

Syllabus

IN THE MATTER OF
M. S. DISTRIBUTING COMPANY

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

Docket 7745. Complaint, Jan. 12, 1960—Decision, Dec. 17, 1962

Order setting aside desist order of May 19, 1960 (56 F.T.C. 1432), requiring cessation of concealed "payola", the enactment of federal statute since the date of the order constituting effective deterrent of the type of practice involved.

ORDER GRANTING RESPONDENTS' PETITION TO REOPEN AND SET ASIDE
ORDER TO CEASE AND DESIST

Upon consideration of respondents' petition, filed November 13, 1962, requesting that the decision of the Commission in this proceeding entered May 9, 1960 [56 F.T.C. 1432], be reopened and the order to cease and desist be set aside, and

It appearing from the matters set forth in respondents' petition that vacation of the order herein would be equitable and in the public interest, and

It further appearing that the enactment by Congress on September 13, 1960, of Public Law 86-752 (74 Stat. 895, 47 U.S.C. 317) constitutes an effective and sufficient deterrent against future violations of the type alleged in this proceeding:

It is ordered, That respondents' petition be, and it hereby is, granted, and that the order to cease and desist previously entered in this proceeding be, and it hereby is, set aside.

IN THE MATTER OF

BALDWIN BRACELET CORP., ET AL.

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

Docket 8316. Complaint, Mar. 14, 1961—Decision, Dec. 18, 1962

Order requiring New York City distributors to cease selling metal expansion watch bands imported from Hong Kong with no marking to indicate their foreign origin; and advertising watch bands as "guaranteed" or "fully guaranteed" when the guarantee was limited and conditional.

Complaint

61 F.T.C.

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 Baldwin Bracelet Corp., a corporation, and Nathan Goodman and Anne Goodman, 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 Baldwin Bracelet Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 22 West 48th Street, New York, N. Y.

Individual respondents Nathan Goodman and Anne Goodman are officers of the corporate respondent. They formulate, direct and control the acts and practices of said corporate respondent, including the acts, policies and practices complained of herein. The place of business of said individual respondents is the same as that of the corporate respondent.

PAR. 2. The respondents are now and for some time last past have been engaged in the sale and distribution of products, including metal expansion watch bands. The respondents cause their said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, respondents sell and distribute, to watch manufacturers or assemblers, and to watch band jobbers and dealers, their said products, namely metal expansion watch bands. Said watch bands consist in whole or in substantial part of components which were manufactured in, and imported from, Hong Kong. When offered for sale or sold by respondents, said watch bands do not bear disclosure showing that they are substantially of foreign origin.

PAR. 4. When products consisting in whole, or in substantial part, of imported components are offered for sale and sold in the channels of trade, they are purchased and accepted as, and taken to be, products wholly of domestic manufacture and origin unless the products are labeled or marked in a manner which informs purchasers that the products, or substantial parts thereof, are of foreign origin.

Complaint

A substantial portion of the purchasing public has a preference for products, including watch bands, which are wholly of domestic manufacture or origin, as distinguished from products which are in substantial part of foreign manufacture or origin.

PAR. 5. The failure of respondents to adequately disclose the foreign country or place of origin of their watch bands or the foreign country or place of origin of substantial components of their watch bands has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public as to the country or place of origin of said watch bands and into the erroneous and mistaken belief that such watch bands are of domestic manufacture, and into the purchase of substantial quantities of said watch bands by reason of said erroneous and mistaken belief.

PAR. 6. In the course and conduct of their business, respondents use the words "guaranteed" or "fully guaranteed" in the advertising of certain of their watch bands, thereby representing that said watch bands are guaranteed by them in every respect.

PAR. 7. Said advertising is false, misleading and deceptive. In truth and in fact, the guarantee is limited and conditional, and the limitations and conditions are not set forth in the advertising.

PAR. 8. Respondents, at all times mentioned herein, have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of watch bands.

PAR. 9. The use by respondents of the false, misleading and deceptive representations and practices hereinabove set forth, and the failure to disclose the foreign origin of their watch bands or of substantial components of their watch bands, had, and now has, the capacity and tendency to mislead and deceive purchasers or members of the buying public in the manner aforesaid, and thereby to induce them to purchase respondents' watch bands. As a consequence thereof, trade in commerce has been unfairly diverted to respondents from their competitors and injury has thereby been done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and 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. David J. McKean for the Commission.

Mr. Ben Paul Noble, of Washington, D.C., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

By complaint issued March 14, 1961, the Federal Trade Commission charged Baldwin Bracelet Corp., a New York corporation of 22 West 48th Street, New York, New York, and its officers, Nathan Goodman and Anne Goodman, his wife, with violations of the Federal Trade Commission Act resulting from their sale and distribution of metal expansion watch bracelets in commerce without disclosing that they consisted of parts manufactured in Hong Kong, and with representing that they were fully or unconditionally guaranteed when, in fact, a charge was imposed on persons seeking to avail themselves of the guaranty.

Although the case was concerned only with these two simple issues, because of obstructive tactics of the respondents, to which reference will be made below, four days of testimony, plus a preliminary deposition, consisting in all of more than 400 pages of typewritten transcript and more than 40 exhibits were required to complete the hearing.¹

Respondents at first denied all allegations of the complaint except that Baldwin Bracelet Corp. was a corporation doing business in New York and that Nathan Goodman was an officer and directed and controlled its acts and practices and that the business involved the sale and distribution of watch bracelets. During a pretrial conference, it was agreed that the admissions would be extended to the fact that the respondent corporation was engaged in interstate commerce within the meaning of the Federal Trade Commission Act and that it is in substantial competition with others in the sale of watch bracelets.

Because of the manner in which the respondents sought to defend this case, I shall start by setting forth the following which are my conclusory and ultimate

FINDINGS OF FACT

1. Respondent, Baldwin Bracelet Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 22 West 48th Street, New York City, New York.

2. It is a family corporation and its practices and business are controlled and directed by Nathan Goodman, its president and di-

¹ As a matter of fact, respondents even now contend because of their conduct to which reference will be made elsewhere that the hearing is not completed.

rector, and by his wife, Anne Goodman, its secretary-treasurer and director, who also are respondents herein.²

3. Respondents are engaged in the sale and distribution of metal expansion watch bracelets for the manufacture of most of which they are associated with a wholly owned affiliated corporation based in the Virgin Islands, also described by them as a "family" corporation.

4. The watch bracelets so manufactured are sold and distributed by them from their place of business in New York to purchasers in New York and in various other states of the United States and the District of Columbia. They maintain and at all times herein mentioned have maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act. They have been, and now are, in substantial competition, in commerce, with others engaged in the sale of watch bracelets.

5. Respondent Baldwin sells its watch bracelets to watch manufacturers and watch importers for attachment to watches as "original equipment" prior to their original sale of the watches. Respondent also sells watch bracelets to watch and jewelry wholesalers for distribution to consumers or users through retail jewelry outlets.

6. Approximately 20% of respondents' watch bracelets are prepared by them for ultimate direct sale at retail to consumers. For this purpose, they are attached to cards covered or enclosed with a transparent plastic packaging device, which in turn are displayed in retail stores on placards or racks prepared and distributed by respondents on which they have endorsed or caused to be endorsed prominently the eye-catching legends, "Unconditionally Guaranteed" or "Fully Guaranteed."

7. The said watch bracelets in fact are not unconditionally and are not fully guaranteed because the retail purchaser is required, should he attempt to avail himself of the alleged guaranty, to pay to the respondents a sum of money (25¢ prior to 1960 and 35¢ thereafter). He is informed of this charge only if he reads certain material, printed only on the back of the card on which the watch bracelet is packaged, following its removal from the placard or rack prior, during or after the act of purchase. The so-called guaranty is limited further to one year, by the same material printed on the back of the packaging card.

8. All watch bracelets sold by the respondents are imported into

² Transcript:

Q. Do the two of you [Nathan Goodman and Anne Goodman] control and direct the policies and actions of respondent Baldwin Bracelet Corp.?

A. [Nathan Goodman] Yes, we do.

Q. And no one else has any hand in directing or controlling Baldwin?

A. No.

the United States. Of these, approximately 20% are marked as made in Hong Kong and are not involved in this proceeding. The balance (approximately \$700,000 in 1960 sales of approximately 1,200,000 bands) bear no marking to show where they are made and are sold with the aid of advertising, literature and displays which do not disclose where they are made.

9. In their promotion of the sales of these unmarked bracelets, respondents advertise that they are "made of the highest-grade American steels and gold-fill" and that "only the finest, first-quality American stainless steel and Gold Fill are used in the construction of every Baldwin Band." While they make these representations, they do not disclose that the actual manufacturing is not accomplished in the United States.

10. On the contrary, respondents, by their arrangements with their wholly owned family corporation in the Virgin Islands, cause the metal to be purchased in strips in the United States, cause it to be exported to Hong Kong, cause it to be fabricated into bracelet linkages and other parts in Hong Kong, cause these to be reexported out of Hong Kong to the Virgin Islands, and there cause two tube ends to be "fixed to the skeleton," following which the bracelets are degreased, polished, inspected, wrapped, boxed, crated and shipped to the United States. Other work done in the Virgin Islands, in the case of gold-filled top shell bracelets, consists only of an additional step in the assembly process. Such gold-filled top shell bracelets amount to about 25% of all the bracelets involved in this proceeding.

11. The essential, operative components of the metal expansion watch bracelets involved in this proceeding are fabricated in Hong Kong. In the form in which they are received in the Virgin Islands, even without being degreased and polished, they could serve as bracelets for holding watches on wrists following the clamping onto their ends of the tube ends to be attached to the watch handles made to receive them.

12. Thus the watch bracelets involved herein are substantially of Hong Kong origin.

13. Respondents, when offering these watch bracelets for sale in commerce in the United States, do not disclose that, in substance, they are fabricated in Hong Kong and not in the United States.

14. There is a definite preference on the part of purchasers of watch bracelets for those made in the United States, if price, style and quality factors are not such as to influence the purchase of such articles made elsewhere.

15. There is a reluctance on the part of substantial numbers of persons to buy articles made in Hong Kong.

16. Articles not made in the United States and not marked or otherwise identified as to the place where they are made have a tendency to lead potential purchasers to believe that they were made in the United States and cause them to buy such articles even though they might not have had they known where the articles were made.

17. A substantial portion of the consuming public prefers watch bracelets made in the United States to those substantially fabricated in Hong Kong.

From the beginning respondents took the attitude that the Federal Trade Commission had no right to bring this proceeding. Having taken that attitude, they engaged in every conceivable device to obstruct and defeat the proceeding. It is not necessary, for the purpose of this decision, to set forth in detail all that the respondents did. A few illustrations ought to be sufficient.

From the beginning and despite many warnings of the criminal aspect of his conduct, the respondent Nathan Goodman deliberately and flatly refused to answer proper questions addressed to him both by counsel supporting the complaint and by the hearing examiner. He persisted in this conduct throughout most of the hearing, even after the hearing examiner had read to him from the Federal Trade Commission Act as follows:

Sec. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.³

Respondents adopted their contumacious position because they took the attitude that the Federal Trade Commission never should have commenced this proceeding against them. They took it upon themselves to make their *private* determination that the Federal Trade Commission had no jurisdiction and that they were immune from its process. Such tactics have been attempted before, resulting only in sorry and expensive lessons for those who tried. There is the classic case which went to the United States Supreme Court, involving John L. Lewis and his United Mine Workers. Lewis was fined \$10,000 for his conduct and the Union was fined originally \$3,500,000 which the Supreme Court modified to an immediate payment of \$700,000 with the remain-

³ See *Sinclair v. United States*, 279 U.S. 263, in which a similar but more loosely worded statute was involved. Sinclair went to jail for three months and was fined \$500 for refusal to answer questions even though he claimed he did so "in good faith on the advice of competent counsel."

ing \$2,800,000 to be remitted upon compliance by the Union with the Court's order. In considering the conduct of Lewis and the Union, the Supreme Court said:

The defendants, in making their private determination of the law, acted at their peril.

United States v. Mine Workers, 330 U.S. 258, @ 293.

It continued, quoting from *Howat v. Kansas*, 258 U.S. 181, 189-190:

... an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings. This is true without regard even for the constitutionality of the Act under which the order is issued.

Respondents took their strange position because they have succeeded in bringing through Customs, free of duty, the bracelets sold by them, under a law which was designed to foster and promote industry in the Virgin Islands.⁴ What they failed to realize was that the law which permitted them to bring in the bracelets, duty free, is only a statute for the collection of duties and that, for the purpose of the parts of the Tariff Act with which they were concerned, the Virgin Islands, though a possession of the United States, are not included within the term "United States." (19 U.S.C.A. 1401(k))

Any contention on the part of an importer that the marking provisions of the Customs laws result in pre-emption of the Federal Trade Commission by the Secretary of the Treasury long ago has been held not to be valid. *L. Heller & Sons, Inc. v. Federal Trade Commission*, 191 F.2d 954 [5 S.&D. 327].

Respondents were able to bring their bracelets into the United States, duty free, because they had succeeded in convincing Customs officers that the bracelets "do not contain foreign materials to the value of more than 50 per centum of their total value" and that they come to the United States from the Virgin Islands. This was accomplished under 19 U.S.C.A. 1301a, Tariff Act of 1930. Assuming that this feat of the respondents is valid, they overlook the fact that Section 1301a is concerned only with the collection of Customs duties and has nothing at all to do with country of origin or deceptive practices which might result from a failure to disclose country of origin.

The manner in which respondents accomplish this exemption from Customs duties is set forth adequately in the record. They, through

⁴ They contested also the decision of the Commission to issue the complaint herein under the first sentence of Section 5(b) of the Act but mere mention of this is sufficient to justify further disregard. *Adams, Sr. v. Federal Trade Commission*, 8 Cir. 296 F. 2d 861 [7 S. & D. 269], November 24, 1961.

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their wholly owned affiliate in the Virgin Islands, arrange for the purchase of metal strip in the United States. They cause it to be shipped to Hong Kong. In Hong Kong the metal strip is fabricated into "unfinished linkage sections" (as certified by the government of Hong Kong) prior to re-exportation out of Hong Kong to the Virgin Islands. In the Virgin Islands the linkage sections are completed as marketable watch bracelets. As stated by the respondents in a letter which they wrote to the Commission prior to the filing of the complaint, after their corporation in the Virgin Islands "receives the unfinished bands, they process them according to the steps previously given you at a cost of approximately 84 cents per dozen bands." What the steps were was brought out from a statement filed by respondents pursuant to the pretrial order. It appears from that statement that a Baldwin bracelet consists of "a top shell," "a bottom shell," "a top liner," "two tube ends" and "rivets." The "manufacturing" process in the Virgin Islands (in view of all that was said and all that was not said by respondents in this case) consists only of placing the tube ends "into a precision die, manually adjusted to accommodate an end part of the bracelet's skeleton. The die is activated by a machine operator, some using foot pressure type machinery, others using air pressure operated machines. In this manner, the two tube ends are fixed to the skeleton which is prepared for the accommodation thereof by the dextrous fingers of a trained worker. The plant employs as many as 17 such employees, never fewer than six, depending upon market requirements." There is an abundance of testimony in the record as to the component elements of a bracelet and the manufacturing process. This evidence establishes quite conclusively that the essential part of the bracelet, the "linkage," (as certified by the Government of Hong Kong) is fabricated in Hong Kong and that a bracelet simply would not be a bracelet without it.⁵

Counsel supporting the complaint was driven by respondents' obstructive tactics to amass a plethora of evidence to establish this. Even without the reams of expert testimony, since it is permissible to make inferences from known facts, the skimpy information which the respondents provided to the Commission, both *ante litem motam* and in the pretrial statement, justifies the finding that the essential portions of the bracelets sold by them are fabricated in Hong Kong. Although the evidence is not as complete as could be desired, this case is not thereby cast into the mold where there is *no* evidence to support the findings and conclusions. On the contrary, this is the sort of case where respondents, having been present in the courtroom and

⁵ See also any dictionary as to the meaning of the word "linkage."

having had the opportunity to explain and show that their bracelets were in fact not fabricated in Hong Kong, as was initially brought out in the *prima facie* case, clinched the case against them by remaining silent and refusing to talk. *Mammoth Oil Co. v. United States*, 275 U.S. 13, 51-53; 48 S. Ct. Rep. 1, 9-10.⁶

Apart from the actual facts which support the decision in this case, if respondents' failure to defeat this case has been the result only of their refusals to testify, their refusal to proceed with the defense, or their contumacious conduct, they consciously made the decision and they must take the consequences of their erroneous decision. *Sinclair v. United States*, 279 U.S. 263. (I cannot emphasize too strongly that the decision herein is not made to punish the respondents for their contumacious conduct. Other procedures are available for that. My decision is based only on the facts in the record.)

