, address, phone and time usually available.

MEN URGENTLY
NEEDED
AGES 17–35

To train for Agents-Operators. Railroads pay $400–450 per month plus pensions, free transportation, hospitalization, many other railroad benefits. Opportunity to advance into $525–775 positions. Jobs waiting in Missouri, also many other states upon completion of training qualifying you as agent or opera tor. Training will not interfere with your present income. If sincerely interested in a better job opportunity with future security, have good health and high school education, personal interview will be granted. Write Box ____, c/o ____________________, give name, race, age, address, phone.

RAILROADS
NEED MEN

17–35. Due to retirement—Station agents, Telegraphers, Teletype Operators, Clerks, urgently needed. High school or equivalent required. WE TRAIN YOU. Starting salaries $400 month up, plus many outstanding benefits. JOBS WAITING on completion of training which will not interfere with your present income. For qualifying interview, give address, age, race, phone number, time usually available. Write Box G–89 Enquirer.

PAR. 5. By means of the statements appearing in said advertisements, as set out in paragraph 4 above, respondents have represented, and are representing, directly or by implication that:

1. The advertisement was an offer of employment;
2. Job openings for railroad station agents and telegraph operators existed in numerous geographical areas;
3. Respondents were a railroad company or affiliated with one or more railroad companies;
4. Their training would qualify trainees to become railroad station agents and telegraph operators;
5. Employment as station agent or telegraph operator was guaranteed to any person who had completed respondents' course of training and who was accepted by respondents as a trainee;
6. The starting salary would be from $400 to $450 monthly; and
7. Respondents' course of study will not interfere with a person's present employment.

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

1. The said advertisement was not an offer of employment, but was published for the purpose of obtaining purchasers of respondents' course of study and instruction;
2. The statements are false, misleading and deceptive for the further reason that when job openings for railroad station agents and

telegraph operators occur, generally these positions are filled by the railroad companies with their own employees on a seniority basis;

3. The respondents are not a railroad company, nor are they affiliated with one or more such companies;

4. The respondents' course of study and instruction will not qualify students for employment as railroad station agents or telegraph operators inasmuch as an apprenticeship period is customarily required by railroads for such positions.

5. The respondents do not have arrangements with railroad companies whereby they can guarantee to enrollees in their school that they will be employed by such railroad companies as station agents or telegraph operators upon graduation from respondents' school;

6. The monthly salary of $400 to $450 greatly exceeds the starting salary that graduates of respondents' school would receive should they be employed by railroad companies as railroad station agents or telegraph operators, and before acquiring seniority in any other positions of employment;

7. Respondents' course of instruction does interfere with the enrollee's present employment, as the enrollee is required to spend from several weeks to several months in residence training at respondents' school in Kansas City, Missouri, in order to complete the course.

Par. 7. In the course and conduct of their said business, as aforesaid, respondents employ commission sales agents or representatives who call upon prospective purchasers and solicit their purchase of said course of study and instruction.

In the course of such solicitation, such sales agents or representatives have made directly or by implication many statements and representations to customers and prospective customers of said course of study and instruction.

Typical, but not all inclusive of which, are the following:

1. Railroad station agents and telegraph operators were in great demand with the railroad companies;

2. Respondents had a placement service and had helped and were then helping to meet the demand by placing their graduates in positions of employment as railroad station agents and telegraph operators with many railroad companies;

3. They would guarantee to graduates of respondents' school employment as railroad station agents and telegraph operators at starting salaries ranging from $400 up monthly;

4. They would obtain employment for those students who so desire and needed it to defray expenses while taking in residence training at the School in Kansas City, Missouri;

5. The average student could complete the entire course in seven months; that only six weeks is required to complete the in residence training at the school in Kansas City, Missouri;

6. Over fifty percent of the railroad station agents and telegraphers are retiring and immediate replacements are needed;

7. Only a limited number of persons would be accepted from the specified area to take the training;

8. A person can select whatever area and locality in which he or she chooses to be station agent or telegrapher, and respondents will obtain such employment for their students completing respondents' course of study.

PAR. 8. The statements, representations and implications set out in paragraph 7 above were exaggerated, false, misleading and deceptive. In truth and in fact;

1. Whereas some employment opportunities are afforded in the railroad field because of retirements, deaths, and shifts of personnel to other industries, such opportunities are reduced by closing or the dualizing of railroad stations, and accordingly, there was not, and is not, a great demand for railroad station agents or telegraph operators as represented by respondents;

2. When graduates of respondents' school obtain employment with railroads customarily they must serve a period of apprenticeship before being assigned to a permanent position as station agent or telegrapher, and respondents therefore do not place their graduates in positions of employment as station agents or telegraphers;

3. Respondents do not in all cases obtain employment with railroads for their graduates, let alone as station agents or as telegraph operators. When graduates or students of respondents' school are employed, it is not at the rate of pay represented in paragraphs 4, 5, and 7 herein; furthermore, when students or graduates from respondents' school are first employed, they are paid by the hour and not at a monthly rate;

4. Respondents do not obtain employment for their students to enable them to defray expenses while taking in residence training.

5. The average student can not and does not complete the course of training in seven months. In truth and in fact, said course of training requires a considerably longer period of time for completion. The residence training at the school in Kansas City, Missouri requires considerably more time than that stated.

6. The claim as to the number and percentage of railroad station agents and telegraph operators retiring is exaggerated and greatly in

excess of those actually retiring and there is no urgent need for immediate replacements.

7. Respondents do not limit acceptance of enrollees to a specified number of persons from a specified area to take the training.

8. The openings for employment with railroad companies for station agents and telegraph operators are not so numerous as to enable a student to select and succeed in obtaining the desired position at a desired location, as specified, nor do respondents obtain same for their graduates; such employment in many instances is not steady and requires a person to wait his or her turn, based on seniority, and after being placed on the "extra board" have often required a person to move several times a month in quest of steady employment. The average starting salary is generally $1.00 to $1.50 per hour and requires a person to serve an apprenticeship at that rate of pay for a period of from one to several months;

PAR. 9. Respondents at all times mentioned herein, have been, and are now, in substantial competition in commerce with individuals, firms and corporations engaged in the sale and distribution of like correspondence courses.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, and representations were and are true, and to induce a substantial number thereof to subscribe to, and purchase, respondents' said course of study and instruction.

PAR. 11. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5(a) (1) of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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, Railroad Communications School, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located at 1302 McGee Street, Kansas City, Mo.

Respondents Arthur C. Henry, Victor Pardun and Eugene Kane are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents, Railroad Communications School, Inc., a corporation, and its officers, and Arthur C. Henry, Victor Pardun and Eugene Kane, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of courses of study, training and instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Employment is being offered when, in fact, the purpose is to obtain purchasers of such courses of study, training and instruction;

2. Positions of employment as railroad station agents or telegraphers are open to all those who complete such courses;

3. Respondents are a railroad company or are affiliated with a railroad company;

4. Respondents' said courses qualify purchasers thereof to become railroad station agents or telegraphers on completion of said courses;

5. Respondents guarantee employment to persons completing said course;

6. There is a great demand for graduates of respondents' school to fill positions of railroad station agent or telegrapher or otherwise misrepresenting the employment demand in the railroad field;

7. Respondents place their graduates in positions as railroad station agents or telegraph operators; or that the starting salaries of respondents' graduates will be any amounts in excess of those customarily received by such graduates;

8. Respondents will obtain employment as station agents or telegraph operators for its graduates at locations selected by such graduates.

9. Respondents will obtain employment for their students to enable them to defray expenses while taking in residence training in their school;

10. Respondents' course of study will not interfere with a person's present employment;

11. The student can complete the entire course of study and training in seven months or any other period of time which is less than that usually required by respondents' students who actually complete the course;

12. The in-residence training at respondents' school can be completed in a period of time which is less than the time usually required for graduates of respondents' school;

13. The number of railroad station agents and telegraphers retiring at any time or any period of time is a given number or percentage which is in excess of those actually retiring;

14. The number of enrollees to take the training in respondents' school is limited to a specified number of persons from a particular area, contrary to fact.

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

KRAUSS BROS. FUR MFG., 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-120. Complaint, Apr. 16, 1962—Decision, Apr. 16, 1962

Consent order requiring New York City manufacturing furriers to cease violating the Fur Products Labeling Act by labeling artificially colored fur as natural and failing to show on labels when furs were bleached or dyed; by invoicing which failed to show the true animal name of furs and to disclose when furs were artificially colored; and by furnishing false guaranties that their furs were not misbranded, falsely invoiced, or falsely advertised.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Krauss Bros. Fur Mfg., Inc., a corporation, and Carl Krauss, 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 Krauss Bros. Fur Mfg., Inc., is a corporation organized, existing and doing business under and virtue of the laws of the State of New York with its office and principal place of business located at 305 Seventh Avenue, New York, N.Y.

Respondent Carl Krauss is president of the said corporate respondent and formulates, directs and controls the acts, practices and policies of the said corporate respondent. His office and principal place of business is the same as that of the said corporate respondent.

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

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

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

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to show that the fur contained in the fur products was bleached, dyed or otherwise artificially colored, when such was the fact.

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

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.

PAR. 6. The respondents furnished false guaranties that certain of their fur products were not misbranded, falsely invoiced or falsely advertised, when respondents in furnishing such guaranties had reason to believe that the fur products so falsely guaranteed would be introduced, sold, transported or distributed, in commerce, in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition 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 the respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 such complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondent Krauss Bros. Fur Mfg., 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 305 Seventh Avenue, in the city of New York, State of New York.

Respondent Carl Krauss 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 respondents Krauss Bros. Fur Mfg., Inc., a corporation, and its officers, and Carl Krauss, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur products; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which has been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

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

2. Falsely or deceptively invoicing fur products by:

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

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

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

PHILLIP HAUSFELD TRADING AS PHILLIP HAUSFELD

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

Docket C-121. Complaint, Apr. 16, 1962—Decision, Apr. 16, 1962

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by failing to show on invoices the true animal name of furs and the country of origin of imported furs, and to disclose when furs were artificially colored; using the term "blended" improperly on invoices; and failing in other respects to comply with invoicing requirements.

COMPLAINT

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

PARAGRAPH 1. Respondent Phillip Hausfeld is an individual trading as Phillip Hausfeld, with his office and principal place of business located at 233 West 26th Street, New York, N.Y.

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

PAR. 3. Certain of said furs and fur products were falsely and deceptively invoiced by the respondent in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

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

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

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

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

(a) The term "blended" was used as part of the information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing, tip-dyeing or otherwise artificial coloring of furs contained in fur products in violation of Rule 19(f) of said Rules and Regulations.

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

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

DECISION AND ORDER

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

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, 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 such 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 Phillip Hausfeld is an individual trading as Phillip Hausfeld with his office and principal place of business located at 233 West 26th Street, in the city of New York, State of New York.

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

ORDER

It is ordered, That respondent Phillip Hausfeld, an individual trading as Phillip Hausfeld, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce; or in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively invoicing furs or fur products by:

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

2. Falsely or deceptively invoicing fur products by:

A. Setting forth the term "blended" as part of the information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing, tipdyeing or otherwise artificial coloring of furs contained in fur products.

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

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

HOUSEHOLD MFG. CO. ET AL.

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

Docket 8340. Complaint, Mar. 16, 1961—Decision, Apr. 19, 1962

Order requiring Los Angeles importers of household utensils and cutlery manufactured in Japan, some of which they assembled with parts made in the United States, to cease selling such products with the word "Japan" imprinted thereon in such small letters and so obscured in assembling or when affixed to display cards as to fail to reveal their Japanese origin to purchasers.

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 Household Mfg. Co., a corporation, and Melville Dorfman and Harry E. Eisenrod, 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 Household Mfg. Co. is a corporation organized and existing under the laws of the State of California with its office and principal place of business located at 1844 East 22d Street, Los Angeles, Calif.

Respondents Melville Dorfman and Harry E. Eisenrod are officers of the corporate respondent. They formulate, direct and control the acts and practices hereinafter set forth. Their business address is the same as the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture and sale of kitchen utensils, cutlery and other merchandise to wholesalers, jobbers, and retailers for resale to the public. Respondents also sell certain imported merchandise.

PAR. 3. In the course and conduct of their business respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the State of California to purchasers thereof located in various other states of the United States and maintain, and at all time 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. Certain stainless steel kitchen utensils and cutlery sold and distributed by respondents are manufactured in and imported from Japan. While certain of respondents' said products bear markings indicating manufacture in Japan, the markings are so small and indistinct that they do not constitute adequate notice to the public that such merchandise is not made in the United States. In other instances said merchandise is assembled or packaged so as to conceal or obscure the mark of foreign origin, in which case there is no clear and conspicuous disclosure to the public that such merchandise is not made in the United States.

PAR. 5. There is among the members of the purchasing public a decided preference for products of domestic manufacture, including stainless steel kitchen utensils and cutlery, and when merchandise, including stainless steel kitchen utensils and cutlery, is not marked so as to disclose foreign origin, or if marked and the markings are concealed, indistinct, or otherwise not clearly legible, the purchasing public understands and believes such products to be of domestic origin.

PAR. 6. Respondents, by placing in the hands of others imported products which do not bear clear and distinct marks of foreign origin, provide means and instrumentalities whereby the purchasing public is misled as to the place of origin of such products.

PAR. 7. Respondents were and are in substantial competition with corporations, firms, and individuals likewise engaged in the sale of kitchen utensils and cutlery in commerce.

PAR. 8. The use by respondents of the aforesaid misleading and deceptive practices and the failure to clearly and concisely disclose the foreign origin of their merchandise has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such merchandise is of domestic origin and into the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

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

Mr. John J. McNally for the Commission.

Lyon and Lyon, by *Mr. Frederick W. Lyon*, of Los Angeles, Calif., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding has been brought under the Federal Trade Commission Act. It is charged that respondents have been, and now are, engaged, among other things, in the importation of certain household utensils and cutlery manufactured in Japan, which is so minutely or indistinctly marked as of Japanese origin, either on the articles themselves or on their packaging, that the American public is misled into believing that such articles are made in the United States, the decided preference of such public being for domestically manufactured products of that type.

The complaint herein issued March 16, 1961, and after service respondents filed their joint answer on May 26, 1961. On June 15, 1961, the case was assigned to the undersigned hearing examiner for trial and initial decision. The entire case was heard in Los Angeles, California, on June 26 and 27, and November 20 and 21, 1961. On said last date all parties rested, and counsel presented oral arguments. Satisfactory time was given to all parties in which to file their proposed findings, conclusions and order, and counsel supporting the complaint filed his on January 4, 1962, but respondents filed none within the time granted. The proposed findings and conclusions filed by counsel supporting the complaint are herein adopted, and an appropriate cease-and-desist order against all respondents is hereinafter issued.

The answer of respondents admits the complaint's allegations as to corporate capacity and the control of the corporate respondent's policies by its officers, and their operations in interstate commerce are admitted, which constitutes evidence; but all other allegations of the complaint are denied. The evidence in support of such disputed allegations consists of some of the testimony of respondent Melville Dorfman, the testimony of the Commission's investigator, attorney examiner John Ohanian, four clerks from the household-goods departments of Los Angeles department stores, and two Los Angeles area housewives, together with certain stipulations and admissions of record, and a number of exhibits received which were offered either by counsel supporting the complaint or by respondents, some of which are physical and some documentary. Among the stipulations is one that two other housewives who had been subpoenaed need not testify, and that their testimony, in substance, would be the same as that of the two housewives who did testify. It is unnecessary to recite the evidence in detail, but some reference to pertinent evidence is briefly made where deemed essential to clarity of decision.

In finding the facts in this proceeding upon the whole record, as required by law, the hearing examiner has given full, careful and impartial consideration to all the reliable, probative and substantial evidence, and to all the fair and reasonable inferences to be drawn therefrom. From such consideration of the whole record, and from his personal observation of the conduct and demeanor of the witnesses, the hearing examiner makes the following

FINDINGS OF FACT

Respondent Household Mfg. Co. is a corporation organized and existing under the laws of the State of California, with its office and principal place of business located at 1844 East 22nd Street, Los Angeles, Calif. Respondents Melville Dorfman and Harry E. Eisenrod are officers of the corporate respondent. They formulate, direct and control the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

Respondents are now, and for some time last past have been, engaged in the manufacture and sale of kitchen utensils, cutlery and other merchandise to wholesalers, jobbers and retailers for resale to the public. Respondents also sell certain imported merchandise.

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

Respondents were and are in substantial competition with corporations, firms, and individuals likewise engaged in the sale of Kitchen utensils and cutlery in commerce.

Certain stainless steel kitchen utensils and cutlery sold and distributed by respondents have been and now are manufactured in and imported from Japan in substantial quantities. In some instances, parts of certain of such articles are manufactured in Japan and then assembled by respondents in the United States, which articles, when so assembled, may consist to some extent of parts made in this country, as clearly demonstrated by Commission's exhibit 17, a knife, the blade of which admittedly was made in Japan (but not so indicated thereon), attached to a wooden handle made in the United States, by a rivet also made in the United States. While certain of respondents' said products bear markings indicating their manufacture in Japan, such markings are so small and indistinct that they do not constitute adequate notice to the public that such merchandise is not made in the United States. In other instances, said merchandise is assembled or packaged so as to conceal or obscure the mark of foreign origin, in which case there is no clear and conspicuous disclosure to the public that such merchandise is not made in the United States.