In an attempted *coup de grace*, respondents cite 19 CFR 11.10(b)(3). This is a regulation which the Secretary of the Treasury has promulgated pursuant to 19 U.S.C.A. 1304(a)(3). It excepts from the marking provisions of Section 1304 "products of possessions of the United States." This could have no bearing on the matters involved in this case. In the first place, the bracelets are not *products*, as contended by respondents, of the Virgin Islands. At best, there is an assembling job in the Virgin Islands which costs the respondents 84 cents a dozen, as opposed to the cost of fabrication in Hong Kong of \$1.25 per dozen. These are respondents' own cost figures. Let us disregard this for a moment. The marking provisions of 19 U.S.C.A. 1304, expressly require markings for goods from the Virgin Islands because the Virgin Islands are not included in the term "United States." 19 U.S.C.A.1401(k).⁷ Consequently, the exception in part (b)(3) of Section 11.10 of the Regulations cannot apply to the Virgin Islands because they are not specifically mentioned. Moreover, it may be questioned whether, disregarding the position of the Virgin Islands in the entire picture, the Secretary of the Treasury had any jurisdiction at all to make a regulation that the products of possessions of the United States need not be marked, because that type of exception is not among the exceptions for which provision is made in the statute, subparts A-K, inclusive, of 1304(a)(3). It can be justified only upon a conclusion that it sets out merely in words what

⁶ As an exercise in simple logic, it is quite obvious that the principal work must be done in Hong Kong. Respondents do not ship metal across the United States and then across the Pacific Ocean and then back all the way to the Virgin Islands just for mechanical stamping out of parts. The purpose must be to use the Hong Kong labor to make the bracelets.

⁷ For a better understanding of the rationale for this, see Section 1557 of Title 19 U.S.C.A.

is the fact—that a possession of the United States is a part of the United States. However, as several times noted above, for the purpose of this part of the Tariff Act, the Virgin Islands are not a part of the United States (19 U.S.C.A. 1401(k)).

Now reverting back to the cost of assembling in the Virgin Islands, 84 cents a dozen, as opposed to the cost of fabrication in Hong Kong, \$1.25 a dozen, respondents seem nevertheless to have been successful in having Customs pass their bracelets duty free under the exemption provision of 19 U.S.C.A. 1301(a). They attempted improperly to use papers purporting to be copies of Customs entries as cross-examination following completion of Commission counsel's redirect examination of respondent Nathan Goodman. They renewed this attempt as an offer of defense following my direction that they proceed with their defense. The offer was rejected and the papers were excluded because, on their face, they appeared to be unreliable. The trier of the facts under no circumstances is required to receive in evidence material which, on its face, is unreliable.⁸ The papers, prepared by respondents' agent, recited that the bracelets were a "product of, or was manufactured or produced in St. Thomas V.I." These entry papers variously stated that the *foreign* materials in them were linkage \$1.95 a dozen, parts to finish 80¢ a dozen; linkage \$2.20 a dozen, parts to finish 10¢ a dozen; linkage \$2.45 a dozen, parts to finish 10¢ a dozen; linkage \$1.95 a dozen, parts to finish 70¢ a dozen; linkage \$2.15 a dozen, parts to finish 60¢ a dozen; linkage \$2.05 a dozen, parts to finish 60¢ a dozen. Obviously, since the cost of assembling, fabrication or finishing in the Virgin Islands, as represented by Nathan Goodman in the statement he filed with the Federal Trade Commission in an effort to forestall this proceeding, amounted only to 84¢, even if the alleged United States cost for the domestic raw metal amounted to \$1.25 a dozen, every one of these entries was false because the foreign materials cost in each case exceeded 50% of the total. Also, as pointed out by Commission counsel and as demonstrated above, the alleged determination of Customs and the fact that respondents were able to bring the bracelets in free of duty are entirely irrelevant to this proceeding because we are here concerned with the deceptive practices of the respondents and not with the revenue aspects of their operation. Finally, the claimed determination by a Customs officer (putting aside all the technical reasons why the papers were inadmissible) is not an adjudication sufficient to create an estoppel by judgment against the Federal Trade Commission.

⁸ Federal Trade Commission Rules of Practice, Sec. 4.12(b).

The respondents' failure to mark their bracelets as being either substantially fabricated in Hong Kong or containing essential components fabricated in Hong Kong is a deceptive practice cognizable by the Federal Trade Commission. The record herein is burdened with extensive testimony showing that the consuming public has a preference for American-made bracelets, that it has prejudices against bracelets made abroad, that such prejudices extend to Hong Kong, and that when goods purchased in the United States do not bear marks of foreign origin, they are assumed to have been made in the United States. Respondents themselves recognize and capitalize on this prejudice because they indulge in the half-truth of boasting that their goods are *made* of 100% American metal. To tell a half-truth is as much or more of a deception than to refrain from making any statement at all.

Following the close of the hearing, Commission counsel made a motion that the hearing examiner take official notice of the preferences and prejudices of the buying public. This motion could have and ordinarily would have been granted had it been made prior to the hearing.⁹ The reason Commission counsel's motion was denied, as stated in the order entered, was that to grant it would have required a reopening of the record and in any event the record was replete with evidence of the very facts respecting which official notice was requested.

The deception with respect to the guaranty is perfectly apparent. Respondents advertise that their bracelets are *fully guaranteed* or are *unconditionally guaranteed*. By setting forth these statements in a large, prominent manner on display cards and placards, they thereby seduce the purchaser into forming a decision to buy or to make a purchase only later to find out, by reading fine print on the back of a card within the package, that there is a charge incidental to the performance of the guaranty and that it is limited to one year.¹⁰

After three and one-half days of hearing (plus a prior morning devoted to a deposition) when the record contained all the evidence (and more) that has been recounted above, Commission counsel requested a postponement for the purpose of producing a witness to

⁹ As a matter of fact, I am skeptical that the concept of official notice extends to such a well-known commonplace fact that there are prejudices and preferences as between imported and domestic merchandise. A trier of the facts does not leave all the knowledge he has acquired during his entire lifetime outside the courtroom when he enters the courtroom to hear an ordinary commercial case, nor should the Commission be required to hear again and again days and days of testimony to establish facts which have been repeatedly established in prior hearings.

¹⁰ Respondents say that the charge is not made to dealers and wholesalers and a consumer could turn a bracelet in to one of them. However, there is no advertising or information conveyed to the consumer to apprise him of this.

testify as to the number of employees in the Virgin Islands plant of respondents' wholly-owned corporation. There was some evidence already in the record as to the number of employees.¹¹ Whether the respondents' corporation employs six or sometimes as many as 17 in the Virgin Islands is of no importance in view of the other evidence showing the fabrication of the essential components in Hong Kong.¹² Another reason given by Commission counsel for a postponement was his intention to compel Nathan Goodman's testimony. If a respondent could delay a Federal Trade Commission proceeding merely by refusing to testify subject only to an order directing him to testify (as distinguished from the criminal sanction above cited), Federal Trade Commission cases would be prolonged interminably. Commission counsel's motion for a continuance, accordingly, was denied, under (a) the hearing examiner's power and duty to "regulate the course of the hearing"¹³ and (b) in accordance with the pretrial order and the written and signed agreement of the parties hereto.

Respondents thereupon were directed to proceed with their defense, *also in accordance with the foregoing power, duty, order and agreement of the parties.* Respondents' attorney made a motion to dismiss, which was denied. He then demanded a first continuance of 30 days for the purpose of briefing his motion to dismiss, and, if it was then denied, a further continuance for the purpose of preparing and presenting respondents' defense. In support of the request he pleaded Federal Trade Commission past customs and that he had been surprised by all the testimony as to consumer preference, this latter in a case where it was apparent from the beginning that consumer preference was involved. The motion for a continuance was denied. Respondents were directed to proceed with their defense. This they deliberately refused to do. In a conciliatory gesture and almost pleading with the respondents, I offered to recess the hearing until the following morning so that they might reconsider their decision and proceed with their defense. This offer was rejected by respondents' attorney. He made it clear that it would be futile to recess until the following morning. The parties were then instructed to present requests to find and propose conclusions and order with the admonition that an initial decision would be issued following expiration of the times designated.

¹¹ Pretrial statement: "The plant employs as many as 17 such employees, never fewer than six, depending upon market requirements."

¹² If 17 employees worked a full forty-four week, fifty weeks in 1960, producing a total of 1,200,000 bracelets, a bracelet would have had to be manufactured every two minutes of the time by each employee, or 10 a minute by all.

¹³ Administrative Procedure Act, Section 7(b)(5).

Respondents' attorney has now submitted a 57-page document entitled "Motion for Summary Judgment or in the Alternative for Dismissal of the Complaint." The making of a motion for summary judgment after the closing of the hearing on the merits is clearly improper. It is obviously out of order after a motion to dismiss has been denied. It is additionally out of order because, even if such a motion could be made in a Federal Trade Commission case, the purpose of a motion for summary judgment is to avoid the expense and delay of a trial in a case where there is no triable issue.¹⁴ Whether this document be regarded as a motion for judgment upon the whole record or as a motion to dismiss is immaterial. As a motion to dismiss, it will not be considered and is hereby dismissed because it has been denied already and leave has not been granted for its renewal. Moreover, in view of what has been said above, I have no alternative but to adhere to that original decision. Similarly, regardless of what kind of motion for judgment it may be, for the same reasons, it must be and is denied on the merits. Any other motions made during the course of the hearing and inconsistent with the conclusions and order to be entered herein hereby likewise are denied.

The 57-page document, apart from its repeated references to the alleged defense of Virgin Islands origin, consists, to a large extent, of partial, incomplete, isolated and distorted quotations from the transcript. It is not worthy of further comment.

A complete hearing has been held herein. Respondents, as well as Commission counsel well knew prior to the commencement of the hearing that they would be required to try the entire case, both prosecution and defense, at one session.

The very strongly and frequently announced policy of the Federal Trade Commission is to this effect. The day of the peripatetic, casual and leap-frog hearing, interspersed with rests and revisits, is a thing of the past. A Federal Trade Commission complaint is not the signal for the beginning of a long career on one case nor an invitation to a Cook's tour of the United States.¹⁵

The pretrial order and the agreement which the parties signed provided:

¹⁴ The District Court in *Schneider v. O'Neal*, 145 F. Supp. 120, observed that such a motion during the trial is improper but treated it as a motion under Rule 12(h), F.R.C.P.

¹⁵ At one time respondents' attorney stated that it would be necessary also to hold sessions of the hearing in the Virgin Islands! And see dissenting opinion of Circuit Judge Friendly in *Exposition Press, Inc. v. Federal Trade Commission*, 2nd Cir. 295 F. 2d 869 [7 S. & D. 240], November 6, 1961; also see Address of Honorable Paul Rand Dixon, Chairman, Federal Trade Commission, before the National Industrial Council's Manufacturing Trade Associations Group, New York City, December 5, 1961.

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Initial Decision

8. The hearing herein shall be held in New York City, commencing on the 25th day of September, 1961, and the entire case on the part of the Commission and of the respondents shall be completed at the session thus commenced.

When I, as the Hearing Examiner in this case, exercised my authority and performed my duty (a) to regulate the course of the hearing and (b) to compel adherence by the parties to their agreement and to the pretrial order that the hearing herein shall consist of only one session, respondents were required, as was Commission counsel, to abide by that determination. Commission counsel, though uncheerfully, did abide by it. Respondents, on the other hand, consistent with their prior conduct in this case, refused to abide by it. They rejected also the opportunity to reconsider their refusal. They have had their day in court and they have made their decision. If it was a wrong decision, as observed in *Sinclair* above (279 U.S. 263), they must take the consequences. As a matter of fact, though it was a wrong decision, I suspect it was a calculated, intentional maneuver. Respondents had no defense. They knew it and, having no defense, they sought to make it appear that unfair advantage was being taken of them. They adopted the position that they were being foreclosed of the right to present a defense so that they might wave the banner of "due process" when what they wanted was not "due process" but *NO* process.

Upon all the foregoing, the findings of fact previously set forth and the entire record, the following are my

CONCLUSIONS

1. The aforesaid acts and practices of respondents 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.
2. The Federal Trade Commission has jurisdiction of this proceeding, of the respondents, and of the acts and practices of the respondents.
3. This proceeding is in the interest of the public.

In determining the form of the order to be entered herein, I have given careful consideration not only to the acts and practices of the respondents but also to the manner in which these acts are committed and to respondents' attitudes. I am of the opinion that the order, as proposed by Commission counsel, is inadequate to achieve effective

enforcement of the law and to provide the remedial measures necessary to make certain that the public will not be deceived. *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608 [4 S. & D. 476]. The following is my

ORDER

It is ordered, That respondent Baldwin Bracelet Corp., through its officers, directors, agents, representatives, and employees, and respondents Nathan Goodman and Anne Goodman, individually, and as officers of said corporation, directly or through any corporate device in connection with the offering for sale, sale, and distribution of metal expansion watch bands or bracelets or other similar products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from :

1. Representing that metal expansion watch bands or bracelets or similar products are guaranteed unless the nature, extent and conditions of the guaranty and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in conjunction with the guaranty representations.

2. Offering for sale or selling metal expansion watch bands or bracelets or similar products which are substantially of foreign origin or fabrication without affirmatively disclosing such foreign origin or fabrication thereon.

3. Offering for sale or selling metal expansion watch bands or bracelets or similar products which are substantially, or contain essential components, of Hong Kong origin or fabrication without affirmatively disclosing such Hong Kong origin or fabrication thereon.

4. Representing, directly or indirectly, or by implication, that respondents' watch bands or bracelets which consist of components or elements made or fabricated outside of the United States are made substantially or wholly of American steels and gold fills without disclosing in immediate conjunction therewith and with equal prominence the place or places in which the said watch bands or bracelets or essential components thereof are fabricated.

5. Offering for sale, selling or distributing watch bands or bracelets not wholly made in the United States in packages or containers in such a manner that the name of the countries or places of fabrication or possession of the United States, if such possession is the Virgin Islands, is concealed without clearly disclosing such countries, places of fabrication or possession in a conspicuous place on the package or container.

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6. Offering for sale, selling or distributing such products mounted or affixed to cards in such manner as to conceal the name of such countries or places of fabrication without disclosing on such cards the fact of fabrication in such countries or places of fabrication.

OPINION OF THE COMMISSION

By Dixon, *Commissioner*:

This is an appeal from a hearing examiner's initial decision holding that respondents, in the sale and distribution of metal expansion watch bands, have violated Section 5 of the Federal Trade Commission Act by (1) representing that the bands were fully or unconditionally guaranteed when, in fact, a charge was imposed on persons seeking to avail themselves of the guarantee, and (2) failing to disclose that the bands were made, in whole or in substantial part, in Hong Kong.

Respondents Nathan and Anne Goodman, husband and wife, do business through two corporations which they own and control: Baldwin Bracelet Corporation, a respondent herein, is incorporated in New York and has its principal place of business in New York City; Janaco Manufacturing Corporation, not a respondent herein, is incorporated in the Virgin Islands, and has its principal place of business in St. Thomas, Virgin Islands.

Respondent Baldwin, from its place of business in New York, sells to customers located in various other states and the District of Columbia. These customers include watch manufacturers and importers (who buy the bands for attachment to watches as "original equipment"), and watch and jewelry wholesalers. The wholesalers, in turn, sell the bands to retail jewelry outlets.

I

Part of the watch bands or bracelets sold by Baldwin move through such retail channels to consumers. These are prepackaged by Baldwin in preparation for retail sale by attaching individual bands to printed "cards," which, in turn, are to be attached to display placards or wire racks similarly prepared by respondents. The placards or racks on which the "carded" bracelets are mounted carry the words "unconditionally guaranteed" or "fully guaranteed." No words of qualification or limitation appear on those placards or racks.

In fact, however, consumers attempting to avail themselves of the guarantee must pay the sum of 35¢ (prior to 1960 the amount was 25¢) to respondents, and the guarantee period is limited to one year. These

limitations, although they do not appear on the display placards or racks, are set out on the reverse side of the cards to which the individual bracelets are attached. They are not visible to the prospective purchaser unless he removes the "carded" bracelet from the placard or rack and examines the back side of the card.

It is well settled that the word "guarantee," unless accompanied by clear and conspicuous words of limitation, negates the idea of any further consideration on the part of the purchaser in his effort to obtain satisfactory performance from the "guaranteed" article, even if the additional sum demanded is only a small handling charge. *Parker Pen Co. v. Federal Trade Commission*, 159 F. 2d 509, 511, 512 [4 S. & D. 597] (7th Cir. 1946); *Clinton Watch Co. v. Federal Trade Commission*, 291 F. 2d 838, 840 (7th Cir. 1961), *cert. denied*, 368 U.S. 952 [7 S. & D. 184].

Respondents do not deny the fact that they prepared and distributed the placards or racks bearing the legends in question, nor do they deny that performance under the "unconditional" guarantee is limited to a one year time period and conditioned upon the payment of a sum of money.¹ In defense they advance two arguments: that the qualifying statements printed on the back of the cards constitute a sufficient disclosure to prevent deception of the consuming public, and that, in any event, the volume of sales from placards or racks bearing the guarantee legends has been *de minimis*.

In support of the first argument, respondents point to the record in this case where the hearing examiner, upon first seeing the bracelet-bearing cards, immediately detected the limiting words on the back. The short answer to this is that the law is designed to "protect the trusting as well as the suspicious." *Federal Trade Commission v. Standard Education Society*, 302 U.S. 112, 116 [2 S.&D. 429, 432] (1937). In that case, the Court of Appeals had thought the alleged deception involved was so transparent that no person, no matter how "fatuous," could have actually been deceived by it. The Supreme Court said: "The fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced."

As to respondents' *de minimis* argument, Goodman himself testified that Baldwin buys from its sister corporation in the Virgin Islands and imports to the United States approximately 1,200,000 bands per year, and that about 20% of these are sold on "cards" as described

¹ Respondents say that the consumer could avoid the payment by returning the bracelet to the dealer from whom he bought it. But this fact, if such it be, is not conveyed to the consumer.

above. Respondents' counsel stipulated these facts.² It is now argued, however, that "less than 3000" display "racks" were used, and that "only about 5000 (bracelets) were ever sold attached to the display racks upon which the examiner relied."³ The record contains three different display "placards" admittedly used by respondents, each of which bears the legend "unconditionally guaranteed." Each of these has "slots" into which Baldwin's "carded" bracelets are inserted for display to consumers: Goodman said he had used about 50 of the 6-bracelet placards; about 75 of the 12-bracelet placards; and about 100 of the 14-bracelet placards.⁴

The other display device used by respondents is a wire rack⁵ onto which is mounted (a) at least a dozen bracelets, and (b) a cardboard placard bearing the "fully guaranteed" legend.⁶ Goodman stated that he had bought about 200 of these wire racks.⁷ None of this display material is supplied to Baldwin's customers free of charge; it is all sold for a price.⁸ Since it is obvious that these displays are designed to be used by the retailer again and again, the argument that less than 3000 display racks were used, even if that term is meant to include both the placards and the racks, in no way rebuts the evidence that all Baldwin bracelets sold through retail channels are exhibited to the consumer on either the cardboard placards or the wire racks, both of which carry the misrepresentation of the guarantee. We find no factual support in the record for the contention that only 5000 bracelets were sold from those displays; on the contrary, we think the hearing examiner correctly found that 20% of Baldwin's 1,200,000 bracelets purchased from Janaco were sold in that manner.⁹

This is not *de minimis*. In any event, however, we are not prepared to say that deception is all right if practiced in moderation. This is not a case where a practice has been abandoned; quite the contrary, respondents are here asserting their right to continue the deception. And the very vigor of their insistence illustrates clearly that they do not themselves consider it economically *de minimis*.

² Tr. 20, 21.

³ Respondents' Brief, p. 4.

⁴ CX 4, 2a, and 3.

⁵ CX 6, figure 103; CX 7, figure 106.

⁶ CX 5.

⁷ Tr. 91.

⁸ CX 1 (deposition of Nathan Goodman), p. 49.

⁹ Goodman testified:

"Q. When they were sold, the 80 percent that go into the stream of commerce, are they sold affixed to something similar to Commission's Exhibit 5?"

"A. They are never sold on such or affixed to such a card." Tr. 84.

Commission's Exhibit 5, the cardboard mounting to be set on the wire rack display, bears the legend "fully guaranteed."

II

The hearing examiner also concluded that respondents had violated Section 5 by selling their watch bands in the United States without disclosing that they are wholly or substantially of Hong Kong origin.

It has been proven in numerous cases before the Commission that many American consumers (1) generally prefer American-made products over those imported from foreign countries, and (2) believe they are getting American-made goods unless informed to the contrary. These two facts have been proved so many times, and by such an overwhelming weight of direct consumer testimony, that the Commission now takes official notice of them, subject, of course, to a respondent's right to show the contrary in the particular case. *Manco Watch Strap Co., Inc.*, Dkt. 7785 [60 F.T.C. 495, 511] Opinion of the Commission issued March 13, 1962. As we said in that case: "This is an area of administration that has evolved to a point at which the accumulated experience and knowledge of the Commission may properly be invoked in exercising its fact-finding function."

In the instant case, the hearings pre-dated our *Manco* decision, so counsel supporting the complaint proved once again what has been proved so often before. Respondents claim they were "surprised" by the method of proof employed in this case and did not have a chance to rebut it. Instead of calling consumers as witnesses, counsel supporting the complaint called manufacturers of similar watch bands who testified that their customers, including watch manufacturers, and jewelry wholesalers and retailers, preferred American-made bands, and had a positive prejudice against those made in Hong Kong and Japan. In short, these businessmen testified that it was hard to sell watch bands bearing a mark indicating Hong Kong manufacture. There is no difficulty in selling such bracelets, however, if the Hong Kong marking is left off.

We see no merit in respondents' objection to this method of proof, or in their claim of surprise. These sellers, as prudent businessmen, were simply mirroring the preferences and prejudices of their customers, who in turn had reflected those of the ultimate consumers. As to the matter of surprise, respondents knew that consumer preferences were at issue in the case. The method of proof chosen by counsel supporting the complaint did not restrict them to that approach in presenting their defense; had they been prepared to rebut direct consumer testimony, they would have necessarily been prepared to rebut the manufacturer testimony actually produced. In

fact, however, respondents themselves recognize the preferences in question by advertising that their own bracelets are made of "100% top quality American materials."

Since respondents made no effort to rebut the facts of consumer preference for domestic bracelets, and consumer assumption of domestic manufacture in the absence of a mark affirmatively disclosing foreign origin, the only remaining factual question was whether or not respondents' bracelets were in fact manufactured in Hong Kong as charged in the complaint.

The establishment of the facts on this point should have been a simple matter of putting respondents on the stand and asking them the pertinent questions. But they refused to answer.¹⁰ Counsel supporting the complaint was therefore driven to a somewhat indirect method of proving what part of the manufacturing of the bracelets was done in Hong Kong. In a statement¹¹ submitted pursuant to a pre-trial order, respondents had described their operation as follows: (1) the raw material from which the bracelets are made is purchased in the United States by Janaco, the Virgin Islands corporation; (2) the raw material (stainless steel strip and gold filled sheeting) is shipped to Yuen Sang Hardware Company in Hong Kong; (3) Yuen Sang "processes" that raw material into what respondents call "unfinished bracelet parts"; (4) those "parts" are shipped from Hong Kong to the Virgin Islands, where Janaco allegedly "manufactures" them into bracelets; and (5) the bracelets are shipped to Baldwin in New York for sale and distribution throughout the United States.

Respondents conceded that "there is no argument that some amount in cost of less than 50 percent of the cost of the final product is involved in processing in Hong Kong,"¹² but refused to answer questions as to the details involved in either the Hong Kong or the Virgin Islands' work. But in the pre-trial statement mentioned above, they had disclosed¹³ that the "manufacturing" done in the Virgin Islands consisted of *only* two operations in the case of one type of bracelet, and three operations in the case of another type: (1) "fixing" of "two tube ends" to the bracelet; (2) "polishing" the finished bracelet; and, as to the second type of bracelet, (3) putting gold filled "top shells" on the skeleton. All other work involved in the making of the finished bracelet was thus admittedly performed in Hong Kong.¹⁴

¹⁰ See testimony of respondent Nathan Goodman at Tr. 31-62, 442-446.

¹¹ Statement Pursuant Pre Trial Memorandum and Order, CX 40.

¹² Tr. 29; see also Tr. 23.

¹³ Statement Pursuant Pre Trial Memorandum and Order, CX 40.

¹⁴ Respondents described their Virgin Islands "manufacturing" of their stainless steel bracelets (75% of the Janaco-to-Baldwin sales) as follows:

"In the manufacturing process, the 'tube ends' are placed into a precision dye, manually adjusted to accommodate an end part of the bracelet skeleton. The dye is activated by a

Five expert witnesses—manufacturers of watch bands with many years of experience in the trade—testified that these operations were minor matters amounting to 5% to 25% of the total work involved in making a completed “gold filled” bracelet (which constitute 25% of the bracelets in issue), and only 3% to 10% of the total effort involved in making the stainless steel bracelets (which constitute 75% of the bracelets in issue). None of the “parts” are made in the Virgin Islands—they all come from Hong Kong in a completed form. In the case of the stainless steel bracelets, three “parts” are received from Hong Kong: the bracelet itself (called a “center section”),¹⁵ and two “tube ends.”¹⁶ These two tube ends, which are less than an inch long and smaller in diameter than a pencil, are simply fastened to the ends of the bracelet. In the case of the “gold filled” bracelets, all of the “parts” are similarly received from Hong Kong. The assembly operation in the Virgin Islands is the same as that for the stainless steel bracelets, except that, in addition to the tube ends, the gold filled “top shells” (also received from Hong Kong) are attached. The mere attachment of those pieces and the polishing of the finished bracelets in the Virgin Islands is of no more significance in the making of a completed watch bracelet than the running of a string through imitation pearls, and the joining of the ends of the string together with a clasp, in the “manufacture” of an imitation pearl necklace. *L. Heller & Son, Inc. v. Federal Trade Commission*, 191 F. 2d 954 [5 S.&D. 327] (7th Cir. 1951), affirming 47 F.T.C. 34. Similarly, in *Segal v. Federal Trade Commission*, 142 F. 2d 255 [4 S.&D. 150] (2d Cir. 1944), it was held that imported spectacle lenses, although assembled into spectacles by the addition of domestic frames and the use of domestic labor whereby “petitioner . . . cuts, edges, bevels, bores and fits them (the imported lenses) into their frames,” 142 F. 2d, at 255, nevertheless retained their identity in the spectacles. As the Court said there:

machine operator, some using foot pressure type machinery, others using air pressure operated machines.

“In this manner the two tube ends are fixed to the skeleton

“In a line of production, the machine operation passes the bracelet to a ‘polisher’” (Statement Pursuant Pre Trial Memorandum and Order CX 40, pp. 4, 5.)

The second type of bracelet—“gold filled”—was described as being “manufactured” in the Virgin Islands in exactly the same manner as the stainless steel bracelets, except for the additional step of putting on the gold filled “top shells.” *Id.*, p. 2.

The fact that this statement describes *all* operations performed by respondents in the Virgin Islands is established by the terms of the pre-trial order pursuant to which the statement was filed. See Memorandum and Order Following Pretrial Conference, June 23, 1961, par. 1b.

¹⁵ CX 14.

¹⁶ CX 15A and 15B. CX 12 has the “tube ends” attached.

It is of course true, as the petitioner argues, that there comes a point where marking becomes impossible; the identity of a foreign made ingredient may be so lost in manufacture that any marking would be positively misleading, unless indeed it was so qualified as to be ineffective. That is not the case with lenses used in spectacles; the frame is merely the carrier of the lense, which is the only element of importance, and which does not lose its identity either in appearance or in function. 142 F. 2d, at 255-256.

Here, respondents' bracelets began as raw steel purchased in the United States. That steel was cut into some 200 odd pieces of metal in Hong Kong for manufacture into bracelet parts, and assembled into the bracelet skeleton. Expert testimony established that the essential element of an expansion watch band is its "expansibility," a quality which the bands had when they left Hong Kong. The attachment of the "tube ends" and the polishing in the Virgin Islands, on the other hand, was a minor assembly operation that did not affect the functional character of the bands. We have no doubt that respondents' bands were substantially manufactured in Hong Kong.

Nor are we persuaded that the bracelets themselves lose their identity when, after respondent Baldwin sells them to "original equipment" assemblers, they are attached to watches. On this point respondents argue that, even if we find its watch bands were manufactured in Hong Kong, we should require disclosure of that fact only on those bands that reach the consumer as separate items, unattached to watches. It is contended that the bands it sells to watch manufacturers and assemblers for attachment to watches should not be marked to disclose their Hong Kong origin.

The record discloses that, of respondent Baldwin's annual sales of approximately \$700,000, about 20% represent sales of bands imported *directly* from Hong Kong. These, all of which are sold to watch manufacturers and assemblers for use as "original equipment," are properly marked "Made in Hong Kong." The other 80% of Baldwin's sales are of bracelets imported indirectly (through the Virgin Islands) from Hong Kong. Of this 80% (none of which are marked to show their Hong Kong origin), only about 20% are sold to consumers as *bands*; the remaining 80% are sold in "bulk" to watch manufacturers and assemblers, and thus reach the consumer attached to watches.

As far as the record shows, these watch assemblers and manufacturers may well be aware of the Hong Kong origin of the bands, and thus may not be deceived by the absence of affirmative disclosure. But the watch-buying public is entitled to the same truthful disclosures as the band-buying public. When attached to a watch, the band, of course, becomes a "part" of the package, consisting of the

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watch and band; but it is a significant part and completely retains its identity as a useful and ornamental object. It is plainly not just an "ingredient" such as a balance wheel or other component that loses its identity in the "manufacture" of the watch.

As the Court said in the *Segal* case, *supra*, there is doubtless "a point where marking becomes impossible; the identity of a foreign made ingredient may be so lost in manufacture that any marking would be positively misleading, unless indeed it was so qualified as to be ineffective." 142 F. 2d, at 255. But certainly no such point is reached when a watch band is attached to a watch. A quality band, one that is attractive, and, as the evidence herein shows, one that is unmarked as to foreign origin, is plainly a substantial selling feature of a watch.

The instant record amply demonstrates that buyers of watches—as well as buyers of watch bands—react to foreign origin markings on the bands. Several manufacturers of watch bands testified that all of their customers, including watch manufacturers and assemblers, had a marked preference for American made bands and a corresponding prejudice against bands made in Hong Kong or Japan, but that this preference-prejudice was not completely unlimited in degree. "The preference is that they prefer to have American-made watch bands, the price being close. They will not be willing to pay great premium prices for American-made products, but if the price is close they have a definite preference for American-made watch bands, quality being equal, of course They are willing to pay somewhat more, but not a great premium because of the American-made product, again assuming that quality is equal."¹⁷ Several of the witnesses testified that they had lost business to competitors who imported bands from Hong Kong and, without marking them as to origin, sold them to watch manufacturers and assemblers for use as "original equipment." If buyers of watches had no interest in the origin of the bands, it seems extremely unlikely that watch manufacturers would be willing to pay a higher price for the same band in order to keep off the foreign origin mark.

We think it is clear that the consuming public is no less interested in the foreign origin of a watch band attached to a watch than it is in that feature of a band that it buys as a separate item. It is wholly immaterial that the foreign band may be just as good, or even better,

¹⁷ Tr. 216. One competitor-witness testified that respondent Baldwin, at one time, had sold a watch band made in Hong Kong in the United States in both a marked and unmarked state. The band marked "Made in Hong Kong" sold for a lower price. This was because "most watch companies preferred to pay the higher price so that it wouldn't have the stamp 'Hong Kong.'" Tr. 220.

than the domestic product. As the Supreme Court has said: "In such matters, the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance."¹⁸

III

The only defense put forward by respondents is their argument of "collateral estoppel." This matter is so closely related to their charge of bias and prejudice on the part of the hearing examiner that we deem it necessary to discuss them together.

The "collateral estoppel" argument boils down to this: Under Section 301(a) of the Tariff Act,¹⁹ goods imported from insular possessions such as the Virgin Islands are admitted free of duty into the United States if they "do not contain foreign materials to the *value* of more than 50 per centum of their total value"; that under Section 304 of the Tariff Act,²⁰ the Secretary of the Treasury is authorized to exempt goods produced in such possessions from the foreign origin marking requirements of that section; that respondents' bracelets have been permitted to enter the United States from the Virgin Islands free of duty and without markings as to foreign origin; that the Treasury Department, by reason of those statutory provisions, has "primary jurisdiction" to determine the question of where respondents' bracelets are "manufactured"; that this "primary jurisdiction" was exercised when the Treasury Department permitted respondents' bracelets to come into the United States free of duty and unmarked as to foreign origin; that in taking this action the Treasury Department necessarily made an administrative "finding" that respondents' bracelets met the statutory test, i.e., contained foreign materials having a *value* of less than 50% of the total value of the bracelets; and that these so-called "findings" of the Treasury Department have conclusively determined that respondents' bracelets were "manufactured" in the Virgin Islands, rather than in Hong Kong, as charged in the complaint and as found by the hearing examiner. Respondents conclude

¹⁸ *Federal Trade Commission v. Algoma Lumber Co.*, 291 U.S. 67, 78 [2 S.&D. 247, 253] (1934).