A number of examples of such imported Japanese-made products were received in evidence as various Commission's exhibits, all of which have been carefully inspected, both during the trial and since, by the hearing examiner. They are:

No. 1, a can opener on a display card with the word "Japan" on the back of the card, and "Japan" so obscurely printed in small letters on the underlip as to be wholly unobservable when affixed to the card, and extremely difficult to read, even when removed from the card, the context of which reads "Household's Easy Roll Can Opener", etc., and presents no statement that the article is made in Japan;

No. 6, a grapefruit knife (the importing of which is now discontinued by respondents), so affixed to a display card as to conceal the practically illegible "Japan" on the covered side of the blade, but having "Household Stainless Steel" imprinted on the face-up side thereof, and attached to a display card which reads "Household Contoured Grape Fruit Knife", etc., and presents no statement or indication that the article is made in Japan, although "Japan" is lightly stamped on the back of said card;

No. 9, a paring knife, so affixed to a display card as to conceal entirely an obscure and very minute, practically illegible "Japan" on the covered side of the blade, the display card reading "Household Serrated Paring Knife", etc., but presenting no statement or indication that the article is made in Japan;

No. 11, a set of stainless steel measuring spoons, all so affixed to a display card, neither spoons nor card bearing any statement or indication adequate to disclose that the articles are made in Japan, although so indicated by "Japan" in very small letters on the back of the spoons, and so stamped in somewhat larger letters on the back of the card, where it does not show to the buying public;

No. 14, a "Perma Edge" utility knife, with a serrated cutting edge, sold either upon a case-like display card or loosely out of a basket, and bearing on the exposed blade, when affixed to such a card, the words "Household Surgical Stainless", with "Household's Perma Edge Utility Knife", etc., disclosed on the card, but no reference to Japanese manufacture, the only indication thereof being "Japan" in very small letters near the handle on the covered side of the blade;

No. 17, a large knife with a smooth-edged blade, set forth in a case-like display card similar to that used for No. 14, and having the same legend on the two sides of the blade, the word "Japan", in small letters, not being visible, such knives being assembled in the United States, as already stated;

No. 20, an eggbeater with a small, obscurely-lettered word "Japan", on the underside or inner surface of two of the revolving blades where only the most careful search can reveal its presence, although the word "Household" is clearly imprinted on the gripping handle;

No. 22, a contoured grapefruit knife bearing "Household Stainless Steel" on the exposed side of the blade as attached and displayed in a card container smilar to that used for Nos. 6 and 9, No. 22 having "Japan" in almost indecipherable, very tiny letters on the hidden side of the blade; and

No. 23, a joined wooden block in which several kitchen knives may be sheathed, and evidently are displayed to the public, with the words "Block Only Japan" so small and so lightly imprinted upon one end of the block as to be unreadable except in bright light when the block is held at certain angles.

These facts, as found by the hearing examiner upon his own inspection, are confirmed by others. Inspection of these said exhibits by some of the lay witness during their testimony reveals that the packaging and obscure or concealed labeling of such items would not reveal to the ordinarily careful buyer the Japanese origin of the articles. Even respondents' counsel, during oral argument, definitely conceded that the markings on such articles, or their display-card placements, were unclear to or concealed from the buying public, although urging that respondents were currently attaching tags to or otherwise changing some articles to remove any doubts as to their foreign origin.

The evidence clearly and substantially establishes that the use by respondents of the aforesaid misleading and deceptive practices and the failure to clearly and concisely disclose the foreign origin of their merchandise has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such merchandise is of domestic origin, and into the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors, and substantial injury has thereby been done to competition in commerce.

The testimony of the four salesladies from the household goods departments of several Los Angeles department stores was to the effect that a large segment of the buying public which they encountered preferred American-made products of that character over those made in Japan, and that many of their customers refuse to buy Japanese-made products, probably due to prejudices arising from World War II, or for other reasons. Some are likewise opposed to products coming from other lands. All four of these witnesses testified that they waited upon substantial numbers of customers each trading day, ranging among the four, from a low of thirty to a high of one hundred customers each day; that numerous customers discuss the origin of goods and preferences for American-made goods over Japanese-made goods, and of those customers discussing such subjects, anywhere from a majority up to all of them have preference for American or other national household articles over those made in Japan. It was also testified by at least one witness that in the absence of clear disclosure of the country of origin, buyers naturally assume that the articles are made in the United States. Similar testimony as to their own preference for domestically-manufactured goods, and their own assumption that such goods are made in this country unless clearly indicated otherwise, was given by the two witnesses who were housewives.

It is therefore found that there is among the members of the purchasing public a decided preference for products of domestic manufacture, including stainless steel and other kitchen utensils and cutlery, and when such merchandise is not marked at all so as to disclose foreign origin, or if marked and the markings are concealed, indistinct, or otherwise not clearly legible, the purchasing public understands and believes such products to be of domestic origin.

In this case the evidence discloses that respondents not only import Japanese-made goods, but also assemble in the United States some articles which contain parts made in Japan and other parts made domestically. Such articles are not sold directly to the public by respondents, but are distributed by them to various manufacturers' agents throughout the United States, who in turn sell such articles to retail stores for sale to the public. Therefore respondents, by such distribution to others of such imported products which do not bear clear and distinct marks of foreign origin, provide means and instrumentalities whereby the purchasing public is misled as to the place of origin of such products.

In oral argument respondents' counsel urged several defensive matters which have been duly considered. While certain lines have been discontinued due to business exigencies, all of respondents' imported lines certainly have not been discontinued, and the unlawful practices charged and established have been continued by respondents, and still continue. There is no absolute promise by respondents to abate all such practices in the future, and all inferences definitely are to the contrary. There is in no sense any defense of abandonment established, and while respondents presented certain allegedly imported products of Japanese origin, of other importers and competitors, which were defectively marked, this likewise constitutes no defense. Even the alleged approval by United States Customs of the markings on the articles in question, which were deemed by it adequate to warrant their import into the United States under the Custom Laws, is no bar to this proceeding, as decided in *L. Heller & Sons, Inc.* v. *FTC* (C.A. 7, 1951), 191 F. 2d 954, 956. Of course it is the continuing duty of the Commission to protect the ignorant, careless or unsuspecting members of the public from misrepresentations; hence, counsel's argument, in substance, that it is the buyer's duty to inspect the goods carefully before purchasing, is not apt or controlling. This principle of public protection is particularly true when goods, sold on display cards which themselves mislead, are so fastened that even the reasonably careful buyer cannot in any event see the concealed, indistinct markings indicating the article's foreign origin until after he has made his purchase, torn away the display card or wrapper, and made a minute, detailed examination of the article.

While counsel supporting the complaint now proposes an order differing slightly from that proposed by him during the oral argument, respondents' objections thereto, it is inferred, would be substantially the same. Respondents contend that any such order would be unfair, unwarranted, burdensome, and utterly impossible for respondents to comply with in the conduct of their business. While similar orders have been issued by the Commission in recent cases, there seems to have been some variance in the forms adopted. The one now tendered by counsel supporting the complaint is substantially in the form of that drafted by the Commission itself in Docket 8382, *Hypo Surgical Supply Corp., etc., et al.*, and issued September 15, 1961. It does not appear that respondents are unable to comply with it by controlling their foreign manufacturers' methods of indicating the source of the goods, and in the packaging of such goods respondents can certainly make plain the foreign origin of the goods so that even "he who runs may read." The said proposed order, which is hereinafter issued, is appropriate to protect the public interest.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, and there is specific and substantial public interest in this proceeding.

2. The aforesaid acts and practices of respondents, as herein found, 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.

It is ordered, That respondents Household Mfg. Co., a corporation, and its officers, and Melville Dorfman and Harry E. Eisenrod, individually and as officers of the 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 kitchen utensils, cutlery 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 any product manufactured or assembled in whole or in part in Japan or in any other foreign country without affirmatively and clearly disclosing on the product itself the country of origin thereof and, if any product should be packaged in a manner which would cause the mark identifying the country of origin to be not readily visible, without clearly disclosing the country of origin on the package or container thereof;

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

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 February 16, 1962, and respondents, on March 15, 1962, having filed a petition for review of said initial decision pursuant to § 4.20 of the Commission's Rules of Practice; and

The Commission having examined the petition and the entire record and being of the opinion that a determination of the questions presented is not necessary nor appropriate under the law to insure a just and proper disposition of the proceeding and to protect the rights of the parties; and

The Commission having determined that in order to conform more clearly to the hearing examiner's findings of fact, paragraph 1 of the order to cease and desist contained in the initial decision should be modified by inserting the words "front or face of the" immediately preceding the word "package" in the eighth line of said paragraph; and

The Commission having also determined that as so modified, said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That said petition for review, filed March 15, 1962, be, and it hereby is, denied.

It is further ordered, That paragraph 1 of the order to cease and desist contained in the initial decision be, and it hereby is, modified by inserting the words "front or face of the" immediately preceding the word "package" in said paragraph.

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

It is further ordered, That respondents, Household Mfg. Co., Melville Dorfman and Harry E. Eisenrod, 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 as modified herein.

IN THE MATTER OF

IRVING KAUFMAN TRADING AS STYLE SCARF CO.

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

Docket C-122. Complaint, Apr. 19, 1962—Decision, Apr. 19, 1962

Consent order requiring an importer in New York City to cease violating the Flammable Fabrics Act by importing and selling in commerce silk scarves and fabric which 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 Irving Kaufman, an individual, trading under his own name and as Style Scarf Co., hereinafter referred to as respondent, has 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 Irving Kaufman, whose address is 44-55 Kisena Boulevard, Flushing, N.Y., is an individual trading under his own name and as Style Scarf Co. Respondent's former office and principal place of business was located at 145 West 40th Street, New York, N.Y.

PAR. 2. Respondent, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, has sold and offered for sale, in commerce; has imported into the United States; and has introduced, delivered for introduction, transported and caused to be transported, in commerce; and has 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 above were silk scarfs.

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

Among the articles of wearing apparel mentioned above were silk scarfs.

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

PAR. 5. The acts and practices of respondent herein alleged were and are in violation of the Flammable Fabrics Act and 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 respondent named in the caption hereof with violation of the Federal Trade Commission Act and the Flammable Fabrics 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 to issue herein, 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 such 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 Kaufman, whose address is 44–55 Kisena Boulevard, Flushing, N.Y., is an individual trading under his own name and as Style Scarf Co. Respondent's former office and principal place of business was located at 145 West 40th 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 Kaufman, an individual, trading under his own name or as Style Scarf Co., or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

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

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

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

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

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

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

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

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

3. 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 Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

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

HUDSON VITAMIN PRODUCTS, INC.

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

Docket C–123. Complaint, Apr. 19, 1962—Decision, Apr. 19, 1962

Consent order requiring a New York City distributor of drug products to cease making misleading therapeutic claims in advertising for its preparations, 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 Hudson Vitamin Products, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hudson Vitamin Products, Inc., 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 89 Seventh Avenue, in the city of New York, State of New York.

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

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

I. *Designation:*
Hudson Geriban Liquid
Formula:
Each fluid ounce supplies:

Thiamine (B–1)	5 mg.
Riboflavin (B–2)	5 mg.
Niacinamide	100 mg.
Panthenol	4 mg.
Pyridoxine (B–6)	1 mg.
Vitamin B–12	3 mcg.

Methionine -- 100 mg.
Choline Bitartrate-- 100 mg.
Iron (as Iron Ammonium Citrate)--------------------------- 100 mg.
Plus other factors as found naturally in Yeast Extract. Alcohol 12% by volume.

Directions:

As a supplement to the daily diet, one (1) tablespoon daily, preferably after a meal. In iron deficiency anemia—one (1) tablespoon two (2) or three (3) times daily, preferably after meals, or as directed by a physician.

II. A. *Designation:*

Hudson Vitamin B–12 (5 mcg.)

Formula:

Each tablet contains (Cobalamin) Vitamin B–12 activity 5 mcg.

Directions:

One (1) tablet daily, or as directed by a physician for nutritional supplementation.

B. *Designation:*

Hudson Vitamin B–12 (10 mcg.)

Formula:

Each tablet contains (Cobalamin) Vitamin B–12 activity 10 mcg.

Directions:

One (1) tablet daily, or as directed by a physician for nutritional supplementation.

C. *Designation:*

Hudson Vitamin B–12 (25 mcg.)

Formula:

Each tablet contains (Cobalamin) Vitamin B–12 activity 25 mcg.

Directions:

One (1) tablet daily, or as directed by a physician for nutritional supplementation.

D. *Designation:*

Hudson Vitamin B–12 (50 mcg.)

Formula:

Each tablet contains (Cobalamin) Vitamin B–12 activity 50 mcg.

Directions:

One (1) tablet daily, or as directed by a physician for nutritional supplementation.

III. *Designation:*

Hudson Enzotoc

Formula:

Each tablet contains:

Pepsin (1:3000 N.F.)-- 100 mg.
Papain -- 30 mg.
Aspergillus Oryzae--- 30 mg.
Oxbile Extract--- 150 mg.
Pancreatin -- 300 mg.
Dehydrocholic Acid--- 30 mg.

Directions:

One (1) or two (2) tablets, SWALLOWED WHOLE, with water, during or after each meal.

THESE TABLETS ARE NOT TO BE CHEWED OR CRUSHED

IV. *Designation:*

Hudson Femtabs.

Formula:

Each tablet contains:

Ammonium Chloride	330 mg.
Homatropine Methlybromide	0.5 mg.
Caffeine Alkaloid	3.3 mg.
Vitamin B-1 (Thiamine HCl)	2.0 mg.
Vitamin B-2 (Riboflavin)	1.0 mg.
Vitamin B-6 (Pyridoxine HCl)	0.5 mg.
Calcium Pantothenate	1.0 mg.
Niacinamide	5.0 mg.

Directions:

(Two (2) tablets three (3) times daily after meals, starting ten (10) days before expected date of menstrual period. The diet should contain high protein content and low-salt. If menstrual cramps occur when menstrual flow begins, medication may be continued until complete relief is obtained.

PAR. 3. Respondent causes its said preparations, when sold, to be transported from its 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. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

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

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth, with respect to respondent's preparation designated "Hudson Geriban Liquid", are the following:

If you are tired, have a poor appetite, and feel generally below par—due to an iron nutritional deficiency, (your physician is qualified to determine this) GERIBAN may well give you the lift you need.

PAR. 6. Through the use of the said advertisements, and others similar thereto not specifically set out herein, respondent has represented and is now representing, directly and by implication, that "Hudson Geriban Liquid" will be of benefit in the treatment of tiredness, poor appetite and feelings of being below par.

PAR. 7. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, "Hudson Geriban Liquid" will not be of benefit in the treatment of tiredness, poorness of appetite or feelings of being below par, except in a small minority of persons whose tiredness, poor appetite and feelings of being below par are symptoms of an established deficiency of one or more of the nutrients provided by the preparation.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest to persons who experience feelings of tiredness, who have poor appetite and who feel below par, that there is a reasonable probability that they have symptoms which will respond to treatment by the use of "Hudson Geriban Liquid". In the light of such statements and representations, said advertisements are misleading in a material respect and therefore constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons experiencing tiredness, who have poor appetite, and who feel below par, these symptoms are not caused by an established deficiency of one or more of the nutrients provided by "Hudson Geriban Liquid", and that in such persons the said preparation will be of no benefit.

PAR. 8. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth, with respect to respondent's preparations designated "Hudson Vitamin B-12 (5 mcg.)", "Hudson Vitamin B-12 (10 mcg.)", "Hudson Vitamin B-12 (25 mcg.)", and "Hudson Vitamin B-12 (50 mcg.)" are the following:

Blood impoverishment of Vitamin B-12 may result in tiredness, poor appetite and weakened resistance (your physician is qualified to determine this).

PAR. 9. Through the use of the said advertisements and others similar thereto not specifically set out herein, respondent has represented and is now representing, directly and by implication, that "Hudson Vitamin B-12 (5 mcg.)", "Hudson Vitamin B-12 (10 mcg.)", "Hudson Vitamin B-12 (25 mcg.)" and "Hudson Vitamin B-12 (50 mcg.)" will be of benefit in the treatment of tiredness, poor appetite and weakened resistance.

PAR. 10. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, neither "Hudson Vitamin B-12 (5 mcg.)", "Hudson Vitamin B-12 (10 mcg.)", "Hudson Vitamin B-12 (25 mcg.)", nor "Hudson Vitamin B-12 (50 mcg.)" will be of benefit in the treatment of tiredness, poor appetite or weakened resistance, except in a small minority of persons whose tiredness, poor appetite and weakened resistance are symptoms of an established deficiency of the nutrient provided by the preparations.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest to persons who experience feelings of tiredness, who have poor appetite, and who have weakened resistance, that there is a reasonable probability that they have symptoms which will respond to treatment by the use of "Hudson Vitamin B-12 (5 mcg.)", "Hudson Vitamin B-12 (10 mcg.)", "Hudson Vitamin B-12 (25 mcg.)" or "Hudson Vitamin B-12 (50 mcg.)". In the light of such statements and representations, said advertisements are misleading in a material respect and therefore constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons experiencing tiredness, who have poor appetites, and who have weakened resistance these symptoms are not caused by an established deficiency of the nutrient provided by "Hudson Vitamin B-12 (5 mcg.)", "Hudson Vitamin B-12 (10 mcg.)", "Hudson Vitamin B-12 (25 mcg.)", or "Hudson Vitamin B-12 (50 mcg.)", and that in such persons the said preparations will be of no benefit.

PAR. 11. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth, with respect to respondent's preparation designated "Hudson Enzotoc", are the following:

> * * * before food can be used by the body it must be digested. This process is the responsibility of enzymes which sometimes fall short of their duties, causing discomfort in the form of indigestion, nausea, distention, belching and heartburn. * * * If you are troubled with faulty digestion—order ENZOTOC today.

PAR. 12. Through the use of the said advertisements and others similar thereto not specifically set out herein, respondent has represented and is now representing, directly and by implication, that "Hudson Enzotoc" will be of benefit in the treatment of indigestion, nausea, distention, belching and "heartburn".

PAR. 13. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, "Hudson Enzotoc" will not be of benefit in the treatment of indigestion, nausea, distention, belching or "heartburn", except in a small minority of persons whose indigestion, nausea, distention, belching and "heartburn" are symptoms of an established deficiency of one or more of the enzymes or bile derivatives provided by the preparation.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest to persons who have indigestion, nausea, distention and "heartburn" and who belch that there is a reasonable probability that they have symptoms which will respond to treatment by the use of "Hudson Enzotoc". In the light of such statements and representations, said advertisements are misleading in a material respect and therefore constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons who have indigestion, nausea, distention and "heartburn", and who belch, these symptoms are not caused by an established deficiency of one or more of the enzymes or bile derivatives provided by "Hudson Enzotoc", and that in such persons the said preparation will be of no benefit.

PAR. 14. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth, with respect to respondent's preparation designated "Hudson Femtabs", are the following:

> FEMTABS offer symptomatic relief from many of the distressing symptoms caused by premenstrual tension, such as anxiety, depression, irritability, headache, etc.

PAR. 15. Through the use of said advertisements and others similar thereto not specifically set out herein, respondent has represented, and is now representing, directly and by implication, that "Hudson Femtabs" will be effective in relieving presently existing anxiety, depression, irritability, headache and other presently existing symptoms of premenstrual tension.

PAR. 16. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, "Hudson Femtabs" will not be effective in relieving any presently existing symptom of premenstrual tension.

PAR. 17. The dissemination by the respondent of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 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, and admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, 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 such complaint, and waivers and provisions as required by the Commission's rules;

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 Hudson Vitamin Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 89 Seventh Avenue, in the city of New York, State of New York.

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

ORDER

It is ordered, That respondent Hudson Vitamin Products, Inc., a corporation, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparations designated "Hudson Geriban Liquid", "Hudson Vitamin B-12 (5 mcg.)", "Hudson Vitamin B-12 (10 mcg.)", "Hudson Vitamin B-12 (25 mcg.)", "Hudson Vitamin B-12 (50 mcg.)", "Hudson Enzotoc" and "Hudson Femtabs", or any other preparations of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, do forthwith cease and desist from, directly or indirectly:

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

(a) That "Hudson Geriban Liquid" will be of benefit in the treatment of tiredness, poor appetite or feelings of being below par, unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms have been caused by an established deficiency of one or more of the nutrients provided by the preparation and, further, unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparation, and that in such persons the preparation will not be of benefit.

(b) That "Hudson Vitamin B-12 (5 mcg.)", "Hudson Vitamin B-12 (10 mcg.)", "Hudson Vitamin B-12 (25 mcg.)" or "Hudson Vitamin B-12 (50 mcg.)" will be of benefit in the treatment of tiredness, poor appetite or weakened resistance, unless such advertisement expressly limits the effectiveness of the preparations to those persons whose symptoms have been caused by an established deficiency of the nutrient provided by the preparations and, further, unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparations, and that in such persons the preparations will not be of benefit.

(c) That "Hudson Enzotoc" will be of benefit in the treatment of indigestion, nausea, distention, belching or "heartburn", unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms have been caused by an established deficiency of one or more of the enzymes or bile derivatives provided by the preparation and, further, unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparation, and that in such persons the preparation will not be of benefit.

(d) That "Hudson Femtabs" will be effective in relieving presently existing anxiety, depression, irritability or headache due to premenstrual tension or any other presently existing symptom of premenstrual tension.

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

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

In the Matter of

CARTER PRODUCTS, INC., ET AL.

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

Docket 7943. Complaint, June 15, 1960—Decision, Apr. 25, 1962

Order requiring the manufacturer of "Rise" shaving cream and its advertising agency to cease disparaging competing products in deceptive television commercials as they did in a video sequence showing a man shaving in obvious discomfort when the "ordinary" aerated lather on his face, represented as dried out, was not shaving cream at all but a substance specially prepared to simulate shaving cream.

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 Carter Products, Inc., a corporation, Sullivan, Stauffer, Colwell & Bayles, Inc., a corporation, and S. Heagan Bayles, an individual, 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 Carter Products, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at Two Park Avenue, New York, N.Y.

Respondent Sullivan, Stauffer, Colwell & Bayles, 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 575 Lexington Avenue, New York, N.Y.

Respondent S. Heagan Bayles is an individual and his address is 575 Lexington Avenue, New York, N.Y.

PAR. 2. Respondent Carter Products, Inc., is now, and for some time last past has been, engaged in the manufacture, advertising, offering for sale, sale and distribution of a shaving cream designated "Rise", and various other products, to distributors and to retailers for resale to the public.

Respondent Sullivan, Stauffer, Colwell & Bayles, Inc., is now, and for some time last past has been, an advertising agency of the respondent Carter Products, Inc., and now prepares and places, and for some time last past has prepared and placed, advertising material for publication, including television commercials including but not limited to that hereinafter set forth, to promote the sale of the aforesaid "Rise" and other products.

Respondent S. Heagan Bayles is an official or employee of Respondent Sullivan, Stauffer, Colwell & Bayles, Inc., and is the executive in charge of the "Rise" account. As such he actively participated in and was in charge of the preparation and dissemination of the "Rise" advertisements hereinafter set forth.

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

PAR. 4. In the conduct of its business at all times mentioned herein, respondent Carter Products, Inc., has been in substantial competition, in commerce, with other corporations and firms in the sale of shaving cream.

In the conduct of its business, at all times mentioned herein respondent Sullivan, Stauffer, Colwell & Bayles, Inc., has been in substantial competition, in commerce, with corporations, firms and individuals in the advertising business.

PAR. 5. Respondents, by means of the aforesaid television commercials, which include visual demonstrations of a male actor shaving, first with what is represented to be a competing shaving lather which appears to have dried out on his face causing him to wince in discomfort resulting from shaving with the competing lather; next the actor is shown shaving in apparent comfort with "Rise" which appears to remain "moist and creamy", have represented, directly or by implication, that competing lathers dry out in the course of a shave making shaving more difficult and uncomfortable while "Rise" stays "moist and creamy" throughout a shave resulting in an easier and more comfortable shave.

PAR. 6. The aforesaid representations, including the visual demonstrations, are false, misleading and deceptive. In truth and in fact, that which is represented as being a competing lather is not a lather or shaving cream at all. It is a formulation specially prepared and used in said demonstration and is not a product used for shaving purposes. Said demonstration is not a valid comparison of the respective qualities of "Rise" and competing products as shaving lathers and tends to disparage competing lathers.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive representations, demonstrations 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 representations were and are true and into the purchase of substantial quantities of "Rise" by reason of said erroneous and mistaken belief. As a consequence thereof substantial trade in commerce has been, and is being, unfairly diverted to respondent Carter Products, Inc., from its 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 the competitors of respondent Carter Products, Inc., and constituted and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Edward F. Downs supporting the complaint.

Mr. William L. Hanaway and *Mr. John J. Campbell*, of New York, N.Y. for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

Carter Products, Inc., a corporation, Sullivan, Stauffer, Colwell & Bayles, Inc., a corporation and S. Heagan Bayles, an individual, hereinafter called respondents, are charged with false advertising of "Rise", an aerosol shaving cream manufactured and sold by respondent Carter Products, Inc., in violation of the Federal Trade Commission Act. Each of the respondents has denied, in substantial part, the violations alleged. Hearings have been held and proposed findings, conclusions of law and order have been submitted by respective counsel. The matter is now before the undersigned hearing examiner for final consideration. All proposed findings of fact and conclusions of law not specifically found or concluded herein are rejected. Upon the basis of the entire record, the hearing examiner makes the following findings of fact and conclusions of law, and issues the following order:

FINDINGS OF FACT

1. Respondent Carter Products, 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 Two Park Avenue, New York, N.Y.

2. Respondent Sullivan, Stauffer, Colwell & Bayles, Inc., is a corporation organized and doing business under the laws of the State of New York with its office and principal place of business located at 575 Lexington Avenue, New York, N.Y. The individual respondent S. Heagan Bayles is the Chief Executive Officer and Chairman of the Board of Directors of the corporate respondent Sullivan, Stauffer, Colwell & Bayles, Inc. His address is also located at 575 Lexington Avenue, New York, N.Y.

3. The respondent Carter Products, Inc., is now, and has been engaged in the manufacture, advertising, offering for sale, sale and distribution of a shaving cream designated "Rise," and other products, to distributors and retailers for resale to the public.

4. Respondent Sullivan, Stauffer, Colwell & Bayles, Inc., is now, and has been, an advertising agency handling the "Rise" advertising account for the respondent Carter Products, Inc., and prepares and places advertising material for publication, including television commercials, to promote the sale of "Rise" shaving cream and other products. The individual respondent S. Heagan Bayles is and was at the time of the advertising complained about, the executive of Sullivan, Stauffer, Colwell & Bayles, Inc. in charge of the "Rise" account. His specific duties with respect to the "Rise" account will be discussed in paragraph 12 hereof.

5. In the course and conduct of its business, respondent Carter Products, Inc., now causes, and has caused the said "Rise" shaving cream, when sold, to be shipped from its factory located in Cranberry, New Jersey, to purchasers located in various states of the United States and in the District of Columbia, and maintains, and has maintained a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act and is, and has been, in substantial competition, in commerce, with other corporations and firms in the sale of shaving cream.

6. In the conduct of its business respondent Sullivan, Stauffer, Colwell & Bayles, Inc., is, and has been, in substantial competition in commerce, with corporations, firms and individuals in the advertising business.

7. The television commercials complained about were 60-second commercials telecast on television stations during the period between December 2, 1959, and the first week in February 1960, and include visual demonstrations of a male actor shaving, first, after applying to his face what was orally represented to be an "ordinary" shaving cream lather which disappeared rapidly and appeared to dry out on his face shortly after application, causing him to wince in discomfort while attempting to shave with the competing lather. However, this "ordinary" shaving cream was not a shaving cream at all but was a white creamy-looking substance prepared by respondent Carter Products, Inc., to simulate shaving cream, and contained properties which caused it to disappear rapidly and appear to dry out immediately after being applied to the face of the actor (CX 16). It actually contained 90 percent water and a 10 percent solution of "ultra-wet 60L", without perfume, and was pressurized in a can. "Ultra-wet 60L" is a surface or foaming agent produced by Atlantic Refining Company and has the property of producing foams. Mr. Edwin L. Brewster, Director of Control for respondent Carter Products, Inc., testified that he received a telephone request to prepare and send to Mr. Richardson's[1] office some cans of lather for use on television commercial shorts which would come out of the can "in a good puff and would disappear rapidly." He then obtained the "ultra-wet 60L" from Atlantic Refining Company. This was mixed with water and placed in a can under pressure and was used in the television commercial to simulate "ordinary" shaving cream lather (CX 16). This mixture resembling shaving cream did not contain any soaps or fatty acid salts usually found in shaving cream lathers. These soaps and

[1] Mr. Richardson is Vice President in charge of sales and advertising for respondent Carter Products, Inc.

fatty acid salts prevent shaving cream from breaking down. In the next visual sequence the actor is shown shaving in apparent comfort with "Rise" which appears to remain moist and creamy. Along with the visual demonstration in the television commercial was an audio portion which stated the following:

> Guard against razor scratch . . . the scratches, scrapes and burns you often get with ordinary aerated lathers that dry out on your face and let your whiskers dry out too. But now there's a new instant lather that stays moist and creamy—keeps your whiskers wet and soft all through your shave—gives you closer, more comfortable shaves.

8. Through and by the use of said television commercials, respondents have represented, directly and by implication, that competing lathers dry out in the course of a shave making shaving more difficult and uncomfortable while "Rise" stays moist and creamy throughout the shave, resulting in an easier and more comfortable shave. Said representations, including the visual demonstrations, are false, misleading and deceptive in a material respect. Through the use of the specially prepared substance which respondents represented in the television commercials to be "ordinary" lather, and which completely dried out and broke down in approximately one minute after ejection from the can as demonstrated during the course of the hearing, respondents thus represented that competing lathers dry out in the same manner, which is contrary to the truth and constitutes disparagement of competing lathers. As demonstrated at the hearing, neither "Rise" nor two other competing commercial lathers dried out as quickly as the special formula used in the first television sequence. Seven other lathers appearing in RXI through RX10 did not, according to these exhibits, dry out in one minute as did the special formula. In its own defense, respondent Carter Products, Inc., offered and there was received in evidence the results of certain tests made by respondent Carter Products, Inc., to support its claim that more than 50 percent of the competing aerated shaving creams on the commercial market dry out faster than "Rise." Even assuming this contention to be true, this does make the representation by respondent Carter Products, Inc. in its television commercial any less a misrepresentation. Since a shaving cream was not used in the purported comparison, such demonstration does not prove the superiority of "Rise" over any competing shaving cream, to say nothing of its claimed superiority over other competing lathers. Accordingly, it was deceptive for respondents to imply that the demonstration in said commercial proves the superiority of "Rise" over competing shaving creams.

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9. Respondents contend that said television commercial was not false or deceptive for the reason that respondents were not comparing "Rise" with all competing lathers but only with those that dry out quickly. After referring to "ordinary" lathers and the discomforts of shaving with them, the television commercials complained about, state:

> . . . but now there's a new instant lather . . . that stays moist and creamy . . . keeps your whiskers wet and soft all through your shave . . . gives you closer, more comfortable shaves. Its RISE patented small bubble lather . . . The richest, wettest lather ever made.

By using this language respondents represented that the new product "Rise" is the only lather that stays moist and creamy, and, among the aerated lathers on the market, "Rise" is the richest, wettest lather ever made. It will be noted that respondents did not state that "Rise" is one of the richest, wettest lathers but the richest, wettest lather. Therefore, this contention must be rejected.

10. Respondents' contention that they used a substance other than shaving lather in the filmed commercials because of technical photographical problems is rejected. Reasonable latitude is and should be granted to advertisers and advertising agencies in the use of "make-up" where necessary to meet the technical requirements of photography. However, this is not a license to misrepresent the truth as to a material fact. It is undisputed that respondents used "Rise" shaving lather in the television commercials complained about. If respondents could successfully photograph "Rise" shaving lather, they could also successfully photograph a competing or competing shaving lathers. Representatives of respondents testified that their reason for using the specially prepared substance which resembled shaving cream but contained ingredients which caused it to disappear and dry up considerably faster than ordinary shaving cream was to dramatize the difference between "Rise" and "ordinary" lathers. Even so, it was not necessary to prepare and use a phony substance resembling shaving cream and represent this to the public as a competing shaving cream, inferior to "Rise". Respondents also contend that, since the thrust of the complaint is directed toward respondents' use of the substitute substance in the filmed comparison with "Rise" and no attack is made with respect to the truth of the audio portion of the filmed commercial quoted in paragraph 7 hereof, the allegations of the complaint have not been established. There is no merit in this contention. As previously found herein, the visual and audio portions of the filmed commercial have been and should be considered together, in their entirety,

not separately. Taken as a whole, they constitute a misrepresentation of a material fact.

11. Respondent Carter Products, Inc., urges that, since the television commercials under inquiry have been permanently and voluntarily discontinued and respondents do not intend to resume their use, no order is necessary. The evidence shows that the Federal Trade Commission initiated its investigation of the television commercials on or about February 1, 1960, and respondents discontinued their latest exhibition on or about February 9, 1960. The complaint herein was thereafter issued on June 15, 1960. Respondent Carter Products, Inc. has filed in the record an affidavit by one of its officers certifying that this respondent has permanently abandoned the use of the television commercials complained about and does not intend to resume their exhibition at any time in the future. This action on the part of Carter Products, Inc. in discontinuing the use of the films is commendable. However, the facts and circumstances which exist in this case do not justify dismissal of the complaint on the ground that respondents have discontinued the exhibition of the films complained about. The respondents did not discontinue their exhibition until after the Commission began its investigation and after the Commission's "hand was on respondent's shoulder." As stated by the Commission in *Argus Cameras, Inc.*, Docket No. 6199: "Dismissal of a complaint in cases of this general character is not the usual procedure. It should not be done unless there is a clear showing of unusual circumstances which in the interest of justice require it." No unusual circumstances are shown or even claimed to exist in this proceeding which would justify dismissal on these grounds.

12. The individual respondent S. Heagan Bayles requests that the complaint be dismissed as to him for the reason that Mr. Bayles had no individual responsibility for the preparation or dissemination of the television commercials complained about. As has been found in paragraph 4 above, Mr. Bayles is the Chief Executive Officer and Chairman of the Board of Directors of respondent Sullivan, Stauffer, Colwell & Bayles, Inc., and in charge of the "Rise'" account for Sullivan, Stauffer, Colwell & Bayles, Inc. The complaint alleges that Mr. Bayles is the executive in charge of the "Rise" account for Sullivan, Stauffer, Colwell & Bayles, Inc., and "as such he actively participated in and was in charge of the preparation and dissemination of the "Rise" advertisements hereinafter set forth". For this reason counsel supporting the complaint seeks an order against the respondent corporation Sullivan, Stauffer, Colwell & Bayles, Inc., and its officers and also against Mr. S. Heagan Bayles

in his individual capacity. As stated by the Commission in the matter of *Kay Jewelry Stores, Inc. et al*, Docket No. 6445: "The Commission has wide discretion in determining the necessity of attaching individual liability to insure the full effectiveness of an order to cease and desist". The respondent corporation Sullivan, Stauffer, Colwell & Bayles, Inc., had approximately 420 employees at the time of the hearing and its total billings are in excess of 60 million dollars per year. Some of these employees are engaged in marketing, copy, art work and area media, i.e., the selection of the type of advertising for the particular advertiser, such as magazines, newspapers, billboards, radio or television, etc. The evidence shows that Mr. Bayles is an executive officer of Sullivan, Stauffer, Colwell & Bayles, Inc., and his duties in connection with the "Rise" account were confined largely to setting the policy levels between his agency and respondent Carter Products, Inc. Mr. Bayles does not and did not have the responsibility of preparing and disseminating the "Rise" advertising films complained about. Copywriters, artists and employees in the television department of Sullivan, Stauffer, Colwell & Bayles, Inc., prepared the story-boards (CX1–5) and then, under competitive bids, the actual making of the films from the story-boards was awarded to an independent film producing company who photographed and produced the films complained about. After the films had been produced and delivered to Sullivan, Stauffer, Colwell & Bayles, Inc., its media department arranged with the television stations for their broadcast. In summary, Mr. Bayles' participation in the "Rise" advertising was limited to setting the policy level between his agency and the respondent Carter Products, Inc.; the day-to-day responsibility for actually preparing the "Rise" advertising films was in the hands of two men at Sullivan, Stauffer, Colwell & Bayles, Inc., Mr. Barrett Welch, Management Supervisor, and, under him, Mr. Roland Marx, an account executive. The evidence is undisputed that Mr. Bayles had no knowledge that the substance "ultra-wet 60L" was going to be used in the film commercials instead of shaving cream. *In the Matter of Wilson Tobacco Board of Trade, Inc., et al*, Docket 6262, the order to cease and desist issued by the hearing examiner was directed against certain respondents in their individual capacities, as well as in their capacities as officers and directors of corporate respondents upon the basis of allegations in the complaint charging the named respondents both in their individual and official capacities. However, the initial decision did not contain any finding that these respondents acted in any capacity other than as officers and directors of the various corporate respondents, nor did the Commission believe there was any evidence to support such a finding. Even though the respondents did not raise the question on appeal in that case, the Commission held that there was no evidence in the record to justify a conclusion that these individuals, as such, might induce evasion of the terms of the order by corporate respondents and no other circumstances appeared pointing to the necessity of directing the order against these parties in their individual as distinguished from their official capacities. Accordingly, the Commission modified the order so as to limit its effect to the named respondents only in their capacities as officers and directors of the corporate respondents, and not against them in their individual capacities. To the same effect are *In the Matter of Neuville, Inc., et al.*, Docket 6405 and *In the Matter of Kay Jewelry Stores, Inc., et al, supra.* Here, there is no evidence in the record to justify any conclusion that Mr. Bayles might induce evasion of the terms of the order by corporate respondents and no other circumstances appear pointing to the necessity of directing the order against Mr. Bayles in his individual as distinguished from his official corporate capacity. Therefore, the order to be issued herein will not be directed against Mr. Bayles in his individual capacity.