¹⁹ "There shall be levied, collected, and paid upon all articles coming into the United States from any of its insular possessions, except Puerto Rico, the rates of duty which are required to be levied, collected and paid upon like articles imported from foreign countries; except that all articles the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession of the United States, or of both, *which do not contain foreign materials to the value of more than 50 per centum of their total value . . . shall be admitted free of duty* upon compliance with such regulations as to proof of origin as may be prescribed by the Secretary of the Treasury." (Emphasis added.) 19 U.S.C. 1301(a).

²⁰ 19 U.S.C. 1304.

that the Federal Trade Commission is powerless to inquire into the actual, physical fact of how much "manufacturing" was done in the Virgin Islands, and how much was done in Hong Kong.²¹

This very question was squarely decided, and adversely to respondents, in *L. Heller & Son, Inc. v. Federal Trade Commission*, 191 F. 2d 954 [5 S. & D. 327] (7th Cir. 1951). The respondents there, as do the respondents here, contended that the Federal Trade Commission Act's general prohibition of deceptive practices must yield to the allegedly specific marking requirements of the Tariff Act. The Court, noting that repeals by implication are not favored, said:

The Tariff Act is a limited statute on an entirely different subject—the conditions under which foreign goods shall enter the United States. . . . In our opinion Congress, at the time it was considering the 1938 amendment to the Tariff Act, was concerned solely with the extent to which the Treasury Department, incidentally to its collection of customs duties, should regulate the labeling of imported goods. Our examination of the amended Tariff Act discloses no language expressing an intention on the part of Congress to repeal Sec. 5 of the Federal Trade Commission Act, or to diminish the authority or the power of the Commission to prevent deceptive trade practices, and since there exists no repugnancy between the two Acts, we are impelled to the conclusion that the Commission had jurisdiction and authority to prohibit the practices herein involved.²²

Respondents have maintained throughout this proceeding that the duty free entry and the exemption from marking, provided for by the cited provisions of the Tariff Act, were conferred for the purpose of encouraging the development of industry and growth in the insular possessions. But we do not conclude from this that the Congress or the Treasury Department have thereby licensed or placed their imprimatur upon growth by deception.

Thus any "findings" allegedly made by the Treasury Department as to the place of manufacture of respondents' bracelets are wholly irrelevant to the issues in this proceeding. Whereas the Treasury officials who admitted respondents' bracelets into the United States free of duty were concerned solely with the "value" (i.e., cost) of the foreign materials, as compared with the "value" of the domestic materials contained in them, the Federal Trade Commission is concerned with any deception of the American public as to where they were made, i.e., where the manufacturing *work* was done. In this case, "value" or cost figures would completely distort the picture of where the bulk of the labor was performed because of the great disparity between the cost

²¹ Respondents argue also that marking their goods as required by the hearing examiner's order would violate the Tariff Act and subject them to penalties. Respondents' Brief, p. 21. The Commission's staff has been assured by the Bureau of Customs that this is not a fact.

²² 191 F. 2d, at 957.

of labor in Hong Kong and in the Virgin Islands. Whereas workers in this industry in Hong Kong earn between 35¢ and \$1.00 per day, similar workers in the Virgin Islands earn about 75% as much as United States' workers (over \$12 per day). Thus, even if it is true that only 49% of the total cost of making the bracelets is incurred in Hong Kong, this would be quite consistent with the expert testimony received herein that the work done on these bracelets in the Virgin Islands amounts to no more than 3% to 10% of the total manufacturing labor involved in making one type (the bulk of the bracelets), and no more than 5% to 25% of that involved in making the other type.

Respondents' claim of bias and prejudice on the part of the hearing examiner stems from his insistence upon going into the actual, physical facts of respondents' operation, rather than accepting, as the only proper evidence, the revealed truth respondents believed the Treasury Department had found. Whereas they complain of "the examiner's predetermination of their guilt and announced displeasure with the idea of any defense at all,"²³ and of his failure to accord them a fair hearing, the record is plain that it was not a fair hearing respondents wanted, but no hearing at all.

In his opening statement, counsel for respondents stated that the bracelets in question were "products or manufactures of the Virgin Islands, a possession of the United States; that they are such by virtue of a statute,"²⁴ and that "a readjudication of the questions involved in the Treasury determination would in effect be a review of the actions of another government agency."²⁵ Accordingly, respondent Nathan Goodman, coowner (with his wife) and president of both the New York corporation (respondent Baldwin) and the Virgin Islands company that allegedly "manufactures" the bracelets (nonrespondent Janaco), refused to answer all questions directed to the place—Hong Kong or the Virgin Islands—where the actual, physical labor of making the bracelets was done. His counsel suggested that if the hearing examiner wanted to know what was done to the bracelets in Hong Kong, "We will have to go to Hong Kong."²⁶ Goodman persisted in his refusal to answer all questions going to that vital issue in the case, although directly ordered to do so by the hearing examiner.²⁷ Illustrative of the type of question Goodman refused to answer is this one by the hearing examiner:

²³ Respondents' Brief, p. (iii), Exception 12.

²⁴ Tr. 4.

²⁵ Tr. 5.

²⁶ Tr. 24.

²⁷ See Tr. 31-62; 442-446.

Hearing Examiner Tocker: Does anything happen in Hong Kong upon or with respect to anything contained either in Commission's Exhibit 8 or 9 (Baldwin bracelets) or in both?

Mr. Noble: Objection.

Hearing Examiner Tocker: Objection overruled.

Mr. Noble: Don't answer it.²⁸

Goodman explained his refusal to answer the question as follows:

Well, I feel that I shouldn't answer that question because I have—this thing has already been decided by the Treasury Department through the Bureau of Customs and a great deal of the taxpayer's money has been spent on foreign investigations and domestic investigations et cetera.²⁹

When requested to give facts, Goodman insisted upon telling the examiner what the Treasury Department had done.³⁰ And at one point his counsel pointed out that, since Goodman was not an "expert" on where goods are manufactured, his testimony as to where the goods were actually made could not be used to rebut the Treasury's "adjudication."³¹ Then, having refused to give the examiner the facts, Goodman attempted to give his "expert opinion" that the bracelets, *since they bore no mark as to foreign origin*, were performed made in the U.S.A!

It was in the face of such sophistry as this that the hearing examiner was moved to comment: "We ought to stop this quibbling, Mr. Noble. We ought to stop this foolishness and get to the merits of the case."³²

Respondents' attitude throughout this proceeding is summed up in their counsel's statement to the hearing examiner that: "Respondents never had a responsibility to prove the government's case."³³ But Goodman, in common with all other citizens of the United States, owed a duty to appear as a witness when properly summoned, and to answer all proper questions. *Interstate Commerce Commission v. Brimson*, 154 U.S. 447, 476 (1894). Having taken so lightly this duty he owed to the United States, his cry of unfairness in the conduct of the hearing has a hollow ring.

Respondents contend that the hearing examiner erred in striking Goodman's "expert opinion" testimony that his bracelets, because they had no mark on them to indicate foreign manufacture, were therefore

²⁸ Tr. 31, 32.

²⁹ Tr. 32.

³⁰ At one point, asked about the shipment of raw materials to Hong Kong, Goodman replied: "Baldwin has received certain considerations from Customs in regard to . . ." Tr. 26. Later, asked by the hearing examiner where the last work had been done on a Baldwin bracelet, replied: "Well, under a ruling by the Secretary of the Treasury . . ." Tr. 51.

³¹ ". . . (A) presumption arises from this fact (duty-free entry) which cannot be rebutted by the respondent's own testimony, who was not the expert who made the adjudication the Treasury relied upon." Tr. 272.

³² Tr. 77.

³³ Tr. 255.

made in the U.S.A.³⁴ It is elementary that the offering of weak evidence raises the inference that the better evidence in the possession of that party would have been adverse to him.³⁵ The same principle is applicable to the documents offered by respondents and rejected by the hearing examiner, which they now contend "would have established the principal defense."³⁶ These were "certificate of origin" forms of the Treasury Department, Bureau of Customs, containing information furnished by respondents' agent in the Virgin Islands (similar documents, although not the same ones, appear at pages 35—37 of respondents' brief). Beneath the data supplied by, and the signature of, respondents' Virgin Islands agent, there appears the signature of a Customs' official who certifies that "I have investigated the foregoing statements and am satisfied that they are correct to the best of my knowledge and belief." The documents contain figures purporting to correctly state the "value" of the "foreign materials" contained in the particular shipment of bracelets represented by each such "certificate of origin."

Since we agree with the hearing examiner that the documents are wholly irrelevant to the issues in this case,³⁷ there is no necessity for us to pass on the further question of the accuracy of the information contained in the documents.³⁸ As heretofore noted, even assuming, *arguendo*, the truth of the claim that the Treasury Department has found respondents' bracelets to contain foreign materials of less than 50% of their total "value," we would still be constrained to find that between 75% and 97% of the work involved in making the bracelets was performed in Hong Kong. Hence, even if the documents had been received by the hearing examiner, and even if we accepted the truth of every statement contained in them, they would not establish respondents' alleged defense.

³⁴ "He (the hearing examiner) granted motion after motion of counsel supporting the complaint to strike answers that, though relevant, material and responsive within the scope of cross-examination, would prove the defense if permitted to stand." Respondents' Brief, pp. 6, 7. The citations to the record in support of this claim, Tr. 67-68, and 75, show only the rejection of this "expert opinion" testimony by Goodman.

³⁵ "The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse. . . . Silence then becomes evidence of the most convincing character. . . ." *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 226 (1939).

³⁶ Respondents' Brief, p. 8. See Tr. 447-461 and 481-487.

³⁷ Section 4.12(b) of the Commission's Rules of Practice, Procedures and Organization provides: "Relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, and unduly repetitious evidence shall be excluded. . . ."

³⁸ The hearing examiner found the documents unreliable in that the figures appearing on their face conflicted with statements respondents had already made to the Commission in the instant case. Thus, they had said that the average *domestic* costs in a dozen bracelets were \$2.09; that the average *foreign* (Hong Kong) costs were only \$1.25; and that their bracelets therefore met the Tariff Act's test for duty free entry. CX 42-B, 42-C. However, each of the rejected documents showed, on their face, foreign costs that exceeded the \$2.09 given as average domestic costs.

Respondents contend further that the hearing examiner erred in denying, at the close of the affirmative case of counsel supporting the complaint, their motions to dismiss and for a 30-day continuance in order to have "an opportunity to argue and prepare, after reading the transcript, a motion to dismiss," and to call witnesses who were not "available in New York this week."^{38a} There was no error in these rulings. More than three months prior to the hearing in New York respondents had agreed to a pre-trial order directing that: "The hearing herein shall be held in New York City, commencing the 25th day of September, 1961, and the *entire case on the part of the Commission and of the respondents shall be completed at the session thus commenced.*"³⁹ They thus had ample opportunity to bring in any witnesses they desired.

As we have already noted, there is no merit in the argument that they were "surprised" by the calling of competing watch band manufacturers to prove the fact of consumer preference for domestic made bands. They had plenty of time, prior to the hearing, to arrange for the testimony of either consumer witnesses or other watch band manufacturers. As to the other witnesses respondents claimed they wanted to call in further hearings, including witnesses in San Juan, Puerto Rico, and St. Thomas, Virgin Islands, the record indicates that the only thing respondents proposed to prove by those witnesses was the authenticity of the rejected documents, discussed above, and related activities of the Treasury Department.⁴⁰

The record is plain that respondents had no factual defense, and that the holding of further hearings in Chicago, on the West Coast, and in the Virgin Islands, as suggested by respondents, would accomplish nothing but delay. The hearing examiner correctly applied our policy that, "to the extent practicable and consistent with requirements of law, such proceedings shall be conducted expeditiously."⁴¹ At the close of the affirmative case herein the hearing examiner offered to adjourn until the following morning and thus give respondents an extra half day to bring in their witnesses. To this offer respondents' counsel replied: "I never second-guess myself. Continuing it to tomorrow morning is not at my request. I won't be here."⁴²

^{38a} Tr. 433, 480-481, 485-486.

³⁹ Memorandum and Order Following Pretrial Conference, June 23, 1961 (Emphasis added.)

⁴⁰ Tr. 487. It was also intimated that respondents would call the "manager" of their Virgin Islands plant. But since its owner, respondent Nathan Goodman, has refused to answer any factual questions concerning its operations, we see no reason to believe his employee would be any more co-operative. Further, respondents offer no satisfactory reason as to why this witness was not produced at the New York hearing.

⁴¹ Section 4.1, Rules of Practice, Procedures and Organization.

⁴² Tr. 488-489.

Because of the gravity of the charge of bias and prejudice on the part of the hearing examiner, we have carefully searched the record in this case. We find that such impatience as he may have expressed with respondents' contumacious conduct and dilatory tactics was only natural and reasonable in the difficult situation thus created by respondents and their counsel. The record amply demonstrates that the hearing was conducted fairly and without any prejudice whatsoever to respondents' legal rights. While respondents argue that the hearing examiner's rulings were all one way, the record is replete with instances in which he sustained respondents' objections⁴³ and overruled objections by counsel supporting the complaint.⁴⁴ In fact, there were several instances in which the examiner expressed positive solicitude for the rights of respondents.⁴⁵ Most importantly, however, the hearing examiner made it plain from the beginning to the end of the hearing that he was only interested in getting at the facts;⁴⁶ that he had a completely open mind⁴⁷ and was quite willing to give respondents' defense of "collateral estoppel" every consideration it was entitled to as a matter of law;⁴⁸ but that he would not permit them to use it to block all inquiry into the facts⁴⁹ or to seize control of the hearing.⁵⁰

⁴³ Tr. 100, 111, 113, 115, 125-126, 145, 290, 319-320, 385, 468.

⁴⁴ Tr. 134, 159, 299, 325, 327, 426.

⁴⁵ "In that respect, though, it may be advisable for you to object within the details of the questioning." Tr. 104. At one point, when respondent Goodman answered a question although his counsel had objected to it, the hearing examiner said: "It would be the better part of wisdom to at least wait until an objection is ruled on before you answer, Mr. Goodman." Tr. 439.

⁴⁶ "I think what we are interested in in this case and in every case before the Commission, and in all government cases, is to arrive at the truth and at the facts." Tr. 320-321.

⁴⁷ "Supposing I try not to make up my mind with respect to that or what you are going to do until I see what you have with respect to the proceedings about which you talk. At the present time, I am a little in the dark, so I can't talk about it." Tr. 7.

⁴⁸ "But this is a matter of defense. You will have ample opportunity to bring that out. At this time I will allow the question. I am not suggesting that you did not follow the right procedure, Mr. Noble, but if we had had a preliminary motion and possibly a preliminary hearing as to what transpired in Treasury, and I could have ruled that that disposes of the case, that would be one thing. Or if we had had a preliminary proceeding and I had ruled that it didn't, that would be another thing. But at the present time, whatever happened in Treasury is a matter of defense for you to bring out later. So I overrule the objection at this time." Tr. 31.

"That is a question of law which I am willing to consider and I will consider it, and you will have an opportunity within the time which I shall provide to brief it fully and establish it as a defense. If it is a defense, you can be just as sure as you are standing there that this portion of the case will be dismissed." Tr. 486-487.

⁴⁹ "The only evidence in this case that is necessary to defeat the commission's prima facie case is evidence that the exhibits which are in evidence were not manufactured in Hong Kong. It is a very simple and neat little issue. It can be testified to and proved probably in ten minutes." Tr. 485.

⁵⁰ "Your client refused to answer very material questions on the manufacture of a bracelet yesterday. He was given his opportunity. He rejected it. I am sure and I trust that appropriate proceedings will be taken to compel his answers. In the meantime, we are going to get on with this case and you are not going to dictate the manner in which the case is tried." Tr. 197-198.

IV

As to the scope of the cease and desist order entered by the hearing examiner, we have already discussed and found wanting respondents' argument that the order should be modified to apply only to the bands sold to consumers as separate units, and thus to exempt from the requirement of disclosure of Hong Kong origin the bands that are sold to watch assemblers or manufacturers for attachment to watches as "original equipment" and ultimate sale to consumers as part of the watch-and-band combination. As we pointed out in that discussion, the fact that the watch assemblers or manufacturers are willing to pay a premium or higher price for a band that bears no mark as to foreign origin, even though it is the same in quality or even the very same band as the one bearing such a foreign origin mark, amply demonstrates that the American consumer has an interest in the origin of the band he finds on his new watch.