CONCLUSIONS

13. The use by respondents of the aforesaid false, misleading and deceptive representations, demonstrations 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 representations were, and are, true and into the purchase of substantial quantities of "Rise" shaving cream by reason of said erroneous and mistaken belief. As a consequence, substantial trade in commerce has been unfairly diverted to respondent Carter Products, Inc., from its competitors and substantial injury done to competition in commerce. Said acts and practices were, and are, to the prejudice and injury of the public and of the competitors of respondent Carter Products, Inc., and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Carter Products, Inc., a corporation, Sullivan, Stauffer, Colwell and Bayles, Inc., a corporation, their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of shaving cream or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Disparaging the quality or properties of any competing product or products, through the use of false or misleading pictures, depictions or demonstrations either alone or accompanied by oral or written statements, or otherwise.

Representing directly or by implication that pictures, depictions or demonstrations either alone or accompanied by oral or written statement accurately portray or depict the superiority of any product over competing products when such portrayal or depiction is an inaccurate comparison of any such product with competing products.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner:*

Respondents herein have been charged with violation of Section 5 of the Federal Trade Commission Act. The matter is now before us on respondents' appeal from an initial decision of the hearing examiner holding that the allegations of the complaint had been sustaind by the evidence and ordering two of the respondents to cease and desist from the practices found to be unlawful.

Respondents are Carter Products, Inc., manufacturer of the shaving cream "Rise" and other products; Sullivan, Stauffer, Colwell & Bayles, Inc., an advertising agency handling the "Rise" advertising account; and S. Heagan Bayles, an executive of the advertising agency. In substance, they are charged in the complaint with falsely and deceptively representing in television commercials that shaving creams competing with "Rise" dry out during the course of a shave while "Rise" stays moist and creamy, and with using false and deceptive visual demonstrations in such commercials to make this representation.

There is no dispute as to the following facts: A television commercial typical of those challenged by the complaint opens by depicting a silhouette of a man shaving; the down stroke of the razor being followed by a jagged line, and a voice saying "Guard Against Razor Scratch". After the picture and the words are repeated, there is a close-up of a man shaving in obvious discomfort. The lather which has been applied to his face appears dried out. Superimposed on this picture are the words "Ordinary Lathers Dry Out". The announcer says "The scratches, scrapes and burns you often get with ordinary aerated lathers that dry out on your face . . . and let your whiskers dry out, too. Your razor tugs and pulls."

The picture then shifts to a can of "Rise" from which a rich, creamy lather is being released onto a man's hand and the words "Stays Moist and Creamy" are flashed on the picture. This is followed by a series of pictures which include a portrayal of a man shaving, his expression indicating that he is experiencing a most comfortable shave. Throughout this sequence, the announcer continues, "But now there's a new instant lather . . . that stays moist and creamy . . . keeps your whiskers wet and soft all through your shave . . . gives you closer, more comfortable shaves. It's Rise patented small bubble lather . . . the richest, wettest lather ever made. Instead of drying out on your face . . . Rise wetter lather puts more moisture into whiskers . . . keeps them wet and soft . . . all through your shave. Guards against razor scratch . . . Gives you closer, more comfortable shaves in half the time. Shave with Rise . . . the wetter lather that doesn't dry out on your face."

The record discloses, and respondents concede, that the so-called "ordinary" lather used in the commercial was not a shaving cream but a substance specially prepared by Carter to simulate shaving cream. As found by the hearing examiner, the substance contained 90 per cent water and a solution of "ultra-wet 60 L", a surface or foaming agent which has the property of producing foam. It did not contain any soaps or fatty acid salts, the ingredients ordinarily used to keep a shaving cream from breaking down, and was formulated in such manner that it would come out of a can "in a good puff and would disappear rapidly".

The record also shows that there are a number of aerated shaving creams that do not dry out in the course of a shave.

Relying primarily on the aforementioned evidence the hearing examiner held that respondents had falsely and deceptively represented in their commercials that all shaving creams competing with "Rise" dry out in the course of a shave while "Rise" does not. He further held that respondents had falsely and deceptively represented that the visual demonstration included in the commercial proved the superiority of "Rise" over competing shaving creams.

The principal argument made by respondents in their appeal is that the hearing examiner misinterpreted the commercials in question and that his conclusion as to what was said in such advertising is not supported by the record. Respondents contend first of all that the commercial was not a comparison of "Rise" with all competing shaving creams, as found by the examiner, but a comparison of "Rise" with "ordinary" shaving creams. They next contend that the record shows that an "ordinary" shaving cream is an inferior shaving cream that dries out on the user's face and that the substance used in the commercial as an "ordinary" shaving cream did in fact have the appearance of a dried-out lather. They argue, therefore, that since the purpose of the commercial was merely to dramatize the difference between "Rise" and a dried-out lather, the use of a simulated product in this dramatization or demonstration was not deceptive.

Respondents point out in this connection that witnesses who had participated in the preparation of the advertising in question had testified unanimously that it was their intention to compare "Rise" only with those competing shaving creams which were without merit or of inferior quality. These witnesses also testified that the word "ordinary" was used in the commercial to refer to such inferior products. Individual respondent, Bayles, testified in this connection as follows: "—it might be well here to say by 'ordinary' what we mean. If you look it up in the dictionary it means commonplace, and it means without merit; it means inferior. That is the definition out of the large Merriam-Webster dictionary." He also testified "We are talking about those lathers which are ordinary and dry out, and 'ordinary' means inferior quality. Those lathers that qualify as ordinary lathers that dry out, yes, we were competing against those". He also testified "We were not competing with lathers that were of the same quality or could be considered of the same quality as Rise." Respondents also contend that it is clear from the audio portion of the commercial that the comparison was made between "Rise" and "ordinary" aerated lathers "that dry out on your face".

We are not impressed with this argument or with the testimony upon which it is based. In the first place, it is noted that "Rise" is referred to in the various commercials as "the richest, wettest lather ever made" and as "the lather that doesn't dry out". The representation is also made that "*No other lather* lets you shave so close" (italic supplied). Moreover, we find it exceedingly difficult to believe that respondents would compare "Rise", a product claimed to be "unique" and "superior", with only the lowest quality shaving creams. In any event, this testimony is wholly irrelevant to the point under consideration. What respondents intended to say in their advertising has no bearing on the question of what was actually said. Nor does it appear from an examination of the advertising that the phrase "that dry out on your face" is a qualification of the term "ordinary aerated lathers" as respondents seem to contend. In the context in which it is used, this phrase is merely a representation that such lathers do dry out.

Elsewhere in the advertising respondents flatly state "Ordinary Lathers Dry Out".

When viewed and heard in its entirety, there can be no doubt that the commercial compares "Rise" with all other competing aerated shaving creams. Neither the word "ordinary" nor any other part of the commercial indicates that respondents are distinguishing between low quality and high quality lathers. Insofar as the viewer can determine from the advertising an ordinary shaving cream is merely a shaving cream other than "Rise". Consequently, we believe that respondents' advertising conveys the impression that all aerated lathers competing with "Rise" dry out. Since the record shows that this is untrue, the representation is a false disparagement of those aerated shaving creams that do not dry out during the course of a shave.

We will consider next respondents' contention that there was no deception in the use of a substance having the appearance of a dried-out lather for the purpose of dramatizing the difference between "Rise" and a dried-out lather. Here again the respondents ignore what was said in the commercial and direct their argument to what they say was the purpose of the advertising. Although it is true that respondents represented that "Rise" is superior to a dried-out lather, it is equally clear that they also represented that "Rise" is superior to competing aerated shaving lathers because these lathers dry out and "Rise" does not. The demonstration in the advertising purported to show why "Rise" is superior. The viewer could observe and see for himself that other lathers dry out while "Rise" remains "moist and creamy". To remove any doubts that this was the purpose of the demonstration, the words "Ordinary Lathers Dry Out" were superimposed on the picture. Since the product which was shown as dried out in the demonstration was a substance other than a shaving cream, having none of the characteristics of a shaving cream except the property of foaming, the demonstration did not show that competing lathers dry out faster than "Rise", although it conveyed the impression that it did. The demonstration did not prove what it purported to prove and was, therefore, false and deceptive. Since we believe, as respondents obviously did, that the demonstration would serve to induce members of the public to purchase "Rise" in preference to competing lathers, there is sufficient public interest to warrant the conclusion that the practice should be prohibited.

We might add in this connection that our views with respect to the use of television demonstrations that convey false or deceptive impressions to the public were fully set forth in our opinion in the matter of *Colgate-Palmolive Company, et al.*, Docket No. 7736 (1961), and the rationale of that decision is equally applicable here.

Respondents have also appealed from the hearing examiner's rejection of their plea of abandonment. We have no reason to disturb the hearing examiner's holding on this point, however. The mere showing that respondents had discontinued the television commercials which gave rise to the charges herein does not lead us to believe that there will be no recurrence of the practices challenged in the complaint. Respondents did not stop using the commercials in question until after the Commission had begun its investigation. As we have previously stated,[1] the dismissal of a complaint on the ground of abandonment is rarely warranted in cases where the discontinuance does not occur until after the Commission has acted. Moreover, respondents' assurance of discontinuance relates only to the specific commercials and not to the practices at which the complaint is directed. There has been no showing of unusual circumstances which would indicate that entry of an order is unnecessary nor does it appear that there has been any change in the competitive conditions which may have influenced respondents to use advertising of the type under consideration. Consequently, we find no error in the hearing examiner's ruling on this point.

Respondents also contend that the order to cease and desist contained in the initial decision is too broad, vague, general and all-inclusive. We agree that the order goes too far but not for the reasons stated in respondents' brief. The order, as drafted, properly prohibits respondents from using false or misleading pictures, depictions or demonstrations to disparage the quality or properties of a product and from using representations that a picture, depiction or demonstration depicts or portrays the superiority of any product over competing products when a geniune or accurate comparison of the products has not been made. The order, however, would also prohibit respondents from "otherwise" disparaging the quality or properties of any competing product or products. This would prevent respondents from making truthful and nondeceptive statements that a product has certain desirable properties or qualities which a competing product or products do not possess. Such a comparison may have the effect of disparaging the competing product, but we know of no rule of law which prevents a seller from honestly informing the public of the advantages of its products as opposed to those of competing products.

[1] In the Matter of *Ward Baking Company*, Docket No. 6833 (1958) and *Firestone Tire and Rubber Company*, Docket No. 7020 (1959).

The complaint alleges and the record discloses that respondents have falsely disparaged competing products. The hearing examiner has found in this connection that respondents not only disparaged competing products by means of false and deceptive visual demonstrations, but that they had falsely represented that lathers competing with "Rise" dry out in the course of a shave making shaving more difficult and uncomfortable. Consequently, his order should have prohibited respondents from making such representations or from otherwise falsely disparaging competing shaving creams. The order will be modified accordingly.

All arguments made by respondents which have not been discussed herein are rejected.

To the extent indicated herein, the appeal of respondents is granted; in all other respects it is denied. The initial decision, modified to conform with this opinion, will be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon briefs in support thereof and in opposition thereto, no oral argument having been requested; and the Commission having rendered its decision granting in part and denying in part the aforementioned appeal and directing modification of the initial decision:

It is ordered, That the following order be, and it hereby is, substituted for the order contained in the initial decision:

It is ordered, That respondents Carter Products, Inc., a corporation, and Sullivan, Stauffer, Colwell & Bayles, Inc., a corporation, their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of shaving cream or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) Disparaging the quality or properties of any competing product or products, through the use of false or misleading pictures, depictions or demonstrations either alone or accompanied by oral or written statements.

(b) Representing directly or by implication that pictures, depictions or demonstrations either alone or accompanied by oral or written statements, accurately portray or depict the superiority of any product over competing products when such portrayal or depiction is not a genuine or accurate comparison of such product with competing products.

And further, In the advertising, offering for sale, sale, or distribution of "Rise" shaving cream, or any other shaving cream, in commerce, as "commerce" is defined in the Federal Trade Commission Act, from misrepresenting the moisture retaining properties of competing shaving creams or otherwise falsely disparaging the quality or merits of competing products.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent S. Heagan Bayles in his individual capacity.

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

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

IN THE MATTER OF

THE QUAKER OATS COMPANY

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

Docket 8119. Complaint, Sept. 16, 1960—Decision, Apr. 25, 1962

Order requiring a major manufacturer of food products for both humans and animals, selling to wholesalers and retailers and with annual sales in excess of $300,000,000, to cease violating Sec. 2(d) of the Clayton Act by such acts as contributing $250 through its Coast Fisheries Division in connection with the sale of its Puss 'N Boots cat food to an anniversary sales promotion called a "Foodarama" staged by a grocery chain with retail stores in 25 cities in Iowa, Illinois, and Missouri, without making such payments available on proportionally equal terms to the chain's competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C.

Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PAR. 1. Respondent The Quaker Oats Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at the Merchandise Mart Plaza, Chicago 54, Ill.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of food products for both human and animal consumption. Respondent sells and distributes its products to wholesalers and retailers, including retail chain store organizations. Respondent's sales of its products are substantial, exceeding $300,000,000 annually.

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

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

PAR. 5. For example, in the year 1959, respondent contracted to pay and did pay to Benner Tea Company, a retail grocery chain with headquarters in Burlington, Iowa, the amount of $250.00 as compensation or as an allowance for advertising or other services or facilities furnished by or through Benner Tea Company in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not made available on proportionally equal terms to all other customers competing with Benner Tea Company in the sale and distribution of products of like grade and quality purchased from respondent.

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

Mr. John Perry supporting the complaint.

Mr. John T. Chadwell, *Mr. Paul H. LaRue*, and *Mr. Luther C. McKinney* of *Snyder, Chadwell, Keck, Kayser & Ruggles*, and *Mr. Merrill E. Olsen* and *Mr. Joseph G. Egan*, all of Chicago, Ill., for respondent.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

This is a proceeding based on a complaint issued September 16, 1960, charging respondent with violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13).

There is no substantial dispute about the facts. Quaker Oats made a payment to Benner Tea Company a purchaser from it in connection with the latter's anniversary Foodarama program in 1959 and this type of payment was not made available to other purchasers on proportionally equal terms.

Counsel for both parties are to be commended for their cooperative attitude in simplifying the record through stipulations which reduced the size of the record and placed the proper emphasis on the important features of the case.

The only substantial questions presented are whether the special circumstances in this case are such that either 1) no order should issue because there is only a single violation, or 2) the order should be curtailed so that it applies only to the sale of cat food the product of the division of respondent which was responsible for the violation disclosed.

This proceeding is now before the hearing examiner for final consideration upon the complaint, answer, testimony and other evidence, motion to dismiss, proposed findings of fact, conclusions of law and briefs. The hearing examiner has given consideration to the proposed findings and conclusions, and all findings of fact and conclusions not hereafter specifically found or concluded, either in their entirety or in substance are hereby rejected. Having considered the entire record herein, the hearing examiner makes the following findings as to the facts, conclusions drawn therefrom and order:

FINDINGS OF FACT

1. Respondent The Quaker Oats Company is a corporation organized, existing and doing business under and by virtue of the laws of

the State of New Jersey, with its office and principal place of business located at the Merchandise Mart Plaza, Chicago 54, Ill.

2. Respondent is now and has been engaged in the manufacture, sale and distribution of food products for both human and animal consumption. Respondent sells and distributes products to wholesalers and retailers, including retail chain store organizations. Respondent's sales of its products are substantial, exceeding $300,000,000 annually.

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

4. Respondent conducts several types of business through divisions which are semi-autonomous although not separately incorporated.

5. One such division is the Coast Fisheries Division of Quaker Oats Company which manufactures and sells Puss 'N Boots cat food. This division accounts for roughly ten percent of the business of Quaker Oats Company.

6. Coast Fisheries Division was set up as a result of the acquisition of a hitherto independent corporation in 1950 and its method of sale differs substantially from the method of sale utilized by the balance of the divisions of Quaker Oats Company. Its sales were conducted primarily through the use of independent brokers who also handle products of companies other than Quaker Oats. Grocery Products Division which sells such packaged goods as Quaker Oats and Ken-l-Ration, utilizes its own sales organization to make its sales to wholesalers and other direct customers. In addition Coast Fisheries Division maintains shipping points and factories which differ from those used by its Grocery Products Division and it utilizes public warehouses rather than company owned distribution centers such as are used by the Grocery Products Division.

7. While the activities of Grocery Products Division have been closely supervised, Coast Fisheries Division presumably by reason of its former independent status, was not as closely supervised nor was its sales manager, Glenn Hesler. In the words of the witness, Vice President William G. Mason, "We realize that we let this Division just become too independent . . ."

8. During the year 1959, respondent sold Puss 'N Boots cat food in cans to Benner Tea Company, a retail grocery chain with headquarters

in Burlington, Iowa, which maintained retail stores in the following cities:

Burlington, Iowa	Muscatine, Iowa
Fort Madison, Iowa	Canton, Illinois
Keokuk, Iowa	Carthage, Illinois
Iowa City, Iowa	Stronghurst, Illinois
Fairfield, Iowa	Galesburg, Illinois
New London, Iowa	Monmouth, Illinois
Winfield, Iowa	Roseville, Illinois
Sigourney, Iowa	Moline, Illinois
Bloomfield, Iowa	Macomb, Illinois
Ottuma, Iowa	LaHarpe, Illinois
Mt. Pleasant, Iowa	Memphis, Missouri
Tipton, Iowa	Kahoka, Missouri
Farmington, Iowa	

9. Such retail stores stocked Puss 'N Boots cat food shipped by respondent to Benner Tea Company in Burlington, Iowa, and then distributed by Benner Tea Company to its individual stores.

10. Respondent's plants which pack Puss 'N Boots cat food are located in Wilmington, California; Pascagoula, Mississippi; and Lubec, Maine. The Puss 'N Boots cat food which was sold to Benner Tea Company in Burlington, Iowa, was shipped from one or more of those plants.