Other portions of the hearing examiner's order, although not separately argued by respondents, require modification. With regard to those provisions requiring affirmative disclosure of foreign origin on the bracelets themselves and on the packages, containers, or displays, we deem it necessary to make certain revisions that will insure both permanency and conspicuousness in the required disclosures. We do not agree, however, that respondents should be required to affirmatively state the fact that some of the work of assembling the bracelets is performed in the Virgin Islands. The amount of work done there is, by any standard, an insubstantial part of the total effort involved in making a finished bracelet. Hence, statements on the bands relating to the Virgin Islands assembly are unnecessary for the protection of the consuming public and might, as noted in the *Segal* case, *supra*, "be positively misleading, unless indeed it was so qualified as to be ineffective."

The hearing examiner's order would also require respondents to cease representing in any manner, including representations in advertisements, that their bracelets are made of American raw materials without disclosing, in conjunction therewith, the fact of Hong Kong manufacture or fabrication. While the record supports the finding of fact on this point (Finding No. 9, p. 1350, Initial Decision), the complaint does not charge this kind of affirmative misrepresentation. We are constrained to hold, therefore, that this provision in the order is outside the scope of the complaint.

Respondents' exceptions are denied. Their motions for leave to file a reply brief after expiration of time, and for further oral argument,

are also denied. The initial decision and order as supplemented and modified to conform to the views expressed in this opinion will be adopted as the decision of the Commission.

FINAL ORDER

The Commission on October 2, 1962, having issued and thereafter served on the respondents its order affording the respondents an opportunity to file objections to a final order proposed by the Commission in modification of the order to cease and desist contained in the hearing examiner's initial decision filed December 13, 1961, and having thereafter extended to November 13, 1962, the date by which such objections may be filed; and

The respondents not having filed any objections to said proposed order within the time provided; and

The Commission having determined that its proposed order should be adopted as the final order of the Commission:

It is ordered, That the order to cease and desist contained in the hearing examiner's initial decision be, and it hereby is, modified to read as follows:

It is ordered, That respondent Baldwin Bracelet Corp., its officers, directors, agents, representatives, and employees, and respondents Nathan Goodman and Anne Goodman, individually, and as officers of said corporation, directly or through any corporate device, in connection with the offering for sale, sale, and distribution of metal expansion watch bands or bracelets or other similar products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that metal expansion watch bands or bracelets or similar products are guaranteed unless the nature, extent and conditions of the guaranty and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in conjunction with the guaranty representations.

2. Offering for sale or selling metal expansion watch bands or bracelets or similar products which are substantially, or which contain a substantial part or parts, of foreign origin or fabrication without affirmatively disclosing the country or place of foreign origin or fabrication thereof on the products themselves, by marking or stamping on an exposed surface, or on a label or tag affixed thereto, of such degree of permanency as to remain thereon until consummation of consumer sale of the products, and of such conspicuousness as to be likely observed and read

by purchasers and prospective purchasers making casual inspection of the products.

3. Offering for sale, selling, or distributing any such product packaged, or mounted in a container, or on a display card, without disclosing the country or place of foreign origin of the product, or substantial part or parts thereof, on the front or face of such packaging, container, or display card, so positioned as to clearly have application to the product so packaged or mounted, and of such degree of permanency as to remain thereon until consummation of consumer sale of the product, and of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers making casual inspection of the product as so packaged or mounted.

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

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

By the Commission, Commissioner Higginbotham not participating.

IN THE MATTER OF

RIESER CO., INC., ET AL.

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

Docket 8471. Complaint, Mar. 6, 1962—Decision, Dec. 18, 1962

Order requiring New York City distributors to cease representing falsely that their bob-pins had been awarded a first prize, through use of the trade mark "First Prize Bob-Pins" superimposed on the picture of a blue prize ribbon appearing on the front of each card to which the bob-pins were attached; and to cease selling imported needles in small paper packets attached to display cards in such manner that the words "Made in West-Germany" appearing on the reverse side were not visible until the packets were torn off.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal

Trade Commission, having reason to believe that the Rieser Co., Inc.,* a corporation, and Norvin H. Rieser, Jr., and Eugene F. Rieser, 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 Rieser Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 110 East 129th Street in the city of New York, State of New York.

Respondents Norvin H. Rieser, Jr., and Eugene F. Rieser are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of bob-pins, hair nets, hairpins, sewing needles, hair accessories, and other articles of merchandise to distributors and jobbers and to retailers for resale to the public.

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

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of certain of their bob-pins, respondents use the name or trademark "First Prize Bob-Pins". Said name or trademark is superimposed on the picture of a blue prize ribbon, which appears on the front of each card to which said bob-pins are attached.

PAR. 5. Through the use of the aforesaid name or trademark, respondents represent that their said bob-pins have won or have been awarded a first prize or other award for grade, quality or design.

PAR. 6. Said statement and representation is false, misleading and deceptive. In truth and in fact, said bob-pins have never won nor

*[The correct corporate name is The Rieser Co., Inc.]

have they been awarded a first prize or any other award for grade, quality or design.

PAR. 7. Respondents package certain of their sewing needles in small paper packets which are securely attached to display cards in such a manner that the words "Made in West-Germany", appearing on the reverse side of said packets, are not visible to the prospective purchaser until and unless said packets are torn off the display card.

PAR. 8. The aforesaid words, which set forth the country of origin of said needles, are concealed from the purchaser's view so as to be wholly inadequate to give the public notice of the country of origin of said product.

PAR. 9. In the absence of an adequate disclosure that a product, including sewing needles, is of foreign origin, the public believes and understands that it is of domestic origin.

As to the aforesaid articles of merchandise, a substantial portion of the purchasing public has a preference for said articles which are of domestic origin. Respondents' failure clearly and conspicuously to disclose the country of origin of said articles of merchandise is, therefore, to the prejudice of the purchasing public.

PAR. 10. By the aforesaid acts and practices, respondents place in the hands of retailers and others the means and instrumentalities by and through which they may mislead the public as to the country of origin of said product.

PAR. 11. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of bobbins, sewing needles, and other products of the same general kind and nature as those sold by respondents.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

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Mr. Terral A. Jordan and *Mr. Sheldon Feldman*, supporting the complaint.

Temko & Temko, of New York, N.Y., by *Mr. Richard S. Temko*, for respondents.

INITIAL DECISION BY DONALD R. MOORE, HEARING EXAMINER*

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint in this proceeding March 6, 1962, and it was duly served on all respondents. The complaint charges respondents with misrepresenting their bobbins as "First Prize" and with failing to disclose clearly that their sewing needles are made in West Germany. These practices are alleged to constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

After being served with the complaint, respondents appeared by counsel and filed answer denying generally any violation of law, but admitting specifically or in effect most of the factual allegations of the complaint, and also advancing certain "affirmative defenses."

Following negotiations between counsel and an informal conference with the hearing examiner, the parties entered into a stipulation of facts and agreement that obviated the necessity for hearings.

On motion of counsel supporting the complaint, the hearing examiner, by notice dated May 22, 1962, took official notice of the following facts:

1. When merchandise, including sewing needles, is offered for sale to the purchasing public and such merchandise is not marked or is not adequately marked showing that it is of foreign origin, such purchasing public understands and believes that such merchandise is of domestic origin.

2. A substantial portion of the purchasing public prefers merchandise, including sewing needles, that is manufactured in the United States over such merchandise that is manufactured in foreign countries.

Respondents were advised of their right to present evidence to the contrary. In the absence of any showing that respondents' products are "exceptional" or that "exceptional circumstances" exist in this matter, it appears appropriate to recognize the "general rule" enunciated by the Commission in *Manco Watch Strap Co., Inc.*, Docket

*The correct corporate name of respondent is *The Rieser Co., Inc.*

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7785 [60 F.T.C. 495] (March 13, 1962), and to take official notice of the Commission's own records demonstrating the existence of (1) a belief or assumption by a substantial segment of the buying public that merchandise, not being clearly marked otherwise, was made in America; and (2) a general consumer preference for American-made merchandise.

Proposed findings of fact and conclusions of law and a proposed form of order, together with supporting briefs, were filed by counsel supporting the complaint and counsel for respondents. Proposed findings not adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as involving immaterial matters.

After carefully reviewing the entire record in this proceeding, and the proposed findings, conclusion and order filed by the parties, together with the supporting briefs, the hearing examiner finds that this proceeding is in the interest of the public, makes the following findings of fact and conclusions drawn therefrom, and issues the following order:

FINDINGS OF FACT

1. Respondent The Rieser Co., Inc., erroneously designated in the complaint in this proceeding as Rieser Co., Inc.,¹ 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 110 East 129th Street in the city of New York, State of New York.

Respondents Norvin H. Rieser, Jr., and Eugene F. Rieser are individuals and 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 advertising, offering for sale, sale and distribution of bob-pins, hair nets, hairpins, sewing needles, hair accessories and other articles of merchandise to distributors and jobbers and to retailers for resale to the public.

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 New

¹ Counsel supporting the complaint and counsel for respondents stipulated and agreed, in paragraph 1 of "Stipulation as to the Facts and Agreement" (CX 7) that the true and correct name of the corporate respondent is The Rieser Co., Inc., and not Rieser Co., Inc., as stated in the complaint, and that The Rieser Co., Inc., is one and the same party as Rieser Co., Inc., and may be so designated and substituted therefor in all further proceedings.

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

4. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of bob-pins, sewing needles and other products of the same general kind and nature as those sold by respondents.

5. In the course and conduct of their business, and for the purpose of inducing the sale of certain of their bob-pins, respondents use the name or trademark "First Prize Bob-Pins." This name or trademark is superimposed on the picture of a blue prize ribbon, which appears on the front of each card to which the bob-pins are attached.

6. Through the use of the name or trademark, "First Prize," respondents represent that their bob-pins have won or have been awarded a first prize or other award for grade, quality or design.

The validity of this finding constitutes the only area of real controversy in this proceeding.

Both sides are in agreement, however, that this question is one of fact for the determination, initially, of the hearing examiner and, ultimately, of the Commission, and that no sampling of public opinion is required. In any event, the case law so teaches, and the hearing examiner has made the finding on that basis.

Despite the agreement of counsel on this point, the stipulation and agreement states that six named consumer witnesses "would testify that the term 'First Prize Bob-Pins' as it appears on Commission Exhibits 1 and 2 and in the format and context thereof, means to them that said bob-pins have won or have been awarded a first prize or other award for grade, quality or design."

As thus reinforced by direct consumer testimony, the conclusion is inescapable that the challenged term has the meaning alleged. Neither the force of this testimony nor the hearing examiner's independent assessment of the term's meaning is weakened by the further stipulation that the individual respondents "would testify that the name or trade mark 'First Prize Bob-Pins' does not constitute a statement or representation to the effect that the merchandise in question has won or has been awarded a first prize or other award for grade, quality or design, and that said name or trade mark is merely laudatory in nature, and is a common designation used in connection with the sale of many articles of merchandise."

This self-serving opinion testimony by respondents flies in the face not only of reason and logic, but of the stipulated consumer testimony as well, and it must be rejected.

Respondents argue that if they "stated that the goods had won a first prize, such would be a representation, but merely using the term as a trademark is not such a representation." Merely to state such a proposition is to demonstrate its speciousness. It must be rejected as wholly untenable. The trademark makes the representation attributed to it.

Respondents further urge that they "used this designation, with innocent intent, as a trademark, and there is no evidence in the record of actual instances of deception or belief that it was a representation in connection with any sale of the merchandise."

As for "innocent intent," it is well established that wrongful intent is not a necessary element in such a case as this. On that point, however, it is pertinent to note that it is not difficult to choose from the vast lexicon of the English language a trade name that does not deceive or mislead. A claim of innocent intent ill comports with the use of a "First Prize" designation for merchandise that admittedly has never won any kind of prize.

Similarly, the attempted defense that the record contains no evidence of actual deception can be disposed of with brief comment. In the first place, as already noted, the record does contain such evidence. Even in the absence of such evidence, it is sufficient if the name has the capacity and tendency to deceive.

7. The representation inherent in the trademark or trade name "First Prize", as found in paragraph 6, is false, misleading and deceptive. In truth and in fact, respondents' bob-pins admittedly have never won nor have they been awarded a first prize or any other award for grade, quality or design.

8. There remains for consideration the question whether any remedy short of excision of the trademark would be adequate to cure its deceptive capacity. It is well settled that trademarks, even when registered, are not immune to challenge under the Federal Trade Commission Act. Here, there is no evidence or even any indication that the term is a registered trademark, and it appears doubtful that it would qualify for registration. But whether registered or not, its status as a trademark does not exempt it from excision if it has the capacity and tendency to deceive or mislead.

That it has such capacity and tendency is evident, and any modifying language would necessarily contradict rather than explain the inherent representation that the articles designated "First Prize" had won a prize. An order is required prohibiting use of the term.

This case is strikingly similar to *Newville, Inc.*, Docket 6405, 53 F.T.C. 436 (1956). There, hosiery was designated "Academy Award," although admittedly, it had not won any award. Use of the term was prohibited. A similar result must be reached here.

9. Although denying in their answer the allegations of paragraphs 7-10 of the complaint, relating to inadequate disclosure of the West German origin of their sewing needles, respondents, in their "First Affirmative Defense", implicitly qualified the denials by alleging that the packets involved had been relabeled so as to disclose to prospective purchasers the country of origin. Furthermore, Commission Exhibits 4, 5 and 6 demonstrate that, as alleged by the complaint, respondents package certain of their sewing needles in small paper packets which are securely attached to display cards in such a manner that the words "Made in West-Germany", appearing on the reverse side of the packets, are not visible to the prospective purchaser until and unless the packets are torn off the display card.

It was stipulated and agreed (CX 7) that the exhibits so arranged are "identical to and typical of" the products, packaging and advertising used by the respondents in the course and conduct of their business as alleged in the complaint.

10. Thus, the words setting forth the country of origin of the needles are concealed from the purchaser's view so as to be wholly inadequate to give notice of the country of origin of said product.

11. In the absence of an adequate disclosure that a product, including sewing needles, is of foreign origin, the public believes and understands that it is of domestic origin.

As to such articles of merchandise, a substantial portion of the purchasing public has a preference for articles which are of domestic origin. Respondents' failure clearly and conspicuously to disclose the country of origin of their articles of merchandise is, therefore, to the prejudice of the purchasing public.

This finding is predicated on official notice, as set forth in the Statement of Proceedings. Nothing to the contrary having been shown by respondents, these matters are found as facts. Respondents concurred in the proposed findings set forth in the first subparagraph of this paragraph, and objected to the second subparagraph only on the ground it was "superfluous" in view of their revised packaging practices.

Stating that the packaging complained of has "long since" been discontinued, respondents contend that the charge of failing to disclose foreign origin is "moot and serves no public interest."

This attempted defense suffers from two deficiencies. First, as pointed out by counsel supporting the complaint, the record is devoid of any *evidence* that the challenged practice has been discontinued. A mere statement of discontinuance of a challenged practice does not warrant dismissal of the charge.

Second, even accepting the respondents' proposed finding concerning this matter, the fact is that as recently as July 1961, they were still packaging sewing needles without adequately disclosing the foreign origin of the products. At the most, respondents claim only that the practice was discontinued before they filed answer to the complaint—that is, before April 1962.

Identifying marks on certain of the exhibits show that the investigation of this matter was under way at least by July 1961. Accordingly, if discontinuance did not take place until early 1962, it is apparent that the respondents continued the practice for some months after becoming aware of the Commission's "hand on their shoulders."

In this state of the record, and on the authority of *Art National Manufacturers Distributing Company, Inc.*, Docket 7286 (May 10, 1961), affirmed 298 F. 2d 476 [7 S. & D. 319] (2d Cir. 1962), the defense of discontinuance is found wanting. There are no unusual circumstances justifying dismissal here.

12. By the acts and practices described in paragraphs 9–11, respondents place in the hands of retailers and others the means and instrumentalities by and through which they may mislead the public as to the country of origin of their sewing needles.

This finding is an obvious corollary to the foregoing facts. Since respondents have failed to disclose adequately that their sewing needles are of foreign origin, and have thereby led the public to believe they are of domestic origin, this failure to make such a disclosure is to the prejudice of a substantial portion of the purchasing public which prefers such goods of domestic origin. It necessarily follows that respondent has, therefore, placed the means and instrumentalities of deception in the hands of retailers and others reselling their products.

13. The use by respondents of the false, misleading and deceptive statements, representations and practices described in these findings has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of such erroneous and mistaken belief. As a consequence, it may be inferred, trade has been or may be unfairly diverted to respondents

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from their competitors and substantial injury has been or may be done to competition in commerce.