11. During the year 1959, respondent also sold Puss 'N Boots cat food to other customers who competed in the resale of Puss 'N Boots cat food with Benner Tea Company, namely: Kroger Company; Safeway Stores, Inc.; National Tea Co.; United Food Markets; Eagle Food Centers, Inc.; The Great Atlantic & Pacific Tea Company; Swanson Super Markets; Geifman's Food Stores, Inc.; and Hy-Vee Stores. Each of these competing customers maintained retail stores in one or more of the following cities: Canton, Illinois; Galesburg, Illinois; Moline, Illinois; Monmouth, Illinois; Burlington, Iowa; Fairfield, Iowa; Ft. Madison, Iowa; Iowa City, Iowa; Keokuk, Iowa; and Ottumwa, Iowa.

12. In June 1959, Benner Tea Company staged an anniversary sales promotion called a "Foodarama". It solicited a large number of suppliers to participate. Its brochure describing the advertising and promotional activities which were to take place during the "Foodarama" contained statements of anticipated advertising and promotional activities which included: a tabloid mailing to 135,000 homes in the Benner trade area featuring the products of participants; a special section in 19 leading local newspapers in named cities plus big space ads in seven smaller towns, a big display booth; signs and displays, special bulletins, special meetings, and radio spots.

13. Benner Tea Company, in its brochure, also offered participants in its "Foodarama" a choice of six (6) different advertising and promotional "deals" as follows:

SUPER FOODARAMA DEAL No. 1
8′ x 10′ Display Booth *plus* mention in Tabloid ---------------------- $150

SUPER FOODARAMA DEAL No. 2
8′ x 10′ Display Booth *plus* 1/16 page in Tabloid and mention in Ad ---- $250

SUPER FOODARAMA DEAL No. 3
8′ x 10′ Display Booth *plus* 1/8 page in Tabloid and mention in Ad ----- $350

SUPER FOODARAMA DEAL No. 4
8′ x 10′ Display Booth *plus* 1/4 page in Tabloid and mention in Ad ----- $450

SUPER FOODARAMA DEAL No. 5
8′ x 10′ Display Booth *plus* 1/3 page in Tabloid and mention in Ad ----- $550

SUPER FOODARAMA DEAL No. 6
8′ x 10′ Display Booth *plus* 1/2 page in Tabloid, prominent space and portion in newspaper Ad and giant 2 week Display in every store ----- $650

14. Over seventy (70) Benner Tea Company suppliers participated in the late 1959 "Foodarama" and contributed about $19,500.00.

15. Benner Tea Company advertised its 1959 "Foodarama" in the following newspapers:

Canton Daily Ledger,
Canton, Illinois
Fairfield Daily Ledger,
Fairfield, Iowa
The Evening Democrat,
Ft. Madison, Iowa
Galesburg Register-Mail,
Galesburg, Illinois
Iowa City Press Citizen,
Iowa City, Iowa
The Daily Gate City,
Keokuk, Iowa
The Macomb Daily Journal,
Macomb, Illinois
Moline Daily Dispatch,
Moline, Illinois
Monmouth Review Atlas,
Monmouth, Illinois
The Mt. Pleasant News,
Mt. Pleasant, Iowa
Muscatine Journal,
Muscatine, Iowa
Ottumwa Daily Courier,
Ottumwa, Iowa
The Burlington Hawk-Eye,
Burlington, Iowa
Burlington Labor News,
Burlington, Iowa
Des Moines County News,
West Burlington, Iowa
Bloomfield Democrat,
Bloomfield, Iowa
Record Republican,
Bonaparte, Iowa
Hancock County Journal,
Carthage, Illinois
Tri-County News,
Farmington, Iowa
Kahoka Gazette Herald,
Kahoka, Missouri
La Harpe Quill,
La Harpe, Illinois
Memphis Democrat,
Memphis, Missouri
New London Journal,
New London, Iowa
Roseville Independent,
Roseville, Illinois
Sigourney News-Review,
Sigourney, Iowa
Tipton Conservative,
Tipton, Iowa

Winfield Beacon,
Winfield, Iowa
Henderson County Graphic-Reporter,
Stronghurst, Illinois

Galesburg Post Publishing Company
(Knoxville Republican & Galesburg Post),
Galesburg, Illinois

16. Respondent's product, Puss 'N Boots cat food, was advertised in Benner Tea Company's Tabloid Mailer which Benner represented would be mailed to 135,000 homes.

17. Respondent agreed to pay and did pay to Benner Tea Company the amount of $250.00 as compensation or as an allowance for advertising and other services or facilities furnished by Benner Tea Company in connection with its offering for sale of Puss 'N Boots cat food sold to it by respondent and in conjunction with the "Foodarama". Such compensation or allowance was not made available on proportionally equal terms to all other customers competing with Benner Tea Company in the sale and distribution of Puss 'N Boots cat food of like grade and quality purchased from respondent.

18. The payment referred to in the preceding finding was made by Glenn Hesler sales manager of the Coast Fisheries Division of Quaker Oats Company out of a fund set up for use of that division in promoting its product Puss 'N Boots in pet stores.

19. Glenn Hesler was a close personal friend of Allen Clark a Vice President of Benner Tea Company who had solicited the contribution to Benner's 1959 Foodarama.

20. No effort was made by respondent to secure a return of the payment made to Benner Tea Company by Mr. Glenn Hesler either from Mr. Hesler or from Benner Tea Company after the payment was discovered by the legal department and after the investigation by the Federal Trade Commission had commenced.

21. Mr. Allen Clark of Benner Tea Company made a similar request to Mr. Kenneth C. Duckwall, a representative of the Grocery Products Division of respondent, that he take a booth and an ad in the tabloid and participate in the 1959 Foodarama. Mr. Duckwall "turned him down cold" and "told him it was against company policy, and that we didn't have a budget set up for something like this."

22. Benner Tea Company was in competition with other customers of respondent in a substantial number of locations and its Foodarama advertising was directed to persons who were potential customers of such competitors.

23. In proportion to the total advertising budget of respondent, the payment of $250 was small; on the other hand such payment may well have exceeded the payments made to individual stores under the only generally available cooperative advertising plan of respondent.

Puss 'N Boots promotional allowances amounted to about 10% of the one million dollars expended on cooperative advertising or roughly $100,000 to be apportioned among some 3,000 available customers.

24. On learning that the Federal Trade Commission was examining into the question of advertising allowances, the management of respondent notified its supervisors that they should avoid discriminatory allowances of the character made to Benner Tea Company, and respondent's Vice President has stated during his testimony that steps have been taken to prevent recurrence of such allowances. Although warnings of that character were previously made, they were not effective to prevent the payment charged as a violation from taking place in connection with the sale of Puss 'N Boots cat food.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over respondent, The Quaker Oats Company, and its sales activities are in commerce, as that term is defined in the applicable statutes.

2. This proceeding is in the public interest (see *Webb Cranford Company* v. *F.T.C.*, 109 F. 2d 268, CA 5, 1940 [3 S. & D. 184], *NuArc Company, Inc.*, Docket No. 7848, Opinion denying Interlocutory Appeal, 57 F.T.C. 1540.

3. Respondent is responsible for the acts of the sales manager of the Coast Fisheries Division, Glen Hesler, in making the payment to Benner Tea Company for participation in the 1959 Foodarama which it knew involved advertising by Benner of respondent's products.

4. The responsibility arises from two circumstances: a) payment of such an allowance was within the apparent authority of Glen Hesler who had been granted a "too independent" status; b) there was no attempt to repudiate the payment or to require its return.

5. Benner Tea Company is in substantial competition with other companies to whom such payments were not made available on proportionally equal terms.

6. The payment of $250 was substantial in the light of the total appropriation for advertising and the number of customers and was made with the expectation services in the form of advertising in the Foodarama Tabloid would result.

7. The doctrines of *de minimis* and abandonment have no application to this case.

8. The fact that there was only one violation of Section 2(d) of the Clayton Act does not prevent the Commission from taking remedial

action. *Swanee Paper Company* v. *F.T.C.* (C.A. 2d, June 22, 1961) F.T.C. Docket 6927 [291 F. 2d 833; 7 S. & D. 175].

9. Under the circumstances disclosed the payment to Benner Tea Company for participation in the 1959 Foodarama constituted a violation of Section 2(d) of the Clayton Act as amended by the Robinson-Patman Act.

10. The internal organization of Quaker Oats Company and the difference in the extent and character of supervision over the activities of the cat food division (Coast Fisheries Division) when compared with the Grocery Products Division, for example, creates a much greater likelihood of violations occurring in the Coast Fisheries Division which sells only cat food than in other divisions which are either much more closely supervised and controlled or in a different kind of business.

11. The uncontradicted testimony that the Grocery Products Divicion, prior to knowledge of an investigation by the Federal Trade Commission, refused to participate in the Foodarama further exemplifies the circumstances which require the limitation of any order to be issued to the particular practice found to violate the statute (*Swanee Paper Corporation* v. *F.T.C.*, *supra; F.T.C.* v. *Mandel Brothers Inc.*, 359 U.S. 385 [6 S. & D. 557] (1959). *F.T.C.* v. *National Lead Co.*, 352 U.S. 419 [6 S. & D. 193] (1957)) and to the product in which such violation is likely to occur.

12. The uncontradicted testimony of the Vice President in charge of sales demonstrated that an effort has already been made to prevent recurrence of such a violation. The fact, however, that warnings of that character were theretofore ineffective demonstrates the necessity of issuance of an order to cease and desist.

ORDER

It is ordered, That respondent The Quaker Oats Company, a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of cat food and related products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

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

OPINION OF THE COMMMISSION

By KERN, *Commissioner:*

Respondent and counsel supporting the complaint have filed cross-appeals from the hearing examiner's initial decision holding that respondent violated Section 2(d) of the amended Clayton Act and ordering it to cease and desist the practice so found. Respondent argues that the complaint should be dismissed because of the circumstances surrounding the particular payment found to violate the Act. It claims, among other things, that the payment involved was an aberration of an established course of conduct, that precautions have been taken to prevent recurrence and that the matter is *de minimis.* Counsel supporting the complaint appeals from the order in the initial decision contending that as limited to "cat food and related products" and to "a special promotion, event, anniversary or like merchandise plan", it is too narrow in scope.

We have carefully considered the grounds of both appeals and have concluded that the initial decision adequately and properly disposes of all issues except that as to the scope of the order.

The Commission's view on the framing of Section 2(d) orders in light of the amendments to Section 11 of the Clayton Act (Public Law 86-107, 86th Cong., 73 Stat. 243), and recent court decisions involving this question is set forth in detail in our opinion in *Vanity Fair Paper Mills, Inc.*, Docket No. 7720,[1] [60 F.T.C. 568, 573].

The order in the initial decision in this case prohibits "in or in connection with the offering for sale, sale or distribution of cat food and related products", in commerce, the following:

> Paying or contracting for the payment of anything of value to, or for the benefit of, any customers of respondent as compensation for or in consideration of any services or facilities furnished by or through such customers in connection with the handling, offering for sale, sale or distribution of said products, by way of subscription or contribution to a special promotion, event, anniversary or like merchandise plan unless such payment or consideration is affirmatively made available on proportionally equal terms to all other customers competing in the distribution of such products.

We believe that the limitation in this order to "cat food and related products" is fully justified. The Quaker Oats Company conducts

[1] Reference is made to *Federal Trade Commission* v. *Henry Broch & Company,* 82 S. Ct. 431 (1962); *Swanee Paper Corporation* v. *Federal Trade Commission,* 291 F. 2d 833 (2d Cir. 1961); *The Grand Union Company* v. *Federal Trade Commission,* 300 F. 2d 92 (2d Cir. 1962); *American News Company and Union News Company* v. *Federal Trade Commission,* 300 F. 2d 104 (2d Cir. 1962).

the grocery trade portion of its business through two divisions: the Coast Fisheries Division and the Grocery Products Division. The Coast Fisheries Division produces and markets Puss 'N Boots Cat Food only. The Grocery Products Division markets a number of packaged products but it does not sell Puss 'N Boots cat food. There are many differences in the distribution systems between the two divisions. The violation found consisted of a $250.00 payment by the Coast Fisheries Division to the Benner Tea Company. In the particular circumstances of this case, we see no reason for extending the scope of the order to products other than those marketed by the Coast Fisheries Division, i.e. cat food, and to products related to cat food. Cf. *The Bankers Securities Corporation* v. *Federal Trade Commission*, 297 F. 2d 403, 30 LW 2294 [7 S. & D. 300] (3d Cir. 1961).

We do not agree that the order should be further limited in this matter to a subscription or contribution to a "special promotion, event, anniversary or like merchandise plan".

During 1959, the cooperative advertising or cooperative sales promotions participated in by the respondent in promoting the sale of Puss 'N Boots cat food in the area in which Benner Tea Company did business were as follows:

1. Cooperative Merchandising and Advertising Agreement of the Coast Fisheries Division,
2. Special Merchandising Offer No. A 204, and
3. "Foodarama".

The first promotion provided for a money allowance of so much per case purchased for advertising through newspapers, radio, television and window posters. The second provided for so much per case "specially merchandised", for advertising through store displays, newspapers, handbills, radio, television catalogs and by other means. The third promotion was the allowance of $250.00 paid to Benner Tea Company for services and facilities furnished in connection with the "Foodarama" promotion. The hearing examiner found that Puss 'N Boots promotional allowances amounted to about 10% of the one million dollars expended on cooperative advertising by respondent or roughly $100,000 to be apportioned among some 3,000 available customers.

There has been no showing of any meaningful distinction between a special promotion and a regular promotion so far as the probability of a future violation is concerned. The customer in the case of the violation shown requested the allowance for a particular promotional event. Thus, the type of violation related to a customer's request rather than respondent's policy. If a deviation or "aberration" from general policy could occur in such a case, it seems likely that it could also occur upon another request in the future for allowances of a more regular nature.

The asserted "aberration" from general policy occurred within the above-described background of participation in cooperative sales promotions. To confine the order to the precise act found to violate the law would be almost wholly ineffective here, and especially so since respondent concedes the act occurred outside the area of its regular programs for cooperative advertising. It seems to us that it is in connection with, but as deviations from, the regular programs that future violations, if any, will most likely take place. For that reason, we believe the order should encompass more than the exact form of the illegal act found to exist. It would indeed be a mockery to consider the public interest adequately protected by saying "stop violating Section 2(d) of the Clayton Act, as amended, but only stop with respect to special promotions—not regular promotions." Moreover, it seems clear to us that the specific requirements of the *Broch* case have been met; clearly only those acts "like or related to" the violation found have been proscribed. To argue that a general promotion has no such kinship with a special promotion is taking an unusually technical position and is doing so at the expense of the public interest. To the extent that the hearing examiner's statement in paragraph 11 of the conclusions in the initial decision may be inconsistent with the view here taken, it does not express the position of the Commission.

Though some may argue to the contrary, we do not view the narrow language of the *Broch* decision as justification for couching orders, either in broad or detailed language, which endeavor to define what respondents may do or must do in order to comply with the statute. We believe our present compliance procedures to be adequate. We recognize an obligation to tell the respondents, with as much specificity as possible, what they must *stop* doing. However, to suggest that a cease and desist order is an appropriate vehicle to gratuitously guide or instruct businessmen as to what they may do and must do, we firmly believe is beyond our province. Government regulation has not yet, and we hope never will, become a substitute for corporate management. American business, so we believe, should, by and large, be left free to adopt its own methods of operation. The free enterprise system should remain, in fact, free and independent; shackled not by a bumptious bureaucracy—but restrained solely and effectively by fair enforcement of the laws enacted by the Congress. We do not regard the *Broch* case, or any prior decision of the highest court, as a command to take over, even in part, corporate direction and control. Suggestions of this character, we believe, only serve to debase the Administrative Process.

Argument has been advanced by respondent's counsel that the respondent should not be subjected to an order not only because of the isolated nature of the illegal transaction, but also because the sales manager of the West Coast Fisheries Division had not in the past been closely supervised and that the illegal act arose from a request by a close personal friend of such sales manager. We are not impressed by these contentions. Indeed, it is the first time that business laxity has been seriously advanced as a basis for dismissal. It is impossible to condone the illegal act of a responsible official of respondent because of the fact that he was poorly supervised and because he was importuned to commit such act by a friend. With respect to the isolated character of the transaction, we do not see why numerous illegal transactions must occur before a statute as explicit in its terms as Section 2(d) of the Clayton Act, as amended, may be violated. Indeed, such an argument does violence to the fundamental doctrine that the Clayton Act was designed to reach certain specified improper business practices in their incipiency.

As we said in the *Gimbel's* case, "respondents record of compliance is not so stainless as to force the conclusion that public protection does not require a cease and desist order." [2] Respondent has violated in the past another section of the Clayton Act equally as explicit as Section 2(d). Our action here appears warranted by the fact that the Commission has previously found it necessary to issue a cease and desist order against this same respondent for violation of Section 2(c) of the Clayton Act, as amended.[3] Respondent's previous callous disregard of its obligations under the Clayton Act must be considered in connection with its present pious protestations.

We conclude that in the order in the initial decision the phrase "by way of subscription or contribution to a special promotion, event, anniversary or like merchandise plan" should be stricken and that the phrase "advertising, promotion or display" should be inserted immediately prior to the words "services or facilities." Thus, the order will apply only as to certain services and facilities, but it is suited to the facts of this proceeding. We find no need in the circumstances of this case to extend the order further. There is no reason to believe, as in *Vanity Fair Paper Mills, Inc.*, *supra*, in which a broader order

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[2] *In the Matter of Gimbel Brothers,* F.T.C. Docket 7888, decided February 23, 1962.

[3] *Modern Marketing Service, Inc., et al.* v. *Federal Trade Commission,* 149 F. 2d 970 [4 S. & D. 379] (C.A. 7) 1945; 37 F.T.C. 386; F.T.C. Docket 3783, decided September 8, 1943.

issued, that future activities might concern other than advertising, promotional or display services or facilities.

The order will be modified in another connection by substituting the word "customer" for "customers" in the second line following the colon therein.

The appeal of respondent is denied and the appeal of counsel supporting the complaint is granted to the extent indicated in this opinion and otherwise denied. It is directed that the initial decision be modified in accordance with the views expressed in this opinion, and that it be adopted, as so modified, as the decision of the Commission. It is further directed that an appropriate order be entered.

Commissioners Anderson and Elman dissented.

DISSENTING OPINION

By ANDERSON, *Commissioner:*

I am unable to subscribe to the views of the majority in this case and I dissent therefrom for the following reasons:

1. The payment by respondent to the Benner Tea Company in connection with the latter's anniversary "Foodarama" program in 1959 in the amount of $250 is of *de minimis* proportions.