This finding is based on the allegations of the complaint, the respondents' answer, the stipulated facts, exhibits and testimony, and the matters concerning which official notice has been taken.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.
2. The complaint herein states a cause of action, and this proceeding is in the public interest.
3. The 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents, The Rieser Co., Inc., a corporation (incorrectly designated in the complaint as Rieser Co., Inc.), and its officers, and Norvin H. Rieser, Jr., and Eugene F. Rieser, individually and as officers of such 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 bob-pins, sewing needles, hair nets, hairpins, hair accessories 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. Using the words "First Prize", or any substantially similar phrase, as a name for or as descriptive of such products.
2. Representing, directly or indirectly, in any manner or by any means, that such products have won or have been awarded a prize for grade, quality or design.
3. Offering for sale, selling or distributing such products which are, in whole or in substantial part, of foreign origin, without clearly disclosing the country or place of origin of the product in a conspicuous place on the product, or on the package or container in cases where it is impossible or impracticable to make such disclosure on the product itself.²

² This section of the order was not proposed by counsel supporting the complaint, but appears necessary to cover not only the needles here in issue, but other products that may be subject to the order. The needles in evidence are not themselves marked to disclose their foreign origin, but the order proposed did not take this into account.

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4. Offering for sale, selling or distributing such products in packages or containers in such a manner that the name of the country or place of origin on the product is concealed without clearly disclosing the country or place of origin of the product in a conspicuous place on the package or container.

5. Offering for sale, selling or distributing such products mounted on or affixed to cards in such a manner as to conceal the name of the country or place of origin without disclosing on such cards the name of the country or place of origin.

6. Furnishing or otherwise placing in the hands of retailers or dealers in such products the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things prohibited by this order.

FINAL ORDER*

The hearing examiner, on September 19, 1962, having filed an initial decision in this matter and the Commission, by its order of October 25, 1962, having placed this case on its docket for review; and

The Commission having duly considered the entire record and having determined that the findings of fact contained in said initial decision are fully supported and are appropriate in all respects but that the order to cease and desist should be modified to eliminate a prohibition with respect to a practice not charged in the complaint and that said order should be revised in form so as to more clearly delineate the practices proscribed:

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

It is ordered, That respondents, The Rieser Co., Inc., a corporation (incorrectly designated in the complaint as Rieser Co., Inc.), and its officers, and Norvin H. Rieser, Jr., and Eugene F. Rieser, individually and as officers of such 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 bob-pins, sewing needles, hair nets, hairpins, hair accessories 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. Using the words "First Prize," or any substantially similar phrase, as a name for or as descriptive of such products.
2. Representing, directly or indirectly, in any manner or by

*The correct corporate name of respondent is *The Rieser Co., Inc.*

any means, that such products have won or have been awarded a prize for grade, quality or design.

3. Offering for sale, selling, or distributing any such products packaged, or mounted in a container, or on a display card, without disclosing the country or place of foreign origin of the product, or substantial part thereof, on the front or face of such packaging, container, or display card, so positioned as to clearly have application to the product so packaged or mounted, and of such degree of permanency as to remain thereon until consummation of consumer sale of the product, and of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers making casual inspection of the product as so packaged or mounted.

4. Furnishing or otherwise placing in the hands of retailers or dealers in such products the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things prohibited by this order.

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

It is further ordered, That respondents, The Rieser Co., Inc., Norvin H. Rieser, Jr., and Eugene F. Rieser 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

ROY WEIR ET AL. DOING BUSINESS AS VALLEY
FRUIT & VEGETABLE CO.

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

Docket C-279. Complaint, Dec. 18, 1962—Decision, Dec. 18, 1962

Consent order requiring packers of citrus fruit and produce in Pharr, Tex., to cease violating Sec. 2(c) of the Clayton Act by paying commissions or brokerage to a large number of direct buyers purchasing for their own account for resale.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C.

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

PARAGRAPH 1. Respondents Roy Weir, Rudolph Ogden, Dan Seitz and Richard Eubank are individuals and copartners doing business as Valley Fruit & Vegetable Co. with their office and principal place of business located at Pharr, Texas, with mailing address at P.O. Box 770, Pharr, Texas.

PAR. 2. Respondents, individually and as copartners doing business as Valley Fruit & Vegetable Co., are now, and for the past several years have been, engaged in the business of packing, selling and distributing citrus fruit and produce, hereinafter sometimes referred to as food products. Respondents sell and distribute their food products directly, and in many instances, through brokers, to buyers located in various sections of the United States. When brokers are utilized in making sales, respondents pay said brokers for their services a brokerage or commission, at a varying rate, depending on the size and value of the food products involved. Respondents' annual volume of business in the sale and distribution of food products is substantial.

PAR. 3. In the course and conduct of its business over the past several years, respondents have sold and distributed and are now selling and distributing food products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, to buyers located in the several States of the United States other than the State of Texas in which respondents are located. Respondents transport, or cause such food products, when sold, to be transported from their place of business or packing plant in the State of Texas or from other places within said State, to such buyers or to the buyers' customers located in various other States of the United States. Thus, there has been, at all times mentioned herein, a continuous course of trade in commerce in food products across state lines between said respondents and the respective buyers thereof.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents have been and are now making substantial sales of food products to some, but not all, of their brokers and direct buyers purchasing for their own account for resale, and on a large number of these sales respondents paid, granted or allowed, and are now paying, granting or allowing to these brokers and other direct buyers on their purchases a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

PAR. 5. The acts and practices of respondents in paying, granting, or allowing to brokers and direct buyers a commission, brokerage or

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other compensation, or an allowance or discount in lieu thereof, on their own purchases, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, 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. Respondents, Roy Weir, Rudolph Ogden, Dan Seitz and Richard Eubank are individuals and copartners doing business as Valley Fruit & Vegetable Co. with their office and principal place of business located at Pharr, Texas, with mailing address at P.O. Box 770, Pharr, Texas.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That the respondents Roy Weir, Rudolph Ogden, Dan Seitz, and Richard Eubank, individually and as copartners doing business as Valley Fruit & Vegetable Co., and their agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of citrus fruit or produce, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying, granting, or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of such buyer, anything of value

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as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of citrus fruit or produce to such buyer for his own account.

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

IN THE MATTER OF

MARVIN POLK TRADING AS PARKER FUR COMPANY,
ETC., ET AL.

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

Docket C-280. Complaint, Dec. 18, 1962—Decision, Dec. 18, 1962

Consent order requiring Chicago furriers to cease violating the Fur Products Labeling Act by failing to show on labels and invoices the true animal name of furs and to disclose when furs were artificially colored; to show the name of the manufacturer, etc., on labels, and the country of origin of imported furs on invoices; to disclose on invoices and in newspaper advertising when fur products were "second-hand"; substituting nonconforming labels for those affixed by manufacturers or distributors; and failing in other respects to conform to labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Marvin Polk, an individual trading as Parker Fur Company and as Re-Sale Fur Salon, and Richard Polk, individually and as a salesman of Parker Fur Company and Re-Sale Fur Salon, 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. Marvin Polk is an individual trading as Parker Fur Company and as Re-Sale Fur Salon. Richard Polk is an individual and salesman of Parker Fur Company and Re-Sale Fur Salon.

Both respondents cooperate in controlling, directing and formulating the acts, policies and practices of the said firms. The office and principal place of business of both respondents is located at 220 South State Street, Chicago, Ill. Respondents manufacture, wholesale and retail fur products.

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

PAR. 3. Certain of said fur products were misbranded 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 without labels and fur products with labels which failed:

1. To show the true animal name of the fur used in the fur product.
2. To disclose that the fur product contained or was composed of bleached, dyed or otherwise artificially colored fur, when in fact the fur product contained bleached, dyed or otherwise artificially colored fur.
3. To show the name, or other identification issued and registered by the Commission of one or more of the persons who manufactured such fur product for introduction into commerce, introduced it in commerce, sold it in commerce, advertised or offered it for sale, in commerce, or transported or distributed it in commerce.

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

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

(b) Labels affixed to fur products did not comply with the minimum size requirements of one and three-quarter inches by two and

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three-quarter inches, in violation of Rule 27 of said Rules and Regulations.

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

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

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

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

1. To show the true animal name of the fur used in the fur product.
2. To disclose that the fur product contained or was composed of bleached, dyed or otherwise artificially colored fur, when in fact such fur product was bleached, dyed or otherwise artificially colored.
3. To show the country of origin of the imported fur contained in the fur product.

PAR. 6. Respondents falsely and deceptively invoiced certain of said fur products or otherwise falsely and deceptively identified such fur products in violation of Section 5(b)(2) of the Fur Products Labeling Act and Rule 11 of the said Rules and Regulations by using coined, fictitious and nonexistent animal names to describe fur products.

Among such falsely and deceptively invoiced fur products but not limited thereto, were fur products covered by invoices which described Rabbit by the term "Northern Seal", a coined, fictitious and nonexistent animal name.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

(b) The disclosure "secondhand", where required, was not set forth on invoices, in violation of Rule 23 of said Rules and Regulations.

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

PAR. 8. Certain of said fur products were falsely and deceptively advertised in that said fur products were not advertised as required under the provisions of Section 5(a) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Said advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

Among and included in the advertisements of the aforesaid fur products, but not limited thereto, were advertisements of the respondents which appeared in issues of the Chicago Sun Times, a newspaper published in the city of Chicago, State of Illinois.

Among such false and deceptive advertisements of fur products, but not limited thereto, were advertisements which failed to disclose that fur products contained or were composed of used fur when in fact such fur products contained or were composed of used fur, in violation of Section 5(a)(2) of the Fur Products Labeling Act.

PAR. 9. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that they were not advertised in accordance with the Rules and Regulations promulgated thereunder inasmuch as such fur products were not described as "secondhand" when in fact such fur products had been previously used or worn by an ultimate consumer, in violation of Rule 23 of said Rules and Regulations.

PAR. 10. Respondents have sold, advertised, offered for sale, and processed fur products which have been shipped and received in commerce, and have misbranded said fur products by substituting for the labels affixed to fur products by manufacturers or distributors pursuant to Section 4 of the Fur Products Labeling Act, labels which did not conform to the requirements of said Section 4 in violation of Section 3(e) of said Act.

PAR. 11. 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

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violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint 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 Marvin Polk is an individual trading as Parker Fur Company and as Re-Sale Fur Salon. Respondent Richard Polk is an individual and salesman of Parker Fur Company and Re-Sale Fur Salon. The office and principal place of business of both respondents is located at 220 South State Street, Chicago, Illinois.

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 Marvin Polk, an individual trading as Parker Fur Company, Re-Sale Fur Salon or under any other trade name, and Richard Polk, individually and as a salesman of Parker Fur Company or Re-Sale Fur Salon, 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 product; or in connection with the sale, manufacture for 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. Failing to affix labels to fur products showing in words and figures plainly legible all the information required to

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be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

B. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

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

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

E. Failing to set forth on labels 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 all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

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

C. Failing to disclose that fur products are "secondhand" when in fact such fur products have been worn or used by ultimate consumers.

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

E. Using coined, fictitious or nonexistent animal names to describe fur products.

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 set forth in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

B. Fails to describe fur products as "secondhand" when such fur products have been previously worn by ultimate consumers.

It is further ordered, That respondents Marvin Polk, an individual trading as Parker Fur Company, Re-Sale Fur Salon, or under any other trade name, and Richard Polk, individually and as a salesman

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of Parker Fur Company or Re-Sale Fur Salon, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the selling, offering for sale, or processing fur products which have been shipped or received in commerce, do forthwith cease and desist from misbranding fur products by substituting for the labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act labels which do not conform to the requirements of the aforesaid Act and Rules and Regulations promulgated thereunder.

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

HOWARD B. GILLMORE

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

Docket C-281. Complaint, Dec. 18, 1962—Decision, Dec. 18, 1962

Consent order requiring a Blossburg, Pa., distributor to cease furnishing to sellers of his wallets a plan of merchandising which involved the operation of a game of chance when sale was made to consumers.

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 Howard B. Gillmore, an individual, 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 Howard B. Gillmore is an individual who operates his business from his home located at 8 Liberty Street, Blossburg, Pa.

PAR. 2. Respondent is now, and for some time last past has been engaged in the sale and distribution of various articles of merchandise, including wallets.

PAR. 3. In the course and conduct of his said business, respondent, causes, and for some time last past has caused, his said merchandise, when sold, to be shipped from his place of business in the State of Pennsylvania 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 merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4 In the course and conduct of his business, as described above, in soliciting the sale of and in selling and distributing his wallets, the proposed respondent furnishes to sellers of his wallets a plan of merchandising which involves the operation of a game of chance, gift enterprise or a lottery scheme when said merchandise is sold and distributed to the purchasing and consuming public. The method or sales plan adopted and used by respondent is the following:

Respondent distributes, and has distributed, to members of the public certain literature including, among other things, merchandising cards with instructions as to their use, order blanks, circulars which feature depictions of the merchandise involved in the scheme and respondent's plan of sale and distribution of his merchandise together with the prize to be allotted to one of a certain number of purchasers. Respondent's merchandising cards have ruled lines numbered 1 through 24 on each line of which following the number is to be written in the name of the purchaser of a wallet. At the top of the merchandising card, preceding the list of 24 numbers, there is a seal under which is concealed one of the 24 numbers. The purchaser whose name appears on the merchandising card following the number which has been concealed under the seal receives a prize. For example, the merchandising card bears the following legend:

This Beautiful Secretary Case
FREE
Member whose number is under the SEAL
receives the case.
(SEAL)

One of said merchandising cards accompanies each order of 24 wallets, packed in the above described case, and is used by the recipient thereof in promoting the sale of the wallets. Sales of respondent's merchandise by means of said merchandising card are made as hereinabove set forth and said prize or premium is allotted to the customer or purchaser from said card in accordance with the above legend or instruction. Whether a purchaser of a wallet receives the prize or premium depends upon the number he selects on the card and thus the recipient of the prize is determined wholly by lot or chance.

PAR. 5. The persons to whom respondent furnishes and has furnished said merchandising card use the same in selling and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting games of chance, gift enterprises or lottery schemes in the sale of his merchandise in accordance with the sales plan hereinabove set forth.

Many persons are attracted by said sales plan or method used by respondent involving the element of chance and thereby are induced to sell respondent's merchandise. The use by respondent of said sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and constitutes an unfair act and practice in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and constituted, and now constitute, unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 Howard B. Gillmore is an individual who operates his business from his home located at 8 Liberty Street, Blossburg, Pa.

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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 Howard B. Gillmore, an individual, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of wallets or other article of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, merchandising cards or any other device or devices which are designed or intended to be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.

2. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

IN THE MATTER OF

ESTHER WOLF, 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-282. Complaint, Dec. 18, 1962—Decision, Dec. 18, 1962

Consent order requiring a furrier in Houston, Tex., to cease violating the Fur Products Labeling Act by representing in labeling and advertising that fictitious prices were reductions from regular retail prices; failing to show on labels and invoices and in advertising the true animal name of furs, and on invoices and in advertising the country of origin of imported furs; failing in advertising to disclose that products contained artificially colored furs, and to use the term "natural" where required; failing to comply in other respects with labeling and invoicing requirements; and failing to maintain adequate records as a basis for price and value claims.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority

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vested in it by said Acts, the Federal Trade Commission, having reason to believe that Esther Wolf, Inc., a corporation, and E. Joseph Wolf and Leonard Halpern, individually and as officers of said corporate respondent, 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 Esther Wolf, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas.

Individual respondents E. Joseph Wolf and Leonard Halpern are officers of the corporate respondent. Said individual respondents cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent including the acts and practices hereinafter referred to.

Respondents are in the business of retailing fur products. All respondents have their offices and principal place of business located at Post Oak and San Felipe Roads, Houston, Texas.

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

PAR. 3. Certain of said fur products were misbranded in that labels affixed thereto represented prices of fur products as having been reduced from regular or usual prices when the so-called regular or usual prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by the respondents in the recent regular course of business, 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 the true animal name of the fur used in the fur product.

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

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

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

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by the respondents 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 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 show the country of origin of the imported furs used in the fur product.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

PAR. 8. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that said products were not advertised in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder.

Said advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said products.

Among and included in the advertisements as aforesaid but not limited thereto were advertisements of respondents which appeared in the

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Houston Post and the Houston Chronicle, newspapers published in the city of Houston, State of Texas.

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

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur products 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) Failed to disclose the name of the country of origin of the imported furs contained in the fur products, in violation of Section 5(a)(6) of the Fur Products Labeling Act.

PAR. 9. Respondents, by means of the labels referred to in paragraph 3 hereof and others of similar import and meaning, not specifically referred to herein, falsely and deceptively advertised fur products in that said advertisements represented prices of fur products as having been reduced from regular or usual prices where so-called regular or usual prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by the respondents in the recent regular course of business, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations promulgated thereunder.

PAR. 10. Respondents by the means hereinbefore alleged, falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder.

Among such advertisements, but not limited thereto, were advertisements which failed to use the term "natural" to describe fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

PAR. 11. Respondents, in advertising fur products for sale as aforesaid, made claims and representations respecting prices and values of fur products. Said representations were of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondents, in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims

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and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 12. 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.