2. The amount above referred to, namely $250, was paid out of a special fund for pet shows.

3. The Benner Tea "solicitor" contacted the Grocery Products Division of respondent and sought funds for the same anniversary. His solicitation was rejected, and he was advised that it was against the policy of the company to accede to requests such as the one that he was making.

4. Respondent's lawyers did not know about the $250 payment until the Federal Trade Commission inquiries concerning same brought it to light. In fact, the respondent's company rule in connection with promotional payments was that such payments must first be approved by the legal department.

5. Record evidence shows that the company official—one Glenn Hesler—who was in charge of the sales activities of the Fisheries Division of the respondent, was a highly individualistic person and that his division was operated in an autonomous manner; that after Mr. Hesler's retirement from the company, changes were made so that less autonomy was permitted the Coast Fisheries Division.

6. The single instance of making a $250 payment promotional allowance to Benner Tea in this matter, under the circumstances, does not show a proclivity to violate the law.

The circumstances of this case compel me to dissent from the opinion of the majority. I would dismiss the complaint.

DISSENTING OPINION

By ELMAN, *Commissioner:*

I

Respondent has regular programs for cooperative advertising on which it expends about $1,000,000 each year. The company's general policy is to comply with Section 2(d) by not making discriminatory allowances to any customers, and, so far as appears, it has never departed from that policy in connection with its regular programs for cooperative advertising. However, in 1959, at the insistent request of one customer, Benner Tea Company, it made a special payment of $250 to the latter in connection with a "Foodarama" promotion. This special promotional allowance, as the opinion states (p. 809), "occurred outside the area of its regular programs for cooperative advertising" and was a "deviation" or "aberration" from respondent's general policy.

Since the only violation found consists of a solitary deviation from an otherwise unmarred record of complying with Section 2(d), I would suppose that the order should be aimed only at preventing similar deviations in the future. What interest of the public will be served by placing respondent under a general prohibitory order covering its regular programs for cooperative advertising, as to which it has always obeyed the law? If the order were tailored to the violation found here, it would be designed to make certain for the future that, as to those special and unusual promotional events where a particular large customer may again bring heavy pressure to bear upon it, respondent will staunchly and unswervingly adhere to its general policy against making discriminatory allowances.

As indicated in my dissenting opinion in *Vanity Fair Paper Mills, Inc.* (Docket 7720, decided March 21, 1962) [60 F.T.C. 568, 579], I believe that a Commission order should accentuate the positive, not the negative, side of compliance. The order should inform and direct the respondent not only as to what he may not do, but as to what he may and must do in order to carry on his business without again running afoul of the statute. It cannot be emphasized too often that the function of a cease and desist order is not to punish but to prevent violations of law. The Federal Trade Commission was not established as a police court, to impose fines on errant businessmen. The public interest expressed in the Act is not served simply by collecting fines and penalties. The Federal Trade Commission Act is not a revenue-raising or penal measure. The Commission's primary and paramount objective must be to guide and encourage businessmen to conduct their affairs both competitively and fairly, without resort to practices that are restrictive, fraudulent, or otherwise harmful to the public.

The violation here, if such it is, derives essentially from inadequate control and supervision by respondent over the making of promotional allowances to customers. Assuming—as the Commission does—that respondent's general policy in regard to cooperative advertising and promotional payments to customers is lawful, any Section 2(d) problem lies in its day-to-day application. An effective order would therefore require respondent to establish and follow affirmative procedures to assure that no similar "deviation or abberration" will again occur. Under such an order it would be respondent's duty to develop and put into effect a program for compliance which would include such specific and detailed steps as, for example, establishing standing operating procedures for advertising, promotional, and other payments and services to customers; making regular announcements to the trade of its strict nondiscriminatory policy regarding such payments and services; devising means for informing, and periodically reminding, the company's responsible officials of such policy and of the specific requirements of applicable provisions of law; providing for systematic high-level review and control of all promotional and advertising activities; and prescribing sanctions to be imposed on employees who fail to abide by the company's established policy and procedures. Continuing conscientious and good faith adherence to such a program would assure both the public and the company that "deviations or aberrations" from its general policy of conforming to Section 2(d) would not again take place.

It may be objected that the drafting of such particularized orders would impose an impossible burden on the Commission. Once a violation is found, however, there is no reason why the respondent should not be directed to come forward with a proposed order containing a plan for compliance, setting forth what it will be required to do, and refrain from doing, to bring about conditions of full conformity with the law. Commission counsel should, of course, prepare and submit comments or objections and, if need be, counter proposals. The end result would be a Commission order that, in form and substance, defines a specific and positive program for compliance, and is not a mere reiteration of broad and indefinite statutory prohibitions.

The issuance of Commission orders phrased in general and indefinite statutory language seems to me to achieve little beyond the imposition of a set of obscure ad hoc prohibitions carrying heavy penalties for their violation. To be sure, no fine or penalty is imposed for a violation of the statute that occurs before entry of an order. To that extent, a respondent is given—to use the vernacular—one free bite at the apple. In the end, however, he may have to pay dearly for that bite. The broad order, incorporating in *haec verba* the general prohibitions of the law, becomes for him the practical equivalent of a criminal statute—for violation of which he may be punished for contempt, or be required to pay civil penalties up to $5,000 for each day of violation.

As Mr. Justice Jackson pointed out in a notable opinion, *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470, 480, 484, 486–487, 489 (dissent), the Clayton Act:

exemplifies the complexity of the modern lawmaking task and a common technique for regulatory legislation. It is typical of instances where the Congress cannot itself make every choice between possible lines of policy. It must legislate in generalities and delegate the final detailed choices to some authority with considerable latitude to conform its orders to administrative as well as legislative policies.

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Such legislation represents inchoate law in the sense that it does not lay down rules which call for immediate compliance on pain of punishment by judicial process. The intervention of another authority must mature and perfect an effective rule of conduct before one is subject to coercion. The statute, in order to rule any individual case, requires an additional exercise of discretion and that last touch of selection which neither the primary legislator nor the reviewing court can supply. The only reason for the intervention of an administrative body is to exercise a grant of unexpended legislative power to weigh what the legislature wants weighed, to reduce conflicting abstract policies to a concrete net remainder of duty or right. Then, and then only, do we have a completed expression of the legislative will, in an administrative order which we may call a sort of secondary legislation, ready to be enforced by the courts.

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. . . If the tribunal to which such discretion is delegated does nothing but promulgate as its own decision the generalities of its statutory charter, the rationale for placing it beyond executive control is gone.

"Admitting," Mr. Justice Jackson stated, "that the statute is 'vague and general in its wording,' it does not follow that a cease and desist order implementing it should be. I think such an outcome of administrative proceedings is not acceptable." (p. 481) I too believe that the only acceptable outcome of a Commission proceeding is an order that gives clear, specific, positive, and concrete guidance and direction to those bound by it.[1]

On December 2, 1913, President Wilson, in asking Congress to "supplement that great act [the Sherman law] by legislation which will not only clarify it but also facilitate its administration and make it fairer to all concerned," stated:

> It is of capital importance that the businessmen of this country should be relieved of all uncertainties of law with regard to their enterprises and investments and a clear path indicated which they can travel without anxiety. It is as important that they should be relieved of embarrassment and set free to prosper as that private monopoly should be destroyed. The ways of action should be thrown wide open. (Messages and Papers of the Presidents, Vol. XVI, Bureau of National Literature, Inc., p. 7910.)

Again, on January 20, 1914, in urging establishment of an interstate trade commission, he told Congress:

> The business of the country awaits also, has long awaited and has suffered because it could not obtain, further and more explicit legislative definition of the policy and meaning of the existing antitrust law. Nothing hampers business like uncertainty. Nothing daunts or discourages it like the necessity to take chances, to run the risk of falling under the condemnation of the law before it can make sure just what the law is . . .
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> And the businessmen of the country desire something more than that the menace of legal process in these matters be made explicit and intelligible. They desire the advice, the definite guidance and information which can be supplied by an administrative body, an interstate trade commission. (*Id*, p. 7916.)

I would again suggest, therefore, that progress towards the goals stated by President Wilson might be made by abandoning the practice of issuing orders which simply incorporate broad, general statutory prohibitions in their terms. If, as in the case, a businessman has strayed, wittingly or unwittingly, from the path of legality, our order should be positively designed to help keep him on the path in the

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[1] Concerning the need for specific explication and elaboration of general regulatory statutes by their enforcing agencies, Judge Friendly has recently said:

"My thesis is that where the initial standard is thus general, it is imperative that steps be taken over the years to define and clarify it—to canalize the broad stream into a number of narrower ones. I do not suggest this process can be so carried out that all cases can be determined by computers; I do suggest it ought to be carried to the point of affording a fair degree of predictability of decision in the great majority of cases and of intelligibility in all." Friendly, "The Federal Administrative Agencies: The Need for Better Definition of Standards," 75 *Harv. L. Rev.* 863, 874 (1962).

If "a fair degree of predictability" and at least "intelligibility" may fairly be asked of the administrative process in general, how much more crucial they become to a businessman required to conduct his operations subject to the restrictions of a Commission order. To suppose that an order framed in the ambiguous and indefinite language of the Robinson-Patman Act (with its complex of conditions, provisos, and defenses) is "intelligible" to the ordinary businessman, or that he can safely "predict" what it will or will not permit, is simply unrealistic.

future. It need not and should not be a sword of Damocles suspended above his head, poised to fall with devastating effect whenever and however he should again stray.

While the suggestions here advanced are far from revolutionary,[2] I recognize that they are in some respects experimental, and I do not even remotely imply that they are either definitive or infallible. But, especially in view of the Commission's current difficulties in writing orders acceptable to the courts,[3] it seems to me that these proposals deserve at least serious consideration. Even if the kind of order I propose should prove unworkable, we might learn much in the process. Administrative regulation must, for the most part, be empiric and pragmatic, and we should not be afraid to experiment on a trial-and-error basis. Holmes has told us that "the tendency of the law must always be to narrow the field of uncertainty." *The Common Law*, p. 127 (1881), quoted in Friendly, *supra*, note 1, at p. 876. This aptly describes the duty of the Commission in drafting the orders. When we fail to heed this principle, we fail the Congress, which—as Mr. Justice Jackson pointed out—expected us to make concrete and definite what the legislators had deliberately and justifiably left general and indefinite;[4] we fail the courts, which look to us for the excercise of "expertise" based on experience and preoccupation with the spe-

[2] *Cf., e.g., United States* v. *E. I. duPont de Nemours & Co.,* 366 U.S. 316, in which the submission by the parties of plans for relief in a case under Section 7 of the Clayton Act is discussed at length. I see nothing in the Robinson-Patman amendments to the Act to prevent the Commission from requiring similar submissions in appropriate cases.

[3] See *Federal Trade Commission* v. *Henry Broch & Co.,* decided by the Supreme Court, January 15, 1962; *Swanee Paper Corp.* v. *Federal Trade Commission,* 291 F. 2d 833 (C.A. 2); *Grand Union Co.* v. *Federal Trade Commission,* C.A. 2, decided Feb. 7, 1962; *American News Co.* v. *Federal Trade Commission,* C.A. 2, decided Feb. 7, 1962; *Bankers Securities Corp.* v. *Federal Trade Commission,* C.A. 3, decided Dec. 18, 1961.

[4] At the time of the debates on the bill that eventually became Pub. L. 86–107, 73 Stat. 243, amending the Clayton Act to bring its finality provisions in line with those of the Federal Trade Commission Act, the problem of vague and obscurely worded Commission orders was a matter of concern. Rep. Meader of Michigan pointed out that objection had been made to the broad, general language in which Commission orders have been written. "If the Federal Trade Commission made its cease and desist orders more specific, rather than just to prohibit some general line of conduct," he said, "I believe there probably would be less objection to making their orders final, giving rise to a clause of action with a penalty of $5,000 a day." Rep. Celler of New York, the chairman of the House Judiciary Committee, responded as follows:

I want to make one other point, if I may, as to the so-called vagueness of the orders of the Federal Trade Commission. We purposely put in our report, I may say to the gentleman from Michigan, the following statement:

"The committee intends that the commissions or boards affected will make a continuous effort to issue orders that are as definite as possible."

In other words, the Judiciary Committee had in mind exactly what the gentleman has discussed. We want to have the orders made clear so that anyone may read them and understand them. It is hoped that as a result of the colloquies that we had during the hearings, and as a result of this admonition in the report, that the various commissions and boards shall in the future make clear and definite exactly what their orders are.

Excerpts from the remarks of Mr. Meader and Mr. Celler, Cong. Rec.—House, July 6, 1959, pp. 11597–99.

cialized problems of trade regulation; we fail the business community, which looks to the Commission's orders for positive guidance and direction, encouraging fair and competitive behavior rather than hampering business by creating uncertainty and doubt as to what may or may not be done, on pain of heavy penalty for guessing wrong; and, most important, we fail the public, which in the last analysis suffers most when the Commission's performance falls short of the statutory objectives.

II

If an order is to be issued in this case, then, it should be directed to correcting respondent's failure, in regard to special promotional payments, to comply undeviatingly with its own general policy against discriminating in making allowances to customers. But the Commission holds that it will not do to confine the prohibitions of the order to "deviations" or "aberrations" from respondent's general policy and practice, because "future violations, if any, will most likely take place" (opinion, p. 809) in connection with respondent's regular advertising programs. Hence, the Commission considers that the order must be broadly drawn to cover not merely payments made in connection with "a special promotion, event, anniversary, or like merchandise plan," as the hearing examiner proposed, but, more comprehensively, with "*any* advertising, promotion or display services or facilities furnished" by respondent's customers. (Final Order, p. 820; emphasis added.)

It is difficult to envision payments to retail customers for services or facilities which are not covered by so broad an order. Yet the order's sweeping prohibitions rest on this much and no more: Once, in the peculiar circumstances described below, respondent strayed from the path of legality by yielding to a particular customer's request for a small contribution to a special anniversary sales promotion which was clearly outside the range of respondent's customary advertising activity. An order limited to such special promotions, the Commission states, must be rejected because it would have no effect on the "regular programs for cooperative advertising" that comprise the great bulk of respondent's promotional activities and expenditures.

It seems to me that the Commission is allowing the tail to wag the dog. When, as in this case, the violation found is so eccentric and radical a departure from respondent's ordinary behavior that an order aimed only at preventing similar deviations in the future "would be almost wholly ineffective" (opinion, p. 809), then, instead of extending the order to cover repondent's lawful general practice, the Commission should reconsider whether to enter and order at all. If the only order which can justifiably be entered on the record is an exceedingly narrow and limited order which would accomplish little or nothing, it does not follow that the Commission should therefore enter a broad order *not* justified by the record. There remains another alternative: to issue no order and dismiss the complaint.

The legality of an order cannot rest solely on its "effectiveness." Nor can the Commission enter an order merely on the basis of a possibility, or even likelihood, that future violations of law may occur. It must first find that a statute it administers has been violated. Then the Commission must relate its order to its findings, by proscribing only "future violations identical with or like or related to" the violation found. *Federal Trade Commission* v. *Henry Broch & Co.*, decided by the Supreme Court, January 15, 1962 [368 U.S. 360; 7 S. & D. 305]. The Commission's authority to restrain unlawful practices found to have been committed "is not an authority to restrain generally all other unlawful practices which has neither found to have been pursued nor persuasively to be related to the proven unlawful conduct." *National Labor Relations Board* v. *Express Publishing Co.*, 312 U.S. 426, 433.

When the Commission finds that a respondent has falsely advertised its product in a particular way—*e.g.*, as to foreign origin—it does not issue an order prohibiting all known forms of misrepresentation, or misrepresentation in general. It tailors the order to the particular type of misrepresentation found. So here, if only a specifically defined and narrowly restricted type of violation has occurred, no justification exists for an order that does more than prohibit respondent from committing that type of violation again. And if, as the Commission apparently recognizes, entry of an appropriately limited order would not be worth the time and effort expended, hindsight suggests that it might have been wiser not to initiate the proceeding. Why begin the game at all when it will not be worth the candle? (*Cf.* my dissent in *Gimbel Brothers*, Docket No. 7888, decided February 23, 1962 [60 F.T.C. 359].)

The Commission states that there "has been no showing of any meaningful distinction between a special promotion and a regular promotion so far as the probability of a future violation is concerned." (Opinion, p. 808.) Consider the facts. The hearing examiner found that respondent's Coast Fisheries Division has been operated as a semiautonomous unit, employing different warehouses, different factories, and a different sales organization from the Grocery Products Division of the company. Neither the Coast Fisheries Division nor its sales manager has in the past been as closely supervised as the Grocery Products Division. The promotional payment here in question was authorized by the Coast Fisheries Division's sales manager in response to the request of a Benner vice-president who was a close personal friend. Payment was made out of a fund intended only for use in promoting Puss 'N Boots cat food in pet stores. The examiner found that when Benner made a similar request of a representative of the Grocery Products Division, the latter " 'turned him down cold' " and " 'told him it was against company policy, and that we didn't have a budget set up for something like this.' " (Initial Decision, p. 804.) The amount actually paid here was $250, a small sum compared with the $100,000 allocated by respondent for Puss 'N Boots promotions. The examiner further found, on the basis of uncontradicted testimony of respondent's vice-president, that steps have been taken to prevent recurrence of such allowances as that made to Benner.

> The peculiar combination of circumstances that produced this particular [incident] is not likely to be repeated, and it is hard to see how the entry of a cease-and-desist order could have any substantial effect in making any such [incidents] less likely in the future. The purpose of a cease-and-desist order is not to punish but to prevent future violations. If, as a practical matter, entry of an order will add little or nothing by way of prevention, how is the public benefitted? *Gimbel Brothers*, Docket No. 7888, February 23, 1962 (dissenting opinion, p. 10).[5]

When respondent had explained the circumstances of the transaction here involved, and had taken reasonable and adequate steps to assure that the same sort of thing would not happen again, the file in this matter should have been closed so that the time and energy of the Commission's staff could have been devoted to the great volume of pressing

[5] *Modern Marketing Service, Inc.*, 37 F.T.C. 386, cited by the Commission, resulted in an order requiring respondent, among others, to cease and desist from paying certain brokerage commissions. It had nothing to do with advertising allowances. Moreover, the *Modern Marketing* case was decided in 1943, and respondent did not acquire its Coast Fisheries Division, which made the payment to Benner, until 1950. The Commission's opinion recognizes that the Coast Fisheries Division is a separate enterprise, so much so that the order is to run only against that division's product, cat food, and not against respondent's other products. I do not understand that respondent or anyone else has advanced "business laxity" as a basis for dismissal. The point, rather, is that the unlawful act here, if any, consisted of an isolated, extraordinary, and unlikely-to-recur incident. The reason urged for dismissal is not that this was excusable "business laxity," but that, in view of all the circumstances, including the corrective measures taken by respondent to prevent any repetition, no useful purpose is served by a formal proceeding here.