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint 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, Esther Wolf, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at Post Oak and San Felipe Roads, in the city of Houston, State of Texas.

Respondents E. Joseph Wolf and Leonard Halpern 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 Esther Wolf, Inc., a corporation and its officers, and E. Joseph Wolf and Leonard Halpern, individually and as officers of said corporation and respondents' representatives,

agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce or the transportation or distribution in commerce of 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, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

B. Representing on labels or other means of identification, directly or by implication, that any price, when accompanied or unaccompanied by any descriptive language, was the price at which the merchandise so labeled or otherwise identified was usually and customarily sold at retail by the respondents unless such said merchandise was in fact usually and customarily sold at retail at such price by the respondents in the recent past.

C. Setting forth on labels affixed to fur products:

(1) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form;

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

D. Failing to set forth the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the sequence required by Rule 30 of the aforesaid Rules and Regulations.

2. Falsely or deceptively invoicing fur products by:

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

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

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 set forth all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

B. Represents directly or by implication that any price, when accompanied or unaccompanied by any descriptive language, was the price at which the merchandise advertised was usually and customarily sold at retail by the respondents unless such advertised merchandise was in fact usually and customarily sold at retail at such price by the respondents in the recent past.

C. Fails to use the term "natural" to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

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

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

IN THE MATTER OF

CHARMOLL FASHIONS, 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-283. Complaint, Dec. 18, 1962—Decision, Dec. 18, 1962

Consent order requiring manufacturers in St. Paul, Minn., to cease violating the Wool Products Labeling Act by falsely labeling the shell of men's and boys' jackets as "100% reprocessed wool", the lining as "100% rayon" and the interlining as "70% reprocessed wool and 30% other fibers" when shell, lining and interlining contained substantially different amounts of fibers than thus set forth; and by failing to show the true generic name of fibers present and the percentage thereof on other clothing labels.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Charmoll Fashions, Inc., a corporation, and Harry Saffe and Harry Katz, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Charmoll Fashions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota.

Individual respondents Harry Saffe and Harry Katz are officers of the corporate respondent and formulate, direct and control the acts, practices and policies of the corporate respondent, Charmoll Fashions, Inc., including those hereinafter set forth.

Respondents are manufacturers of wool products, namely, men's and boys' clothing, and have their office and principal place of business at 317 Sibley Street, St. Paul, Minn.

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

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

Among such misbranded wool products, but not limited thereto, were men's and boys' jackets labeled or tagged by the respondents to show that the shell of the jacket was 100% reprocessed wool, that the lining was 100% rayon and that the interlining was 70% reprocessed wool and 30% other fibers, whereas, in truth and in fact, the said shell, lining and interlining contained substantially different amounts of fibers than that set forth on the labels in each instance.

PAR. 4. Certain of said wool products were misbranded by respondents in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act 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 men's and boys' clothing with labels which failed:

1. To show the true generic name of the fibers present, and
2. To show the percentage of such fibers.

PAR. 5. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

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 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, Charmoll Fashions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 317 Sibley Street, in the city of St. Paul, State of Minnesota.

Respondents Harry Saffe and Harry Katz 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 Charmoll Fashions, Inc., a corporation, and its officers, and Harry Saffe and Harry Katz, 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 manufacture for introduction into commerce, the introduction into commerce, or the offering for sale, sale, transportation, delivery for shipment or distribution, in commerce, of men's and boys' clothing or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such wool products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.
2. Failing to securely affix to or place on each product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner, each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

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

MANUFACTURING CHEMISTS' ASSOCIATION, INC., ET AL.

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

Docket C-284. Complaint, Dec. 19, 1962—Decision, Dec. 19, 1962

Consent order requiring eight manufacturers of trisodium phosphate (TSP) and their trade association to cease conspiring to hinder competition by, among other things, fixing and maintaining noncompetitive or rigid prices for TSP; fixing prices and terms of sale through common use of a multiple basing point or other system equalizing prices without regard to

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shipping cost, using standard containers for TSP or identical differentials for sale therein, using identical quantity differentials such as identical carload and truckload prices, or using uniform contracts with provisions for identical terms of sale; by maintaining a zone delivered pricing system; or by collecting and exchanging information concerning transportation charges or using any factor so collected in computing the price of TSP; and requiring them to review their prices and pricing systems on the basis of their individual costs, withdraw their presently effective prices, etc., and establish new prices individually determined.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (38 Stat. 717, 15 U.S.C.A. Sec. 41, 52 Stat. 111), and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Manufacturing Chemists' Association, Inc., a corporation; Olin Mathieson Chemical Corporation, a corporation; Monsanto Chemical Company, a corporation; Allied Chemical Corporation, a corporation; The American Agricultural Chemical Company, a corporation; FMC Corporation, a corporation; Virginia-Carolina Chemical Corporation, a corporation; Hooker Chemical Corporation, a corporation; and Stauffer Chemical Company, a corporation, more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby names the previously mentioned corporations, each and all as respondents herein, and issues its complaint against each of the named parties stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Manufacturing Chemists' Association, Inc., hereinafter sometimes referred to as respondent MCA, is an incorporated trade association organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at the Universal Building, Connecticut and Florida Avenues, Washington, D.C. Said trade association was originally organized in 1872 and incorporated under its present corporate title in 1949 under the laws of the State of New York.

Respondent Olin Mathieson Chemical Corporation is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at 460 Park Avenue, New York 22, N.Y. In June 1955, Olin Mathieson Chemical Corporation acquired and merged Blockson Chemical Company.

Respondent Monsanto Chemical Company is a corporation organized and existing under the laws of the State of Delaware, with its

principal office and place of business located at 800 North Lindbergh Boulevard, St. Louis 66, Mo.

Respondent Allied Chemical Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 61 Broadway, New York 6, N.Y.

Respondent The American Agricultural Chemical Company is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 100 Church Street, New York 7, N.Y.

Respondent FMC Corporation, formerly operating under the name Food, Machinery and Chemical Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place for transacting the business of its Chemical Division located at 633 3rd Avenue, New York 17, N.Y.

Respondent Virginia-Carolina Chemical Corporation is a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at 401 East Main Street, Richmond, Va.

Respondent Hooker Chemical Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 666 Fifth Avenue, New York 19, N.Y. In June 1958, Hooker Chemical Corporation acquired and merged Shea Chemical Corporation.

Respondent Stauffer Chemical Company is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 380 Madison Avenue, New York 17, N.Y. In November 1959, Stauffer Chemical Company acquired and merged Victor Chemical Works.

All of the respondents named herein, other than respondent MCA, are collectively referred to hereinafter as "respondent manufacturers".

PAR. 2. The respondent manufacturers, hereinbefore named and described, either directly or through operating divisions or subsidiaries, are engaged in the manufacture, sale and distribution, or the sale and distribution of trisodium phosphate, hereinafter referred to as TSP.

Each of the respondent manufacturers is engaged in the business of selling and distributing TSP to customers located in States other than the State in which each respondent respectively maintains production or processing facilities and in some instances to customers located outside the continental limits of the United States. There has been and is now a pattern and course of interstate commerce in said

TSP by respondents within the intent and meaning of the Federal Trade Commission Act. The amount of sales in commerce is substantial.

PAR. 3. The respondent manufacturers are in substantial competition with each other, and with others in the manufacture, sale, processing and distribution of TSP, except to the extent that competition has been hindered, lessened, restricted and eliminated by the unfair methods of competition and unfair acts and practices hereinafter set forth.

PAR. 4. TSP is a chemical substance which is manufactured in three distinct forms: crystalline, anhydrous and monohydrate. The raw materials from which TSP is manufactured consists of phosphoric acid, soda ash and caustic soda. TSP has a number of industrial uses including the following:

- a. In alkaline cleaning compounds, particularly in industrial and home floor and wall cleaners;
- b. Water treatment and water treating compounds for precipitating water hardness and furnishing PO_4 ion in boilers where an alkalinity higher than DSP (Disodium Phosphate) is needed;
- c. In metal cleaning and metal working for removing oil and grease;
- d. In wool scouring;
- e. Dehairing hogs;
- f. In fruit cleaning for removing insecticidal sprays and to inhibit growth of fruit mold;
- g. As a denture cleaner;
- h. To emulsify casein paints; and
- i. As a general industrial cleaner for removing oil and grease.

Total industry sales in recent years have been substantial; in 1956, such sales amounted to approximately \$6,500,000.

TSP is sold by respondent manufacturers to numerous types of customers located throughout the United States. It is sold direct to soap and detergent manufacturers, meat packing plants and other direct users of TSP including Federal institutions as well as State, county and municipal institutions. TSP is also sold to wholesalers who resell to the consuming public and is sold direct to many customers through brokers.

PAR. 5. Respondent MCA is a trade association whose membership is composed of manufacturers of TSP and various other chemicals and chemical products. Respondent MCA has been and now is engaged through its divisions, committees and operating units in a wide range of activities of mutual interest to its members including standardization programs, traffic and transportation problems and other

manufacturing, distribution and sales procedures. Respondent manufacturers are, or formerly were, or the corporations heretofore named that have been acquired by them were, members of respondent MCA, and have for a number of years, through such membership and otherwise, directly or indirectly participated in the cooperative and collective action of all of those named herein as respondents in formulating, engaging in and making effective the methods, systems, acts, practices and policies which are alleged herein to be unlawful. Respondent MCA has participated, engaged and continues to so participate and engage in aiding respondent manufacturers in carrying out the unlawful acts and practices and unfair methods of competition alleged herein which affect competition between the respondent manufacturers and between respondent manufacturers and others not parties hereto.

Blockson Chemical Corporation, Victor Chemical Works and Shea Chemical Corporation, now defunct corporations, had for a number of years, through membership in respondent MCA and otherwise, directly or indirectly participated in the cooperative and collective action of all of those named herein as respondents in formulating, engaging in and making effective the methods, systems, acts, practices and policies which are alleged herein to be unlawful. Olin Mathieson Chemical Corporation, which acquired and merged Blockson Chemical Company, Hooker Chemical Corporation, which acquired and merged Shea Chemical Corporation, and Stauffer Chemical Company, which acquired and merged Victor Chemical Works, have, after so acquiring and merging the former corporations, continued in effect the methods, systems, acts, practices and policies alleged herein to be unlawful.

PAR. 6. Respondent manufacturers, either directly or indirectly through subsidiary or affiliated corporations or operating divisions, acting between and among themselves and with others not named herein as parties respondent and through and by means of respondent MCA, for many years last past and continuing to the present time, have maintained and now maintain and have in effect an understanding, agreement, combination and conspiracy to pursue, and they have pursued, a planned common course of action between and among themselves to adopt and adhere to certain practices and policies to hinder, lessen restrict, restrain, suppress and eliminate competition in the manufacture, distribution and sale of TSP in the course of the aforesaid commerce by use of the following:

- a. Fixed or maintained arbitrary, artificial, noncompetitive or rigid prices;
- b. Fixed or maintained prices, terms and conditions of sale through the common use of a multiple basing point system. Under this system

there are governing basing points used in determining freight charges for any destination for delivery of TSP in the United States. Except as set forth under the succeeding subparagraph c, each TSP producing plant for each respondent manufacturer is designated by all respondent manufacturers as a basing point to be used in determining freight charges from such point to any destination in the United States. All of the respondent manufacturers use the same base price in arriving at the delivered price for TSP at any destination in the United States. In arriving at the delivered price for TSP at any destination, the governing basing point must first be determined. This is done by adding to the base price the rail or truck freight costs from each basing point likely to govern the destination in question. Whatever basing point has the lowest total of these two factors, basing price plus freight costs, governs the price at the destination in question.

Under this pricing system each producing and shipping respondent manufacturer quotes and charges to any destination in the United States a delivered price derived by the use of this formula. The result of the use of the formula is the quoting of a delivered price for TSP by every respondent manufacturer identical with the delivered price quoted by all other respondent manufacturers to any delivery destination in the United States;

c. Respondent manufacturers of TSP have adopted, maintained and made effective a type of zone delivered price plan or system, governing the distribution and sales of TSP in certain geographic areas such as metropolitan New York, New York; Philadelphia, Pennsylvania; and Chicago, Illinois, whereby the uniform base prices, applicable under the aforesaid basing point freight equalization plan or system, together with an arbitrary and uniform delivery charge in lieu of freight are used with the result that prices offered by respondent manufacturers to all purchasers within said zones, regardless of shipping points and differences in freight rates from the various shipping points to these destinations, are identically or substantially matched;

d. Fixed or maintained prices by adopting or using the same general standard type and size of containers in which TSP is packaged, shipped and sold, or by adopting or using identical differentials for the sale of TSP in the various standard containers;

e. Fixed or maintained prices by the adoption or use of identical quantity differentials for TSP, such as adopting and using identical carload and less-than-carload prices or identical truckload or less-than-truckload prices;

f. Respondents, by mutual agreement and understanding between and among themselves, and by means of and through the respondent

MCA, have promoted adherence to the freight equalization plan or system by the dissemination and exchange among themselves of freight rate data and information; and

g. Fixed or maintained prices by adopting or using uniform or substantially uniform contracts with identical or substantially identical provisions containing uniform or substantially uniform terms and conditions of sale.

PAR. 7. The acts and practices of the respondents, as herein alleged, have had and do have the effect of hindering, lessening, restricting, restraining, and eliminating competition in the sale of TSP; are all to the prejudice and injury of customers of respondents and to the public; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the 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 Manufacturing Chemists' Association, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at the Universal Building, Connecticut and Florida Avenues, Washington, D.C.

Respondent Olin Mathieson Chemical Corporation is a corporation organized and existing under and by virtue of the laws of the State

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of Virginia with its office and principal place of business located at 460 Park Avenue, New York 22, N.Y.

Respondent Monsanto Chemical Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 800 North Lindbergh Boulevard, St. Louis 66, Mo.

Respondent Allied Chemical Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 61 Broadway, New York 6, N.Y.

Respondent The American Agricultural Chemical Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 100 Church Street, New York 7, N.Y.

Respondent FMC Corporation, formerly operating under the name Food, Machinery and Chemical Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place for transacting the business of its Chemical Division located at 633 3rd Avenue, New York 17, N.Y.

Respondent Virginia-Carolina Chemical Corporation is a corporation organized and existing under and by virtue of the laws of the State of Virginia with its office and principal place of business located at 401 East Main Street, Richmond, Va.

Respondent Hooker Chemical Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 666 Fifth Avenue, New York 19, N.Y.

Respondent Stauffer Chemical Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 380 Madison Avenue, New York 17, N.Y.

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

ORDER

I

A. *It is ordered*, That respondents Manufacturing Chemists' Association, Inc., Olin Mathieson Chemical Corporation, Monsanto Chemical Company, Allied Chemical Corporation, The American Agricultural Chemical Company, FMC Corporation, Virginia-Carolina

Chemical Corporation, Hooker Chemical Corporation and Stauffer Chemical Company, their respective officers, agents, representatives, employees, directly or through any corporate or other device in or in connection with the manufacture, offering for sale, sale or distribution of trisodium phosphate, hereinafter referred to as TSP, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or practices.

1. Fixing or maintaining arbitrary, artificial, noncompetitive or rigid prices;

2. Fixing or maintaining prices, terms and conditions of sale through the use of a basing point system, or any system by which prices are equalized at shipment destinations without regard to actual shipping costs;

3. Adopting, maintaining or making effective a zone delivered pricing plan or system, governing the distribution and sale of TSP in any geographic area or areas, whereby uniform base prices, together with uniform delivery charges in lieu of freight, are used to determine prices in such area or areas;

4. Fixing or maintaining prices by adopting or using the same general standard type or size of containers in which TSP is packaged, shipped and sold, or by adopting or using identical differentials for the sale of TSP in the various standard containers;

5. Fixing or maintaining prices by the adoption or use of identical quantity differentials for TSP, such as adopting or using identical carload and less-than-carload prices or identical truckload or less-than-truckload prices;

6. Collecting, compiling, circulating or exchanging information concerning transportation charges or other charges in lieu thereof used or to be used as a factor in computing the price of TSP; or using, directly or indirectly, any such information so collected, compiled, or received as a factor in computing the price of TSP;

7. Fixing or maintaining prices by adopting or using uniform or substantially uniform contracts with identical or substantially identical provisions containing uniform or substantially uniform terms and conditions of sale.

B. Nothing contained herein shall prevent any respondent manufacturer, acting independently, from negotiating or carrying out in

good faith a contract to manufacture, or to sell to or buy from any bona fide customer or supplier, whether such customer or supplier is or is not a respondent herein.