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business at hand.[6] At the least, the Commission should refrain from adding another broad order to the mountain of work laid at the door of staff members charged with securing compliance with Commission orders.[7]

FINAL ORDER

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

The Commission, for the reasons stated in the accompanying opinion, having denied the respondent's appeal and granted in part and denied in part the appeal of counsel supporting the complaint, and having directed that the initial decision be modified in accordance with its views expressed in the opinion and, as so modified, adopted as the decision of the Commission:

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

It is ordered, That respondent The Quaker Oats Company, a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of cat food and related products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of respondent as compensation for or in consideration of any advertising, promotion or display services or facilities furnished by or through such customers in connection with

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[6] "Ordinarily the Commission should enter no order where none is necessary." *Eugene Dietzgen Co.* v. *Federal Trade Commission*, 142 F. 2d 321, 330 (C.A. 7) [4 S. & D. 117].

See also *Argus Cameras, Inc.*, 51 F.T.C. 405, 409, where the complaint was dismissed on a finding that "everything that could be accomplished by a cease and desist order has already been accomplished"; *Wildroot Co., Inc.*, 49 F.T.C. 1578, 1581–82. Compare *Modern Methods, Inc.*, Docket No. 7568, decided February 19, 1962, 60 F.T.C. 309.

[7] Statistics demonstrate that the weight of the compliance burden is indeed heavy. At the close of fiscal 1959 the total number of compliance matters pending was 1,719. By he end of fiscal 1960 it was 1,871, and a year later it had reached 2,037. See the Commission's *Annual Report*, 1960, p. 77; *Annual Report*, 1961, p. 60. Since the number of compliance matters disposed of during a year averages approximately 1,300, there would seem to be enough business already on hand to keep the Commission's compliance staff occupied for more than a year-and-a-half without the addition of a single case to those pending.

This problem appears to be chronic. See, *e.g.*, Staff Report to the Monopoly Subcommittee of the Committee on Small Business, House of Representatives, December 27, 1946, submitted by Representative Kefauver, chairman of the Subcommittee, stating that members of the Commission's staff "have such a large backlog of cases that they have to spend all their time 'swatting new flies' and do not have time to find out whether they have effectively disposed of the old ones." (p. 26) the handling, offering for sale, sale or distribution of said products, unless such payment or consideration is affirmatively made available on proportionally equal terms to all other customers competing in the distribution of such products.

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

It is further ordered, That respondent, The Quaker Oats Company, a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the initial decision as modified.

Commissioners Anderson and Elman dissenting.

IN THE MATTER OF

PAUL J. LIGHTON ET AL. TRADING AS BERNARD'S

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

Docket 8305. Complaint, Mar. 6, 1961—Decision, Apr. 25, 1962

Order requiring furriers in Owensboro, Ky., to cease violating the Fur Products Labeling Act by such practices as setting forth required information on labels in pencil, failing to disclose in advertising that fur products offered for sale were composed of artificially colored fur, and failing to comply in other respects with labeling and advertising requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Paul J. Lighton, Ruth G. Lighton and Jerome J. Lighton, individually and as copartners trading as Bernard's, 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. Paul J. Lighton, Ruth G. Lighton and Jerome J. Lighton are individuals and copartners trading as Bernard's with their office and principal place of business located as 117 West Second Street, Owensboro, Ky.

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

PAR. 3. Certain of said fur products were misbranded in that they were not labeled in accordance with the rules and regulations promulgated thereunder in the following respects:

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

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth with pencil in violation of Rule 29(b) of said rules and regulations.

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

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

PAR. 5. Certain of said fur products were falsely and deceptively invoiced in that respondent set forth on invoices pertaining to fur products the name of an animal other than the name of the animal that produced the fur, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 6. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 7. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Owensboro, Kentucky Ledger and Inquirer, a newspaper published in the city of Owensboro, State of Kentucky, and having a wide circulation in said State and various other States of the United States.

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

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

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

(c) Information required under Section 5(a) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder was not set forth in type of equal size and conspicuousness and in close proximity with each other in violation of Rule 38(a) of said rules and regulations.

PAR. 8. Respondents in advertising fur products for sale as aforesaid made claims and representations respecting the prices and values of fur products. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said rules and regulations.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Mr. DeWitt T. Puckett for the Commission.

Wilson and Wilson, of Owensboro, Ky., by *Mr. William L. Wilson*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this matter charges the respondents with violation of the Fur Products Labeling Act and the Rules and Regula-

tions promulgated thereunder and the Federal Trade Commission Act, in connection with the sale of fur garments. After the filing of respondents' answer, a hearing was held at which a stipulation of facts was entered into by counsel on the record and certain evidence in support of the complaint was also received. Proposed findings, conclusions and order have been submitted by the parties and the case is now before the hearing examiner for final consideration. Any proposed findings, conclusions or order not included herein have been rejected.

2. The respondents Paul J. Lighton, Ruth G. Lighton and Jerome J. Lighton are individuals and copartners doing business under the trade name Bernard's, with their office and principal place of business located at 117 West Second Street, Owensboro, Ky.

3. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been 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 had 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.

4. Respondents did not place additional labels on their said fur products, neither did they remove or alter the labels which were attached to such products when received by respondents, but such labels remained on the garments while being offered for sale to the public. Nevertheless, certain of such fur products were not labeled in accordance with the Fur Products Labeling Act and 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. For example, the word "grey" appeared before the term "Persian Lamb".

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth with pencil on some labels.

(c) Required item numbers were not set forth on labels attached to all of the products.

The violation set forth in "(a)" above is a violation of Section 4(2) of the Fur Products Labeling Act and Rule 29(a) promulgated thereunder.

The violation set forth in "(b)" above is a violation of Section 4(2) of said Act and Rule 29(b) promulgated thereunder.

The violation set forth in "(c)" above is a violation of Rule 40 promulgated under said Act.

5. Respondents set forth on a sales slip covering the sale of a fur garment the following information: "Dyed Mink, origin Japan", in addition to other information.

The aforesaid act violates Sections 5(b)(1) and 5(b)(2) of the Fur Products Labeling Act and also the Fur Products Name Guide, which provides that "Where there is a name of an animal with an adjective in connection therewith, it should be carried on labels, advertising and invoices as may be required under the Act and the Rules and Regulations promulgated thereunder."

6. Respondents, in the course and conduct of their business as aforesaid, caused the dissemination in commerce, as "commerce" is defined in the Fur Products Labeling Act, of certain newspaper advertisements concerning said products and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products.

Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Owensboro, Kentucky, Messenger and Inquirer, a newspaper published in the city of Owensboro, Kentucky, and having a wide circulation in that State and various other states of the United States.

In some of these newspaper advertisements respondents advertised certain of their fox fur products without designating the particular type or name of fox which actually produced the fur contained in the garment, as shown in a copy of the aforesaid Owensboro paper dated Friday, December 25, 1959.

The aforesaid practice violated Section 5(a)(1) of the Fur Products Labeling Act and the Fur Products Name Guide.

Respondents also advertised in the July 7, 1960, issue of the same Owensboro paper certain Mouton fur coats as follows: "Mouton Fur processed lamb, origin U.S.A. Coats $50 plus federal tax", without disclosing that said coats were dyed or artificially treated, when such was the fact.

The aforesaid act violated Section 5(a)(3) of the Fur Products Labeling Act.

Information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in type of equal size or conspicuousness and in close proximity with each other.

The aforesaid practice violates Section 5(a) of the Fur Products Labeling Act and Rule 38(a) promulgated thereunder.

7. Respondents in advertising fur products for sale as aforesaid, made claims and representations respecting the prices and values of such products. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based.

The aforesaid practice violated Rule 44(e) of the Rules and Regulations promulgated under the Fur Products Labeling Act.

8. In justice to respondents it should be added that it was evident from their statements and demeanor at the hearing that the violations set forth above were not willful or intentional, but were due largely to oversight or inadvertence. Respondents apparently desire to comply fully with all provisions of the Fur Products Labeling Act, and since the issuance of the complaint in the present proceeding they have sought to correct the violations complained of and to avoid any further violations.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, were in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act. The proceeding is in the public interest.

ORDER

It is ordered, That respondents Paul J. Lighton, Ruth G. Lighton and Jerome J. Lighton, individually and as copartners trading as Bernard's, or under any other trade name, 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. 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.

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

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

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

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

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

A. Fails to disclose:

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

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

B. Fails to set forth the information required under Section 5(a) of the Fur Products Labeling Act, and the Rules and Regulations promulgated thereunder in type of equal size and conspicuousness and in close proximity with each other.

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

OPINION OF THE COMMISSION

By DIXON, *Commissioner:*

This matter is before us for review of an initial decision filed February 16, 1962. The complaint, charging respondents with having committed several acts violative of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, was issued March 6, 1961. The respondents, all individuals, are copartners operating a retail clothing store in Owensboro, Kentucky. Among the items which they sell and advertise are "fur products", as that term is defined in the Fur Products Labeling Act.

Respondents, on May 5, 1961, filed an answer which denied all of the material allegations of the complaint. For reasons not readily apparent from the record, but apparently including the substitution of hearing examiners, the first and only hearing was not held until December 18, 1961. At the hearing, in lieu of calling witnesses and taking testimony, complaint counsel and counsel for respondents entered stipulations as to the facts. The transcript indicates that the stipulations were accomplished in a rather haphazard fashion. First one counsel and then the other would orally announce the facts agreed upon. With respect to one charge, the matter was discussed off the record, and the hearing examiner announced on the record the purport of the agreed facts. Two exhibits, newspaper advertisements placed by respondents, were placed in the record.

At the conclusion of the hearing, the hearing examiner ordered complaint counsel to file within thirty days his proposed findings, conclusions and order to cease and desist. After filing, this pleading was served on counsel for respondents and he filed a response thereto which, in effect, admitted the facts as set out in the proposed findings, but made several suggestions or recommendations concerning the wording of the order and requested the hearing examiner to insert in his initial decision a statement that the acts were not engaged in with intent to willfully violate the Act.

The hearing examiner's initial decision meticulously adheres to the proposals submitted by complaint counsel adding only the provision suggested by respondents' counsel that the acts were not engaged in willfully or intentionally. Neither party has taken an appeal from the initial decision. This opinion is the result of the Commission's routine practice of reviewing all initial decisions prior to adoption.

This case represents a startling example of why such a continuous policy of review is necessary, for there is scarcely a single charge herein which was properly dealt with or disposed of. We turn now to a consideration of the multiple errors committed.

Paragraph 3(a) of the complaint makes the following charge:

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.

The parties stipulated that nonrequired information was, in fact, mingled with required information and gave as an example that the word "grey" was placed before the term "Persian lamb". In spite of the fact that the complaint only charges a violation of Rule 29(a), the hearing examiner found that the stipulated facts prove a violation of the Rule as charged and of Section 4(2) of the Fur Products Labeling Act. We are unable to agree that Section 4(2) of the Fur Products Labeling Act is violated by this state of facts.

Section 4(2) provides that a fur product shall be considered to be misbranded unless the label affixed thereto clearly shows: (A) the name, as set forth in the Fur Products Name Guide of the animal that produced the fur; (B) that the fur was used when such is the fact; (C) that the fur was bleached, dyed or otherwise artificially colored when such is the fact; (D) that the fur is composed of paws, tails, bellies or waste fur when such is the fact; (E) the name or identification mark of one of the prior handlers of the product; and (F) the name of country of origin of any imported fur. Unfortunately, the initial decision does not disclose which of the six provisions of Section 4(2) are supposed to have been violated; however, it seems quite obvious that only (A) could be involved since the term "grey" was used in conjunction with the term "Persian lamb". But, Persian lamb is the correct name for a fur product,[1] and correctly describing it as grey does not alter that fact.

It may be that the theory behind the finding that the section has been violated is that the section defines the permissible limits of information which can be disclosed on the label, and the disclosure of any additional information violates the section. But by no stretch of the imagination can the wording of Section 4(2) be interpreted as requiring that *only* the information described in the Section is permitted on a label. This prohibition is contained in Rule 29. As a matter of fact, our promulgation of this Rule, which, among other things, permits the inclusion of information not specified in Section 4(2) of the Act, demonstrates the falsity of this premise. Thus, it is our view that Section 4(2) of the Fur Products Labeling Act was not violated by inclusion of the word "grey" before the words "Persian lamb" on the label, and the hearing examiner's holding to the contrary is in error.

We turn now to the hearing examiner's finding that the use of the term "grey" Persian lamb" on a label violates Rule 29(a). This

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[1] Rule 8(a) of the Rules and Regulations provides:

"The term 'Persian Lamb' may be used to describe the skin of the young lamb of the Karakul breed of sheep or top-cross breed of such sheep, having hair formed in knuckled curls."

Rule requires that all of the information which, pursuant to Section 4(2) of the Act, must be disclosed on the label, shall be" . . . set out on one side of the label and no other information shall appear on such side except the lot or style designation and size." The Rule also provides, "The lot or style designation may include non-deceptive terms indicating the type of garment, color of fur, and brand name for fur." Thus, it is proper to indicate the color of the fur on the same side of the label with the so-called "required information" when the color is included with the "lot or style designation". As a matter of fact, a color designation when so used becomes by operation of Rule 1 "required information".[2] Therefore, the hearing examiner's finding is apparently based upon the theory that when the color of a fur appears on the label in a position other than included with the lot or style designation, it becomes "non-required" information excluded by Rule 29(a). While this may be a reasonable interpretation of the Rule, it seems to us that information should not jump from the "required" to "non-required" classification with a change of its position on the label. Such an interpretation may well breed more uncertainty than it dispels. It is the Commission's view that labeling irregularities of this type can better be dealt with by the application of Rule 30 which sets out the sequence in which the required information must appear on the label.

Thus, while the facts here stipulated may constitute a violation of the strict language of Rule 29(a), the violation is too marginal and tenuous to justify an order to cease and desist and we will dismiss the charge.

We come now to paragraph 3(b) of the complaint, which reads as follows:

> Information required under Section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder was set forth with pencil in violation of Rule 29(b) of said rules and regulations.

The respondents stipulated to the truth of this charge, and the hearing examiner found the charge sustained and issued an order to cease and desist in the following terms:

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

[2] Rule 1(a)(5) reads as follows:
"The terms 'required information' and 'information required' mean the information required to be disclosed on labels, invoices and in advertising under the Act and Rules and Regulations, *and such further information as may be permitted by the regulations,* when and if used." (Emphasis supplied.)

One need have no special expertise to immediately discern the weakness in the quoted order. The order is merely a "road block to the narrow lane the transgressor has traveled".[3] As the Supreme Court has pointed out, the Commission could not hope to attain the objectives which the Congress envisioned for it if it prohibited only the illegal practices in the precise form found to have existed in the past. Under the order proposed by complaint counsel and adopted by the hearing examiner, this respondent would be free to use crayons, washable ink or any number of unsatisfactory writing implements. The order is inadequate and must be stricken. An effective order, prohibiting all unsatisfactory alternatives and requiring the respondents to adhere to the medium prescribed by Rule 29(b), "indelible ink", will issue.

As with the previous violation, the hearing examiner found a violation not charged in the complaint. He concluded that not only had the Rules and Regulations been violated but also Section 4(2) of the Fur Products Labeling Act. It is our view that the record will not support a finding that this section of the Act has been violated. This section provides, *inter alia*, that a fur product shall be considered to be misbranded if the required information is not shown on the label ". . . in words and figures plainly legible—". There is no finding in this record that the penciled labels were not "plainly legible". Presumably a penciled notation can be as legible as a notation made with other mediums. The rule requiring the use of indelible ink on the label is not directed so much to the fact that this medium may produce a more legible label since the readability of the notation depends to a great extent upon the art of the person wielding the writing implement. The rule requiring indelible ink is predicated upon the fact that other writing media can be easily altered by conscious action or smudged or changed by inadvertent handling. The hearing examiner's finding that the penciled notation on the label violated Section 4(2) of the Furs Products Labeling Act is in error and must be reversed.

Paragraph 3(c) of the complaint charges that the respondents misbranded certain fur products by not setting forth on the label the item numbers required by Rule 40 of the Rules and Regulations. We find no fault with the disposition of this charge and the hearing examiner's finding, conclusion and order will be affirmed and adopted.

Paragraphs 4 and 5 of the complaint both charge false and deceptive invoicing. Paragraph 4 charges that fur products were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act,

[3] *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470, 473 (1952) [5 S. & D. 388].

which provides, *inter alia*, that a fur product shall be considered to be falsely or deceptively invoiced if the invoice does not show:

(A) The name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, ...

Complaint paragraph 5 charges that respondents violated Section 5 (b) (2) of the Act which provides that a fur will be considered to be falsely or deceptively invoiced if the invoice contains the name of an animal other than the name specified in the above partially quoted Section 5(b) (1) (A).

The sum total of the evidence adduced in support of the charge is the stipulation which reads as follows:

Respondent set forth on Retail Slip No. 2067—47 dated 9-10-60 the following information: "Dyed mink, origin Japan," in addition to other information.

The hearing examiner relying upon this evidence found that the two sections of the Act had been violated. In addition, he found that the Fur Products Name Guide had been "violated" in that it requires: "Where there is a name of an animal with an adjective in connection therewith, it should be carried on labels, advertising and invoices as may be required under the act and the rules and regulations promulgated thereunder." Here again the examiner found a violation not charged in the complaint. The complaint's silence on this point is indicative of the Commission's belief that every possible failure to follow the Fur Products Name Guide is specifically dealt with by specific provisions of the Act or the Rules and Regulations. In other words, a failure to follow the Fur Products Labeling Guide is not in and of itself a violation. It is *malum prohibitum* solely because of the specific provisions of the Act and the Rules.

We turn now to a consideration of the merits of this charge; that is, does the evidence adduced support the violation found? It is our view that it does not. Examination of the Fur Products Name Guide reveals that dependent upon the genus-species of the animal that produced the fur, a mink product must be invoiced as either Mink, Japanese Mink, or China Mink. In order to show that a fur product was falsely invoiced, it is necessary to prove that a mink of one genus-species was referred to by the name of an animal belonging to another genus-species. In the instant case, the record must show that the fur product allegedly falsely invoiced was not "mink" as described, but was in fact Japanese Mink. The record does not establish this fact. Apparently complaint counsel and the hearing examiner assume that because the fur product originated in Japan, it must be composed of Japanese Mink. There is nothing in the record to give support to this presumption, and it is certainly not the type of premise subject to official notice. Thus, since the record is entirely silent as to the true nature of the fur allegedly falsely invoiced, the hearing examiner's finding that respondents violated Sections 5(b)(1) and 5(b)(2) of the Fur Products Labeling Act is in error, and the charges must be dismissed.

We next consider the false advertising charges made in paragraphs 6 and 7 of the complaint. The first of these charges is that respondents placed a newspaper ad which was false and deceptive in that it:

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

In support of this charge, a copy of one of respondents' newspaper advertisements was received in evidence, and it was stipulated that:

> Respondents advertised certain of their fox fur products without designating the particular type or name of fox which actually produced the fur involved in said garment . . . .

The hearing examiner found this evidence sufficient to establish the violation charged and ordered respondents to cease and desist therefrom.

A fur is correctly and properly advertised as simply "fox" if it was derived from any genus-species of the red fox, which include black fox, cross fox, red fox, platinum fox and silver fox. In order to prove the violation charged, it was necessary to show that the fox furs advertised were derived from animals of a genus-species other than red fox. There is nothing in this record to show the genus-species of the furs advertised and, therefore, the hearing examiner's finding of a violation was in error and must be reversed.

In paragraph 7(b) of the complaint, respondents are charged with failing to disclose in an advertisement the fact that the fur products offered contained or were composed of bleached, dyed or otherwise artificially colored fur in violation of Section 5(a)(3) of the Fur Products Labeling Act. We find no error with respect to the disposition of this charge. The evidence clearly reveals that the respondents advertised a dyed fur without disclosing the fact that its color had been altered. The hearing examiner's finding and order appropriately dispose of this charge and will be affirmed.

Complaint paragraph 7(c) charges the respondents violated Rule 38(a) of the Rules and Regulations in that information required under Section 5(a) of the Act was not all set forth in an advertisement in type of equal size and conspicuousness and in close proximity with each other. The evidence on this point consists of an advertisement for "MOUTON FUR, Processed Lamb" coats in which the words "MOUTON FUR" are printed in type approximately three or four times larger than the type used to print the words "Processed Lamb". This is a violation of Rule 38(a) as charged since the term "mouton" is under Rule 9 a "permitted" term, and such "permitted" terms are by Rule 1(a)(5) considered to be "required information".

As pointed out above, the complaint charges that this state of fact violates only Rule 38(a). However, the hearing examiner concluded that the practice violated both said rule and Section 5(a) of the Fur Products Labeling Act. Section 5(a) deals only with the nature of the information which must be disclosed in an advertisement and does not to any extent deal with the form in which the information must be presented. Only Rule 38(a) deals with the form of the advertisement, and, therefore, only 38(a) has been violated. The examiner's finding that respondents' advertisement violated Section 5(a) in this respect is in error and must be reversed.

We come now to a consideration of the final charge in the complaint, which is contained in paragraph 8 thereof and reads as follows:

> Respondents in advertising fur products for sale as aforesaid made claims and representations respecting the prices and values of fur products. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said rules and regulations.

Rule 44(e) reads as follows:

> Persons making pricing claims or representations of the types described in subsections (a), (b), (c) and (d) shall maintain full and adequate records disclosing the facts upon which such claims or representations are based.

Comparison of the rule with the complaint charge raises an immediate question concerning the sufficiency of the complaint for under the rule only such pricing claims or representations as are described in the four previous subsections of the rule must be supported by full and adequate records. The complaint charge would be satisfied by showing that respondent had made any claims or representations concerning the prices and values of its fur products.

While poorly drafted and probably inadequate in a court proceeding, the complaint is doubtless sufficient before this body since "Pleadings before the Commission are not required to meet the standards of pleadings in a court where issues are attempted to be framed with a measure of exactness which is designed to limit the broad sweep of investigation that characterizes the proceedings of administrative bodies...." (*A. E. Staley Mfg. Co., et al.* v. *Federal Trade Commission*, 135 F. 2d 453, 454, 7th Cir. 1943 [3 S. & D. 556]). The respondents here could not be unaware of the exact nature of the violation charged since a perusal of Rule 44(e) itself defines the limit of the obligatory recordkeeping. We turn now to a consideration of the evidence adduced and the hearing examiner's disposition of this charge.

The transcript indicates that complaint counsel and counsel for respondents discussed this charge off the record. The hearing examiner then dictated on the record the facts which had been agreed to. We here set out in full the pertinent remarks of the hearing examiner as they appear in the transcript:

In connection with Paragraph 8 of the complaint, there has been a conference between counsel on both sides and the Hearing Examiner regarding that portion of the complaint. It is the Examiner's understanding, and this is based upon the statement just made by Mr. Jerome Lighton off the record, that it is the Examiner's understanding [sic] that the only fault as he understood found by the Commission's investigator with the records kept by Respondent was that at that time Respondent listed fur coats separately, that is to say, coats composed entirely of fur, but insofar as fur-trimmed coats or coats which had fur collars were concerned, they were included under the general designation and in the column referring to coats generally. In other words, Respondent's records did not segregate coats which were fur trimmed and which had fur collars from coats which were not so made. In other words, did not distinguish between fur-trimmed and fur-collared coats from fabric coats.

And I further understand that insofar as the facts were concerned, assuming that the record should have shown that information, as a matter of fact they did not at that time show the information. In other words, they under the column "coats" included all coats including both those fur trimmed and fur collared.

At no place in the record are we enlightened as to what bearing or relevance the quoted stipulation has to the charge under consideration. We see no reason for presuming that a record listing both cloth and fur-trimmed coats does not constitute a "full and adequate" record from which the facts supporting a pricing representation can be determined.

The record is deficient in another respect for it does not show that the respondents ever made advertising claims or representations of the type described in subsections (a), (b), (c) and (d) of Rule 44(e). While the record does contain a newspaper advertisement of fur-trimmed coats offered at a "40% discount", there is nothing in the record to tie the coats offered in this advertisement to the records with which the quoted faulty stipulation was concerned. Further, the advertisement in question was apparently only introduced in support of the charge made in complaint Paragraph Seven (a) which was concerned with the alleged misuse of the term "fox". The hearing examiner stated on the record that it was his understanding ". . . that the only material part of that ad has to do with the word 'fox'. . . ."

In disposing of this charge, the hearing examiner made the following finding:

> Respondents in advertising fur products for sale as aforesaid, made claims and representations respecting the prices and values of such products. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based.

He then found that the practice described violated Rule 44(e). In addition to the fact that the record will not support the finding made by the hearing examiner, it is obvious that the finding will not support his conclusion that Rule 44(e) has been violated. No matter how lenient we may be with the pleading which initiated the proceedings, we will not, and indeed, may not, apply the same relaxed rules to the hearing examiner's findings. Thus, the failure to find that the respondents made pricing claims and representations of the types described in subsections (a), (b), (c) and (d) of Rule 44(e) is fatal, for without such a finding Rule 44(e) is not violated. For this reason and for the reason that the record does not contain evidence sufficient to prove a violation, the charge with respect to 44(e) must be dismissed.

In conclusion, we note that the hearing examiner, drawing upon evidence not of record, to-wit, the unsworn and unrecorded statements and the "demeanor" of the respondents, has "In justice to respondents . . ." concluded that the violations practiced were not willful or intentional but were due to oversight or inadvertence. Since there is nothing in the record to support this finding by the hearing examiner and for the further reason that it deals with a subject completely irrelevant and immaterial to a proceeding of this type, the finding is in error and must be stricken. We note in passing that "justice to respondents" in particular and the public in general would have been better served in this matter by a closer adherence to basic legal principles on the part of all participants.

The initial decision is in error to such a substantial extent that it must be vacated in its entirely. In lieu thereof, we are issuing our own findings of fact, conclusions and order to cease and desist.

Commissioner Anderson concurred in the result and Commissioner Elman did not concur.

COMMISSIONER ELMAN, NOT CONCURRING

The Commission seems to me to have followed a rather curious procedure in this case.

By not filing a petition for review under Rule 4.20, respondents in effect acquiesced in the hearing examiner's initial decision and order. For all practical purposes, the matter came before the Commission in the same posture as if respondents had entered into a consent agreement. To be sure, the Commission may and does refuse to adopt an initial decision as its own where there appear to be substantial doubts as to its correctness. In such a case, despite the failure to appeal, the Commission *sua sponte* places the matter on its own docket for review, as provided in Rule 4.19. But in undertaking such review the Commission should at least hear the parties before venturing to make any radical changes in the initial decision and order.

In this case, however, without giving notice to counsel, without having the benefit of briefs or oral argument, and solely on the basis of its own independent examination of the record, the Commission concludes that the initial decision is so permeated with error that it must be vacated in its entirety and replaced with new findings of fact, conclusions, and order. I am not now prepared to say that the majority is either right or wrong in reaching this conclusion. It may well be that, after hearing what counsel might have to say, I would concur in the disposition of the case made by the Commission. At this stage, however, unaided by briefs or oral argument, I do not feel ready to agree that the initial decision—to which neither side has objected—is so egregiously wrong.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

This matter having been considered by the Commission and the Commission having determined, for the reasons stated in the accompanying opinion, that the initial decision should be vacated and set aside, now makes in lieu thereof these its Findings As To The Facts, Conclusions And Order.

FINDINGS AS TO THE FACTS

1. The respondents, Paul J. Lighton, Ruth G. Lighton and Jerome J. Lighton, are individuals and copartners doing business under the trade name Bernard's, with their office and principal place of business located at 117 West Second Street, Owensboro, Ky.

2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been 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 had been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur products" are defined in the Fur Products Labeling Act.

3. Certain of said fur products were not labeled in accordance with the Rules and Regulations promulgated under Section 8(b) of the Fur Products Labeling Act in that the information required to appear on the label pursuant to Section 4(2) of said Act was hand printed thereon with pencil. Rule 29(b) of said Rules and Regulations requires that such hand printed notations be made with indelible ink.

4. Certain of said fur products were not labeled in accordance with the Rules and Regulations promulgated under Section 8(b) of the Fur Products Labeling Act in that the labels did not contain the item numbers as required by Rule 40 of said Rules and Regulations.

5. Respondents, in the course and conduct of their business, caused the dissemination in commerce, as "commerce" is defined in the Fur Products Labeling Act, of certain newspaper advertisements concerning fur products and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale, of such fur products.

Among and included in the advertisements as aforesaid, were advertisements of the respondents which appeared in issues of the *Messenger and Inquirer*, a newspaper published in the city of Owensboro, Kentucky, and having a wide circulation in that State and various other States of the United States.

In an advertisement placed by respondents in a July 7, 1960, issue of said newspaper, women's coats containing or composed of dyed Mouton Lamb fur were advertised or offered without disclosing the fact that said coats were dyed or artificially colored in violation of Section 5(a)(3) of the Fur Products Labeling Act.

In the aforesaid advertisement, information required by Section 5(a) of the Fur Products Labeling Act to appear therein was not set forth in type of equal size or conspicuousness in violation of Rule 38(a) of the Rules and Regulations promulgated under Section 8(b) of said Act.

CONCLUSIONS

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

2. This proceeding is in the public interest.

3. The aforesaid acts and practices of respondents, as herein found, were in violation of the Fur Products Labeling Act or the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Paul J. Lighton, Ruth G. Lighton and Jerome J. Lighton, individually and as copartners trading as Bernard's, or under any other trade name, 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. Utilizing any medium other than indelible ink to hand print on labels affixed to fur products the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated pursuant to Section 8(b) of said Act.

2. Failing to set forth on labels affixed to fur products the item numbers or marks required by Rule 40 of the Rules and Regulations promulgated pursuant to Section 8 (b) of the Fur Products Labeling Act.

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

(a) Fails to disclose that the fur product advertised or offered for sale contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(b) Fails to set forth the information required under Section 5(a) of the Fur Products Labeling Act, and the Rules and Regulations promulgated pursuant to Section 8(b) of said Act in type of equal size and conspicuousness and in close proximity with each other.

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

Commissioner Anderson concurring in the result and Commissioner Elman not concurring.

IN THE MATTER OF

GOLDEN VALLEY NATIONAL SALES AND DISTRIBUTION CO., INC., ET AL.

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

Docket 8461. Complaint, Jan. 17, 1962—Decision, Apr. 25, 1962

Order requiring distributors in Palo Alto, Calif., to cease representing falsely in newspaper advertising, circulars, letters, and radio commercials that their "Vademecum" tooth paste would whiten teeth and remove stain or film, and contained no abrasive.

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 Golden Valley National Sales and Distribution Co., Inc., a corporation, and Douglas B. Guy and Karl Bledsoe, 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 Golden Valley National Sales and Distribution Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 378 Cambridge Avenue, Palo Alto, Calif.

Respondents Douglas B. Guy and Karl Bledsoe 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 tooth paste under the brand name of "Vademecum" which is a cosmetic as "cosmetic" is defined in the Federal Trade Commission Act.

PAR. 3. Respondents in the course and conduct of their business, have caused said "Vademecum" tooth paste, when sold, to be transported from their place of business in the State of California, to purchasers located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said "Vademecum" tooth paste in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certan advertisements concerning the said "Vademecum" tooth paste by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and other advertising media, and by means of radio continuities broadcast through stations located in various States of the United States, having sufficient power to carry such broadcasts across state lines, and by circulars and letters, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said "Vademecum" tooth paste, and has disseminated, and caused the dissemination of, advertisements concerning the said "Vademecum" tooth paste by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said cosmetic in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical, but not all inclusive, of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

> Makes white teeth whiter
> * * * Even stubborn tobacco stains vanish.
> Vademecum is actually guaranteed to remove stains and whiten your teeth. * * * Makes decay-causing stains and film disappear like magic.
> * * * Brings hard-to-clean porcelain fillings back to original whiteness.
> * * * If you are bothered by stains on your teeth—such as those caused by smoking—you'll see them vanish like magic.
> Vademecum contains no abrasives * * * so it can't harm teeth enamel.

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

1. That Vademecum tooth paste will whiten the teeth, and cause white teeth to become whiter.

2. That Vademecum tooth paste will remove stains from the teeth.

3. That Vademecum tooth paste will remove film from the teeth.

4. That Vademecum tooth paste contains no abrasive.

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

1. All human teeth are not white. The color of human teeth varies from white to a shade of brown or yellow with each individual and Vademecum cannot whiten such teeth, nor cause white teeth to become whiter.

2. Brushing with tooth paste will not remove stains from the teeth.

3. Brushing with tooth paste will not remove film from the teeth.

4. Vademecum contains chalk which is an abrasive.

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

Mr. Frederick J. McManus and *Mr. Charles J. Connolly* for the Commission.

Mr. Karl V. Bledsoe, of Palo Alto, Calif., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The complaint herein, charging respondents with violation of the Federal Trade Commission Act by disseminating false advertisements concerning their tooth paste designated "Vademecum", was issued January 17, 1962, and was duly served upon respondents by registered mail on January 25, 1962. The respondents have not filed their answers to this complaint within the time required and are now in default. Pursuant to the provisions of Rule 4.5(2c) of the Commission's Rules of Practice for Adjudicative Proceedings, the hearing examiner hereby declares the respondents in default and now finds the facts to be as alleged in the complaint, and issues his initial decision containing such findings, approporiate conclusions drawn therefrom and order to cease and desist, as follows:

FINDINGS OF FACT

1. Respondent Golden Valley National Sales and Distribution Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 378 Cambridge Avenue, Palo Alto, Calif.

Respondents Douglas B. Guy and Karl Bledsoe 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.

2. Respondents are now, and for some time last past have been, engaged in the sale and distribution of tooth paste under the brand name of "Vademecum" which is a cosmetic as "cosmetic" is defined in the Federal Trade Commission Act.

3. Respondents in the course and conduct of their business, have caused said "Vademecum" tooth paste, when sold, to be transported from their place of business in the State of California, to purchasers located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said "Vademecum" tooth paste in commerce as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said "Vademecum" tooth paste by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and other advertising media, and by means of radio continuities broadcast through stations located in various States of the United States, having sufficient power to carry such broadcasts across state lines, and by circulars and letters, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said "Vademecum" tooth paste, and has disseminated and caused the dissemination of, advertisements concerning the said "Vademecum" tooth paste by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said cosmetic in commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. Among and typical, but not all inclusive, of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

Makes white teeth whiter
* * * Even stubborn tobacco stains vanish.

Vademecum is actually guaranteed to remove stains and whiten your teeth. * * * Makes decay-causing stains and film disappear like magic.

* * * Brings hard-to-clean porcelain fillings back to original whiteness.

* * * If you are bothered by stains on your teeth—such as those caused by smoking—you'll see them vanish like magic.

Vademecum contains no abrasives * * * so it can't harm teeth enamel.

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

(1) That Vademecum tooth paste will whiten the teeth, and cause white teeth to become whiter.

(2) That Vademecum tooth paste will remove stains from the teeth.

(3) That Vademecum tooth paste will remove film from the teeth.

(4) That Vademecum tooth paste contains no abrasive.

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

(1) All human teeth are not white. The color of human teeth varies from white to a shade of brown or yellow with each individual and Vademecum cannot whiten such teeth, nor cause white teeth to become whiter.

(2) Brushing with tooth paste will not remove stains from the teeth.

(3) Brushing with tooth paste will not remove film from the teeth.

(4) Vademecum contains chalk which is an abrasive.

CONCLUSIONS

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

ORDER

It is ordered, That the respondents Golden Valley National Sales and Distributing Co., Inc., a corporation, and its officers and Douglas B. Guy and Karl Bledsoe, individually and as officers of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act of "Vademecum" tooth paste, whether sold under that name or any other name or names and possessing the same or similar properties, do forthwith cease and desist from:

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

(a) Respondents' tooth paste will whiten teeth.

(b) Respondents' tooth paste will remove stain from the teeth.

(c) Respondents' tooth paste will remove film from the teeth.

(d) Respondents' tooth paste contains no abrasive.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice effective July 21, 1961, the initial decision of the hearing examiner did, on the 25th day of April 1962, become the decision of the Commission; and, accordingly:

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