II

It is further ordered, That each respondent manufacturer shall, within sixty (60) days after the date of service of this Order, individually and independently, revise its prices and pricing systems and policies on trisodium phosphate in the following manner:

A. Review its prices, price lists, discounts and differentials, and pricing systems and policies, on the basis of its own costs, the margin of profit individually desired, and other lawful considerations;

B. Withdraw its presently effective prices, price lists, discounts, differentials and pricing systems. Prices in any contract outstanding at the time this Order issues shall be withdrawn on the earliest date permitted by the terms of such contract.

C. Establish new prices, price lists, discounts and allowances determined under (A) above, which prices shall become effective not later than sixty (60) days after the date of service of this Order. Nothing contained herein shall prevent any respondent, acting independently, from thereafter deviating from, modifying, or otherwise changing the established new prices for any lawful purpose.

D. In the event any prices, price lists, discounts, or allowances thus established are changed within the period of two (2) years following their adoption, the respondent making such change shall have the burden of establishing that such change was made in good faith to meet a competitive pricing situation or for any lawful purpose.

III

It is further ordered, That each of the respondents shall, within sixty (60) days after the service upon them 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.

Complaint

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IN THE MATTER OF

BERMAN FURS & SPORTSWEAR, 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-285. Complaint, Dec. 19, 1962—Decision, Dec. 19, 1962

Consent order requiring a Rochester, N.Y., furrier to cease violating the Fur Products Labeling Act by removing required labels from fur products prior to ultimate sale; failing to label fur products; failing to show on invoices that products contained artificially colored furs, and to use the term "natural" where required; by advertising which failed to disclose the country of origin of imported furs, and representing falsely that fictitious prices were reductions from regular retail prices; by failing to maintain adequate records as a basis for price and value claims; and failing to comply in other respects with the requirements of the Act.

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

PARAGRAPH 1. Respondent Berman Furs & Sportswear, 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 684 North Clinton Avenue, Rochester, N.Y.

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

Respondents retail fur products and sportswear.

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 distribu-

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tion, 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. Respondents have removed, or caused or participated in the removal of, prior to the time certain fur products were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products, in violation of Section 3(d) of said Act and the Rules and Regulations promulgated thereunder.

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 without labels.

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder inasmuch as required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by the respondents 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 thereunder.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was bleached, dyed or otherwise artificially colored when in fact the fur contained in such fur products was bleached, dyed or otherwise artificially colored.

PAR. 7. 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 "natural" was not used to describe fur products that were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) 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. 8. Certain of said fur products were falsely and deceptively advertised in that said fur products were not advertised as required under the provisions of Section 5(a) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Said advertisements were intended to aid, promote and assist, directly or indirectly in the sale and offering for sale of said fur products.

Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Rochester Times Union, a newspaper published in the city of Rochester, State of New York.

Among such false and deceptive advertisements of fur products, but not limited thereto were advertisements which failed to show the name of the country of origin of the imported furs contained in fur products.

PAR. 9. In advertising fur products for sale as aforesaid respondents represented prices of fur products as having been reduced from regular or usual prices where the so-called regular or usual prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by respondents in the recent regular course of business, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

PAR. 10. In advertising fur products for sale respondents made claims and representations respecting prices and values of fur products. Said representations were of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 11. 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

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Decision and Order

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 Berman Furs & Sportswear, 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 684 North Clinton Avenue, Rochester, N.Y.

Respondents Anna Berman, Harold Berman and Benjamin Berman 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 Berman Furs & Sportswear Inc., a corporation, and its officers, and Anna Berman, Harold Berman, and Benjamin Berman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale, in commerce, or the transportation or distribution in commerce, of 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, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

- B. Failing to set forth on labels 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. Failing to describe fur products as natural when such fur products are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.
- C. Failing to set forth on invoices the item number or mark assigned to a fur product.
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 set forth in words and figures plainly legible, all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.
- B. Represents directly or by implication that the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such product in the recent regular course of business.
4. Making claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

It is further ordered, That Berman Furs & Sportswear, Inc., a corporation, and its officers, and Anna Berman, Harold Berman, and Benjamin Berman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from removing, or causing or participating in the removal of, prior to the time any fur product subject to the provisions of the Fur Products Labeling Act is sold and delivered to the ultimate consumer, any label required by the said Act to be affixed to such fur product.

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

Complaint

IN THE MATTER OF

JACK SHORR ET AL. DOING BUSINESS AS UNITED
STATES LIQUIDATION COMPANY, ETC.

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

Docket C-286. Complaint, Dec. 19, 1962—Decision, Dec. 19, 1962

Consent order requiring Woodland Hills, Calif., distributors to cease representing falsely in newspaper advertising that their waterless cookware was distress merchandise from the stock of a business in liquidation, limited in quantity and with a "lifetime guarantee", and that it was offered at a purported large reduction from regular retail prices which were, in fact, excessive.

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 Jack Shorr and Mickey Shorr, individually and as copartners doing business as United States Liquidation Company and as Shorr Sales Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Jack Shorr and Mickey Shorr are individuals and are copartners doing business under various trade names, including United States Liquidation Company and as Shorr Sales Company. The said respondents do not maintain a permanent principal office or place of business. The residence of respondent Jack Shorr is located at 4228 Manson Avenue, Woodland Hills, Calif. The residence of respondent Mickey Shorr is located at 5010 Abbeyville Avenue, Woodland Hills, Calif.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of a variety of products, including waterless cookware, to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold to be shipped from their place of business in the State of California, or from various other States, to public warehouses located in various other States of the United States, for storage and for ultimate sale to members of the public located in States other than those in which such shipments originated.

Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their said products, respondents have made numerous statements in advertisements inserted in newspapers with respect to the availability and prices thereof and the savings available to purchasers.

Typical and illustrative of the aforesaid statements are the following:

In the Fort Wayne, Indiana "Journal-Gazette", issue of July 30, 1961:

FINAL NOTICE

WHEREAS: They are no longer engaged in the sale of 3 PLY, 18-8 STAINLESS STEEL Waterless Cookware . . . by means of HOME DEMONSTRATION, principals have placed with United States Liquidation Co. a number of 17 pieces sets for immediate disposal . . . carries the same valid lifetime guarantee as when sold on home demonstration for \$159.95 . . .

HOME DEMONSTRATION PRICE-----	\$159.95
DISPOSITION PRICE-----	\$38.50

. . . Quantities limited . . . DISPLAYED FOR IMMEDIATE SALE BY UNITED STATES LIQUIDATION CO.

PAR. 5. By and through the use of the above-quoted statements, and others of similar import not specifically set out herein, and through the use of the word "Liquidation" in respondents' trade name, respondents represented:

(a) That said products were distress merchandise, or were part of a line of discontinued products which was being liquidated and had to be immediately disposed of at special or reduced prices.

(b) That the quantities of such products available for sale were limited.

(c) That the higher stated prices set out in said advertisements were the prices at which the advertised merchandise had been usually and customarily sold by respondents, by respondents' purported principals, or by other retailers, at retail in the recent regular course of business, and that the difference between the higher and the lower prices represented savings to purchasers from said usual and customary retail prices.

PAR. 6. In truth and in fact:

(a) The said products were neither distress merchandise nor from the stock of a business being liquidated. Furthermore, there was no requirement for such products to be disposed of at special or reduced prices at any time.

(b) The quantities of said products available to respondents for sale were not limited. To the contrary, respondents could and did order and get delivery of sufficient quantities of said products, from the manufacturer thereof, as to enable them to utilize such methods of selling such products at numerous temporary locations throughout the country.

(c) The higher prices set forth in said advertisements were in excess of the prices at which the advertised merchandise had been usually and customarily sold by respondents, by their purported principals, or by other retailers. The difference between the higher and lower prices did not represent savings to purchasers from the usual and customary retail prices of respondents, their purported principals, or other retailers.

Therefore, the statements and representations, as set forth in paragraphs 4 and 5 hereof, were and are false, misleading and deceptive.

PAR. 7. In their advertisements of waterless cookware, the respondents have used such statements as "lifetime guarantee".

PAR. 8. In truth and in fact the respondents' advertised guarantees for waterless cookware fail to set forth the nature and extent of the guarantee, the manner in which the guarantor will perform and the identity of the guarantor. Therefore, statements referred to in paragraph 7 hereof are false, misleading and deceptive.

PAR. 9. 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 waterless cookware of the same general kind and nature as that sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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 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. Respondents Jack Shorr and Mickey Shorr are individuals and are copartners doing business as United States Liquidation Company and as Shorr Sales Company. The address of Jack Shorr is 4228 Manson Avenue, Woodland Hills, Calif. The address of Mickey Shorr is 5010 Abbeyville Avenue, Woodland Hills, Calif.

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 Jack Shorr and Mickey Shorr, as individuals or as copartners doing business as United States Liquidation Company, Shorr Sales Company, or under any other trade name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of waterless cookware or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That the quantities of such products which are available for sale are limited.

(b) That any amount is respondents' usual or customary retail price for said merchandise when such amount is in excess of the price at which said merchandise has been usually and customarily sold by respondents in the recent regular course of business; or that any amount is the price at which such merchandise has been usually and customarily

sold in the regular course of business by respondents' purported principals or other retailers, unless such stated amount is the price at which such merchandise has been sold in regular course of business by such purported principals or by such other retailers.

(c) That any of respondents' products are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

2. Misrepresenting in any manner the usual or customary retail prices of such merchandise or the savings to be afforded to purchasers thereof.

3. Using the word "Liquidation", or any other word or words of similar import or meaning, in or as a part of respondents' trade name, or representing in any other manner that such products are distress merchandise or are a part of a line of discontinued products which is being liquidated.

4. Representing, directly or by implication, that respondents' products are being disposed of or offered for sale at reduced or special prices, unless such products are in fact offered for sale at reduced or special prices.

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

ARCTIC FUR CO., INC., TRADING AS
ALASKA-ARCTIC FURS ET AL.

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

Docket C-287. Complaint, Dec. 20, 1962—Decision, Dec. 20, 1962

Consent order requiring manufacturing furriers in Seattle, Wash., to cease violating the Fur Products Labeling Act by labeling with fictitious prices; failing to show on invoices and in advertising the true animal name of fur, when fur was artificially colored, and when it was natural; failing to show on invoices the country of origin of imported furs, and when fur products were composed of cheap or waste fur, and to use the term "Dyed Mouton Lamb" as required; setting forth on invoices the name of another animal than that which produced the fur and of another country than the true country of

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origin; by newspaper advertising which represented prices falsely as reduced from prices which were in fact fictitious, and as "reduced up to ½ or more"; and by failing in other respects to comply with requirements of the Act.

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 Arctic Fur Co., Inc., a corporation trading as Alaska-Arctic Furs, and Melville P. Steil, Vincent P. McNally and John H. Willers, individually and as officers of said corporate respondent, and Frank G. Holmstrom, individually and as auditor and manager 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 Arctic Fur Co., Inc., is a corporation organized, existing and trading as Alaska-Arctic Furs, under and by virtue of the laws of the State of Washington.

Individual respondents Melville P. Steil, Vincent P. McNally and John H. Willers are officers of the corporate respondent and individual respondent Frank G. Holmstrom is auditor and manager of the corporate respondent. Said individual respondents cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent including the acts and practices hereinafter referred to.

Respondents are engaged in the business of manufacturing, wholesaling and retailing fur products. All respondents have their offices and principal place of business at 1517 Fifth Avenue, Seattle, Wash.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952 and more especially since 1959, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce; and have sold, advertised, offered for sale and processed fur products which have been shipped and received in commerce and upon which fur prod-

ucts substitute labels have been placed by respondents, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Respondents in selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, have misbranded such fur products by substituting thereon, labels which did not conform to the requirements of Section 4 of the Fur Products Labeling Act, for the labels affixed to said fur products by the manufacturer or distributor pursuant to Section 4 of the said Act, in violation of Section 3(e) of the said Act.

Among such misbranded products, but not limited thereto, were fur products which were misbranded within the meaning of Section 4(1) of the Fur Products Labeling Act, in that labels affixed thereto, contained fictitious prices and misrepresented the regular retail selling prices of such fur products in that the prices represented on such labels as the regular prices of the fur products were in excess of the retail prices at which respondents usually and regularly sold such fur products in the recent regular course of its business.

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

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by the respondents 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 fur products, but not limited thereto, were invoices pertaining to such fur products which failed:

1. To show the true animal name or names of the fur used in the fur product.
2. To disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored when such was the fact.
3. To show the country of origin of the imported furs used in the fur product.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of Section 5(b) (2) in the following respects:

1. The name of an animal other than the name of the animal that

produced the fur contained in said fur products was set forth on invoices.

2. The name of a country other than the name of the country wherein the furs actually originated was set forth on invoices as the country of origin.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

(b) The term "Dyed Mouton Lamb" was not set forth in the manner required by law, in violation of Rule 9 of said Rules and Regulations.

(c) Fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored were not described as natural, in violation of Rule 19(g) of the said Rules and Regulations.

(d) The disclosure that fur products were composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces, or waste fur was not set forth on invoices, in violation of Rule 20 of the said Rules and Regulations.

(e) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on invoices with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

PAR. 8. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that said products were not advertised in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder.

Said advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said products.

Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents, which appeared in the Seattle Times, a newspaper published in the city of Seattle, State of Washington and having a wide circulation in said State and various other States of the United States.

By means of said advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely

and deceptively advertised fur products in that said advertisements:

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur products as set forth in the Fur Products Name Guide.

(b) Failed to disclose that fur products contained or were composed of bleached, dyed or otherwise artificially colored fur, when such was the fact.

PAR. 9. Respondents, by the means hereinbefore alleged, falsely and deceptively advertised fur products in that said advertisements:

1. Contained terms set forth in abbreviated form, which implied, directly or indirectly, that the fur products contained the fur of a particular animal when such was not the case, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

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

3. Represented through the use of terms such as, among others, "reduced up to 1/2 and more" that prices of fur products were reduced when such was not the case and the reduction was in fact fictitious, in violation of Section 5(a)(5) and Rule 44(a) of the said Rules and Regulations.

PAR. 10. Respondents by the means hereinbefore alleged, falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act, in that said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder.

Among such advertisements, but not limited thereto, were advertisements which:

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

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

(c) Failed to describe as natural fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

(d) Contained information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which was not set forth separately with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

PAR. 11. 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 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, Arctic Fur Co., Inc., is a corporation organized, existing and trading as Alaska-Arctic Furs, under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 1517 Fifth Avenue, in the city of Seattle, State of Washington.

Respondents Melville P. Steil, Vincent P. McNally and John H. Willers are officers of said corporation, and Frank G. Holmstrom is the auditor of said corporation. 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 respondent Arctic Fur Co., Inc., a corporation trading under its own name or as Alaska-Arctic Furs or under any other trade names, and its officers and Melville P. Steil, Vincent P. McNally and John H. Willers, individually and as officers of said corporation, and Frank G. Holmstrom individually and as auditor 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 product; or in connection with the manufacture for sale, sale, advertising or 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 sale, advertising, offering for sale or processing of any fur product which has been shipped and received in commerce and upon which fur product a substitute label has been placed by the respondents, 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. Substituting labels for labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act which substitute labels do not conform to the requirements of Section 4 of the said Act.

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

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 of the animal producing the fur contained in the fur product as specified in the Fur Products Name Guide, and as prescribed under the Rules and Regulations.

C. Misrepresenting the country of origin of the furs contained in fur products.

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

E. Failing to set forth the term "Dyed Mouton Lamb" in the manner required where an election is made to use that term instead of the term "Dyed Lamb".

F. Failing to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, as natural.

G. Failing to disclose that fur products are composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces or waste fur.

H. Failing to set forth information required under Section 5(b) (1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to each section of fur products composed of two or more sections containing different animal furs.

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 set forth all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

B. Represents in any manner, directly or by implication, that fur products contain the fur of a particular animal when such is not the case.

C. Sets forth information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

D. Sets forth the term "blended" as part of the information required under Section 5(a) 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.

E. Fails to disclose fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, as natural.

F. Fails to set forth separately in advertisements relating to fur products composed of two or more sections containing different animal furs the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section.

G. Represents directly or by implication that the regular or usual prices of any fur product is any amount which is in excess of the prices at which respondent has usually and customarily sold such products in the recent and regular course of its business.

H. Represents directly or by implication that the prices of fur products have been reduced when such is not the case.

I. Misrepresents in any manner the savings available to purchasers of respondents' fur 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

EDWARD JOSEPH HRUBY DOING BUSINESS AS
HRUBY DISTRIBUTING COMPANY

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

Docket 8068. Complaint, Aug. 4, 1960—Decision, Dec. 26, 1962

Order dismissing by a two-to-one decision, complaint charging an Omaha, Nebr., distributor with violating Sec. 2(c) of the Clayton Act by receiving commissions or brokerage on purchases of food products for its own account, the majority holding that the allowances concerned were functional discounts made to an intermediate distributor to enable him to sell to other wholesalers at a price competitive with that offered by producers selling through food brokers.

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: